

**Enhancing inter-professional  
relationships in a changing  
family law system**

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and Meredith O'Connor**



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Enhancing Inter-Professional Relationships in a Changing Family Law System

The University of Melbourne



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## EXECUTIVE SUMMARY

### The Policy Context

Over the past decade, Australia's family law system has increasingly emphasised the use of non-adversarial approaches to resolving post-separation disputes about children. Most recently the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth) came into operation. A central focus of this reform is the provision of extensive family dispute resolution services outside the court system. Such developments inevitably demand that family lawyers and family dispute resolution practitioners engage in greater collaboration, and the success of the reforms is likely to be affected by the capacity of these two groups of professionals to form and maintain effective working relationships. However, the existing research suggests a range of areas of potential conflict and sources of tension that may inhibit positive working relationships between family lawyers and family dispute resolution practitioners. These include confusion about role boundaries, hierarchical approaches to the inter-professional relationship, lack of respect for the other profession's skill base, and poor understanding of the other profession's responsibilities and work practices. A closer examination of these relationships in Australia, including consideration of what characterises successful collaborative relationships, and the factors that promote these characteristics, was the focus of this research.

### The Research

This report describes a two year empirical project that was jointly funded by the Australian Research Council and the Australian Government Attorney-General's Department. The research involved investigation of the ways in which family lawyers and family dispute resolution practitioners regard and manage their inter-professional relationships when helping clients to resolve post-separation conflict over children. The project involved a sequential design of two studies.

**Study 1** took place in 2006. This qualitative study aimed to gather detailed information about the characteristics of successful collaborative relationships between family lawyers and family dispute resolution practitioners and how these were formed and supported. Data collection for this stage of the project relied on a form of intensity sampling, where participants were experiential experts in the area of interest. The data were obtained through in-depth semi-structured interviews with practitioners\* who had an established and reputedly positive working relationship with the other profession. Interviews were conducted with family dispute resolution personnel (then known as PDR practitioners) from four well known dispute resolution programs operating in the family law system and family lawyers who had an established working relationship with one (or more) of these programs. The surveyed dispute resolution programs were:

- Relationships Australia's Family Mediation Service in Victoria (RAV);
- UnitingCare Unifam's 'Keeping Contact' Program, which operates in Sydney and Parramatta (Keeping Contact);
- Victoria Legal Aid's Roundtable Dispute Management program (RDM);

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\* In this report, 'practitioners' is used as a general term to encompass members of both professions.



- The Family Court of Australia's Mediation Section (as it was then known) and the Magellan Program, operating in the Melbourne registry (Magellan).

The sample of 59 participants comprised 29 family dispute resolution practitioners and 30 family lawyers associated with the four services. Family dispute resolution participants were recruited through the managers of the services and through attendance at staff meetings by members of the research team. Family lawyers were recruited through the relevant dispute resolution service and by telephone contact. The precise method of contacting family lawyers varied according to the service with which they were associated, and details are set out in Chapter 2.

The interviews focused on exploring the issues identified in earlier research about inter-professional relationships within legal settings. Collaboration between these practitioners included working together with clients during dispute resolution conferences (at RDM), participating in regular joint professional development meetings (at RAV), referrals (at Keeping Contact), and consultation and dialogue about mutual clients (such as between the Family Court mediators and Independent Children's Lawyers). By including a mix of community-based, court-based, and Legal Aid Commission dispute resolution services, the study aimed to tease out the extent to which the nature of these programs and their different locations within the family law system affected their relationships with the legal profession. The data collected for Study 1 therefore provided detailed qualitative information about the features of good working relationships between family lawyers and family dispute resolution practitioners and the factors affecting their formation.

The results of this study informed the design of Study 2, which sought to deepen our understanding of inter-professional relationships in the Australian family law system by surveying a broader and more representative sample of practitioners working in the sector.

**Study 2** took place in 2007. This largely quantitative study used a questionnaire survey to confirm the relevance of the characteristics of good collaborative relationships revealed in Study 1 and gauge the extent to which such relationships were reflective of the broader family law community. In contrast to the Study 1 sample, this study captured a broad range of inter-professional relationships of varying quality and levels of establishment. Its data therefore provided valuable information about the perceptions of practitioners who do not work closely with members of the other profession. The questionnaire asked practitioners for information about their level of contact with the other profession, their responsibilities and inter-professional practices and their understanding of the practices and responsibilities of the 'other' profession, as well as their attitudes and satisfaction with their inter-professional relationships.

The quantitative data were analysed using the SPSS statistical software package. A range of statistical procedures were used. Those of relevance to this report include multivariate analysis of variance, correlation, regression, and t-tests. A total of 456 practitioners completed the questionnaire, including 134 family dispute resolution practitioners and 322 family lawyers. Although exact numbers of family lawyers and family dispute resolution practitioners working on parenting matters in Australia are unknown, the greater number of family lawyers than family dispute resolution

practitioners in the sample appears to reflect the population distribution of each profession.

The sample of family dispute resolution practitioners who completed the questionnaire included practitioners working in community-based family relationship organisations, Legal Aid Commission family dispute resolution services, and Family Relationship Centres. The family lawyers who completed the questionnaire comprised solicitors in private practice, including sole practitioners and solicitors working in both small and large law firms, and Legal Aid and community-based family lawyers. Practitioners were drawn from a diverse range of locations, including capital cities and regional and rural areas.

Family dispute resolution practitioners were recruited through the managers of the services, who were provided with information about the project and asked to pass on an email invitation from the researchers to their family dispute resolution staff. Legal Aid family dispute resolution practitioners, many of whom work sessionally and are otherwise in private practice, were recruited through the National Legal Aid Secretariat. Family lawyers were recruited with the assistance of the Chair of the Family Law Section of the Law Council of Australia, which represents approximately 2300 family lawyers throughout Australia, and Legal Aid Commissions. The questionnaires contained a mix of closed format (including Likert-scale and rank questions) and open-ended questions. The responses to the Likert-scale and rank questions were analysed using SPSS, while the open-ended responses were analysed thematically and used to contextualise and extend our reading of the quantitative data analysis. The assumptions for all tests were carefully checked, and the tests used were robust for unequal cell sizes. Without exact information on the current number and characteristics of the population of each profession, weightings were not appropriate.

## **This Report**

**Chapter 1** of this report describes the policy and research context in which this research took place, and sets out the legal and professional practice requirements governing the work of each profession in family law matters.

**Chapter 2** summarises the key insights from Study 1, which involved interviews with practitioners associated with family dispute resolution agencies that had reputedly good working relationships with the legal profession. This chapter describes the key characteristics of the positive collaborative relationships surveyed in this study and how these relationships were formed and supported. The findings are discussed under thematic sub-headings: complementary services; cross-professional understanding; positive inter-professional practices; and positive personal contact.

**Chapter 3** summarises the key insights from Study 2, which used the information obtained in Study 1 to gauge the extent to which good collaborative relationships exist in the broader community of family law professionals in Australia and to survey the attitudes and perceptions of practitioners who do not have close working contact with the other profession. The findings are discussed under the thematic headings: inter-professional contact; satisfaction with the inter-professional relationship; collaborative relationships; positive inter-professional practices; cross-professional understanding; hierarchical inter-professional attitudes; and concerns about role boundaries.

**Chapter 4** draws together the findings from the two studies and discusses the conclusions and recommendations developed from them. These findings, conclusions and recommendations are summarised below.

### **Findings, Conclusions and Recommendations**

The research indicates that whilst some family lawyers and family dispute resolution practitioners enjoy positive inter-professional relationships, many practitioners have little collaborative contact with the other profession, and there are significant misunderstandings and tensions between the two groups. The successful collaborative relationships surveyed in this project were characterised by a number of features. These included:

- Practitioners described a complementary services approach to their relationship, in which each group saw themselves and the other profession as contributing different but equally valuable complementary skills and expertise to the dispute resolution process;
- Practitioners from both groups understood and respected the nature of each other's roles, responsibilities and ways of working with family law clients;
- Practitioners had a shared expectation of the dispute resolution process and a shared understanding of the particular family dispute resolution program's aims and approach to working with family law clients;
- Family lawyers engaged in 'positive' advocacy practices;
- Practitioners trusted the intake screening and referral practices of the other profession in cases involving family violence;
- Practitioners engaged respectfully with members of the other profession and extended professional courtesies, such as the provision of timely feedback about clients.

The interview data indicate that these characteristics were supported and enhanced through regular positive contact between practitioners from each profession, such as working together as a multi-professional team or through participation in information sharing and joint professional development meetings. The research therefore offers important insights into how such positive inter-professional relationships might be developed more widely in the sector.

#### **1. Understanding and Role Clarity**

The successful collaborative relationships in this project - whether practitioners worked directly together as a multi-professional team or functioned along the more traditional lines of client referrals - were underpinned by a complementary services outlook, in which practitioners from both groups valued the contributions made by the other profession to the dispute resolution process. Central to this approach was an understanding of, and respect for, the different roles and responsibilities of the other profession, and how these filled gaps in the practitioner's own roles when working with family law clients.

However, the Study 2 data suggest that many practitioners may not have a well developed understanding of the other profession's roles and work practices. In

particular, the research revealed some misunderstandings about the nature of family lawyers' client advocacy role and misconceptions of family lawyers' responsibilities to children among family dispute resolution practitioners. The data also suggest that aggressive advocacy practices by family lawyers, and disrespect for family lawyers' roles by family dispute resolution practitioners, present barriers to the production of successful collaboration between the two professions.

The majority of family dispute resolution practitioners in our project identified a primary or overriding duty to the child. In contrast, family lawyers, whose primary duty is to advance and protect their client's interests, and who have no direct responsibilities to children (unless acting as an Independent Children's Lawyer), described themselves as juggling a number of simultaneous professional responsibilities. These included duties to the client and the court and responsibilities under the *Family Law Act* regarding advice about children's 'best interests', which is legally defined. The research suggests that these differences in responsibilities were not well understood by some family dispute resolution practitioners, who expected family lawyers to accord the same priority to the child's interests as they themselves did. A number of family dispute resolution practitioners were particularly critical of the legally defined nature of family lawyers' responsibilities regarding children's 'best interests', and wanted family lawyers to draw on the social science research evidence on child development and children's needs when working with parents, as they do themselves. The data also suggest that many family dispute resolution practitioners who do not work closely with family lawyers have a poor understanding of and/or little respect for the family lawyer's client advocacy role, with some confusing this role with 'adversarialism'.

The research indicates that inter-professional relationships are enhanced where family dispute resolution practitioners have a clear understanding of the nature and importance of the family lawyer's advocacy role. The findings also suggest that greater familiarity with the law governing children's 'best interests' may enhance family dispute resolution practitioners' relationships with family lawyers, through an increased understanding of the knowledge base which informs family lawyers' practices and by clarifying the resonances and gaps between the law and the child development literature. A similar familiarisation process for family lawyers regarding the relevant research used by family dispute resolution practitioners when working with parents may also benefit collaboration. However, the research does not support the idea of family lawyers becoming 'child development experts' or family dispute resolution practitioners acquiring expertise in family law. Rather, the data indicate the importance of a complementary services approach to the inter-professional relationship, in which practitioners from both groups respect and value the expertise and knowledge base of the other profession.

The research also suggests the importance to good inter-professional relationships of family lawyers practising their advocacy role in a non-adversarial way. In particular, effective collaborations with family dispute resolution practitioners were undermined where family lawyers were seen to be over-zealous or bullying in support of their client's instructions or failed to manage a client's unreasonable expectations.

In addition, the project indicates that some family lawyers may not be aware of the diversity of approaches to working with family law clients across the different dispute

resolution programs operating in the sector, and suggests that some family lawyers and family dispute resolution practitioners may have different expectations of the dispute resolution process or be working towards different goals. In particular, the research revealed a diversity of approaches to the concepts of neutrality and impartiality among family dispute resolution practitioners, which were not always apparent to family lawyers. The research also suggests that some legal practitioners are concerned about the potential implications for vulnerable clients of the family dispute resolution practitioner's obligation of impartiality.

### **Recommendations:**

1. Education is indicated for family dispute resolution practitioners in the multiple professional roles and responsibilities required of family lawyers. In particular, education is needed about the importance of the family lawyers' client advocacy and legal advice roles for family law clients.
2. Education is also indicated for family lawyers on the nature of different family dispute resolution processes, their advantages and limits, and the ways in which family lawyers' roles of legal advice and client advocacy can best fit with family dispute resolution. In particular, family lawyers need to have an understanding of the ways in which family dispute resolution practitioners approach their obligation of impartiality. Where necessary, this information will need to be service-specific, with a focus on the particular aims and approaches used and the legal practitioners' roles within this context. Family dispute resolution services should consider how they may best educate family lawyers about the services they provide and how they work with family law clients.
3. The research also indicates that cross-professional development opportunities designed to familiarise family dispute resolution practitioners with the relevant law governing the 'best interests of the child' and familiarise family lawyers with the relevant research evidence that informs family dispute resolution practitioners' work with parents may enhance inter-professional collaboration.

## **2. Developing Mutual Understanding and Respect**

As noted, underpinning the successful collaborative relationships in this project was a clear understanding of and respect for the other profession's roles and responsibilities. Family dispute resolution practitioners who had positive collaborative relationships with family lawyers were more likely to understand the conflicting duties inherent in the family lawyer's role; to describe the benefits of legal advice and client advocacy, particularly for 'less powerful' clients; to support the need for an advocate for the parents within the context of their service; and to respect and draw on family lawyers' expert legal knowledge for their clients as a complement to their own social or psychological science knowledge of children's needs and family dynamics. The Study 1 interviews showed that such understanding had flourished through regular positive contact between practitioners, such as directly working together with clients and through regular information sharing or cross-professional development meetings. For example, successful collaborative relationships involving a high degree of mutual understanding and respect for each profession's roles and responsibilities were found

at Victoria Legal Aid's RDM program, where family dispute resolution practitioners and clients' legal advisers worked together as a team in roundtable conferences, and at RAV, where the service has a Lawyers Panel and a culture of regular joint professional development meetings.

However, the interview data also indicate that the *nature* of inter-professional contact is important, and that contact with members of the other profession may have a positive or negative influence depending on its quality. For some practitioners in Study 1, contact with the other profession had served to reinforce negative perceptions, while for others contact had had a positive and transformative effect on their relationships.

The diversity of family dispute resolution services means that there can be no universal template for promoting collaboration and advancing understanding and respect. RDM's practice of involving clients' legal representatives in dispute resolution conferences, which is common across Legal Aid family dispute resolution programs, is not the dominant family dispute resolution model in the sector. However, the model of professional development meetings used by RAV and the solicitors on its Lawyers Panel appears to have potential for replication in the sector, as it does not depend on any particular model of family dispute resolution practice. Family lawyers and the family dispute resolution practitioners at RAV have regular meetings in which both groups report they are supportive of respectful relationships. Factors that appear to have generated these respectful relationships are:

- Sharing information about work practices and the changing nature of these, as well as about the practice constraints on the respective roles of the two professions;
- Approaching the other profession with trust and respect and allaying fears of the other profession by honesty and openness about their family law work and its challenges;
- Responding sensitively to the other profession's concerns;
- The meetings are conducted in a positive spirit of inclusiveness; and
- Inclusion of a social aspect, to build a sense of camaraderie.

#### **Recommendations:**

4. The Australian Government Attorney-General's Department, family dispute resolution providers, the Family Law Section of the Law Council of Australia, and state family law associations should consider how to facilitate regular joint meetings for family dispute resolution practitioners and family lawyers for information-sharing purposes. These should:
  - be conducted in a spirit of openness and inclusiveness; and
  - explore ways of family lawyers and family dispute resolution practitioners working together and sharing information about how they work, including the challenges they face in their practices.

5. There should be further exploration of the professional development meetings conducted by RAV and its Lawyers Panel and of the RDM teamwork model to tease out what can be replicated more generally across the sector.
6. Service providers and professional organisations should take responsibility for ensuring that prejudiced and uninformed attitudes about the other profession are challenged.

### **3. Improving Communication and Feedback**

Both family lawyers and family dispute resolution practitioners raised concerns about poor communication and feedback about cases in which both were involved. There is potential to develop protocols to guide inter-professional referrals and feedback, whilst taking into account limitations such as confidentiality requirements. The diversity of family dispute resolution services means that protocols would need to be tailored to the needs of particular services. Further, such protocols should not be seen as a substitute for familiarity with the other profession's ways of working and a collaborative approach to working with members of the other profession.

#### **Recommendation:**

7. Consider developing a model of structured feedback for practitioners from each profession that is consistent with each profession's confidentiality obligations and the nature of the dispute resolution service.

### **4. Screening for Family Violence**

There was evidence that concern on the part of some members of both professional groups about the practices of the other profession in identifying and managing disputes involving violence had impeded the formation of successful collaborative relationships. Some family dispute resolution practitioners expressed frustration that family lawyers did not understand how they screen for, and work with, cases involving violence. Whilst there were some complaints by family lawyers about the screening processes of some family dispute resolution services, family lawyers who had good relationships with family dispute resolution services trusted them to screen and work safely with victims of violence.

In light of the centrality of family violence to both the family dispute resolution and shared parenting provisions of the 2006 reforms, both professional groups need to be able to identify violence and work with cases involving violence and both should screen all clients for violence. There was some indication, although not supported by strong evidence, that some family lawyers may not be identifying cases involving violence.

#### **Recommendations:**

8. Consideration should be given to further research to assess whether family lawyers are, or are not, reliably identifying cases of violence and are, or are not, able to identify cases which are appropriate for referral to family dispute resolution.

9. Consideration should be given to the development of further training courses for family lawyers in violence, appropriate referral and the ways in which family dispute resolution agencies deal with violence.
10. The ways in which dispute resolution services screen for and work with violence should be included in the inter-professional meetings as recommended above at Recommendation 4.

## **5. Further Research**

Many family dispute resolution practitioners in Study 2 suggested that family lawyers were rarely ‘non-adversarial’ when representing clients. However, many participants in Study 2 had limited contact with members of the other profession, and such claims are likely, therefore, to reflect perceptions gained from clients (which may or may not be accurate) rather than direct knowledge of family lawyers’ behaviour. The data also show that some family dispute resolution practitioners confuse the concepts of ‘advocacy’ and ‘adversarialism’ and that some object to the partisanship inherent in the family lawyer’s client advocacy role. Where practitioners enjoyed good collaborative relationships, family dispute resolution practitioners’ descriptions of family lawyers’ advocacy practices were more positive, and descriptions of poor advocacy (such as failure to manage a client’s unreasonable expectations) were distinguished from adversarial practices (where lawyers support the escalation of conflict by clients).

Claims of adversarial approaches by family lawyers sit uncomfortably with the numerous empirical studies of family lawyers which demonstrate that practitioners normally discourage the escalation of conflict by clients. It is likely that family dispute resolution practitioners’ complaints reflect a mix of the issues noted above, as well as experiences of ‘bad’ advocacy practices by some family lawyers. However, it is not clear what some family dispute resolution practitioners are attempting to convey when they complain of adversarialism by family lawyers. The data thus suggest the need for further research to clarify more precisely what family dispute resolution practitioners mean when they criticise family lawyers for adversarial behaviour.

### **Recommendation:**

11. Further research is indicated into family dispute resolution practitioners’ understandings of adversarial practices and client advocacy.



## CHAPTER ONE POLICY AND RESEARCH CONTEXT

### 1.1 THE FAMILY LAW AND POLICY CONTEXT OF THIS RESEARCH

This project commenced in January 2006. At that time, Australian family law was engaged in a continuing policy shift away from litigation-based approaches to resolving family disputes towards a greater use of non-adversarial conflict resolution models. Supported by funding from the Australian Government, courts and dispute resolution agencies have developed a range of services for family disputes.<sup>1</sup> Because of its relative speed, low cost and capacity to respond to the emotional components of family disputes, mediation has been widely adopted, using various models and approaches. Other dispute resolution methods, such as conciliation, arbitration and expert processes, have also been utilised. The growing significance of these alternatives to trial was recognised in 1996 when the *Family Law Reform Act 1995* (Cth) introduced the term Primary Dispute Resolution (PDR). Since that time, the Australian Government has continued to support the use of non-litigation pathways,<sup>2</sup> and promote policies that encourage parents ‘to take responsibility for resolving disputes themselves’.<sup>3</sup>

As well as the burgeoning of dispute resolution services, there has been extensive development of practice standards which have responded, amongst other things, to the difficult issues of power relationships within families and to family violence, with its potential impact on safety and the fairness of agreements.<sup>4</sup> Other developments have included the promotion of child focused dispute resolution practices.<sup>5</sup> Child focused practice, which has parallels in other jurisdictions,<sup>6</sup> was a response to increasing research evidence that parental conflict is damaging for children<sup>7</sup> and demands for

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<sup>1</sup> H. Astor and C. Chinkin *Dispute Resolution in Australia* (Butterworths, Sydney: 2002) 328-361.

<sup>2</sup> Family Law Pathways Advisory Group, *Out of the Maze: Pathways to the Future for Families Experiencing Separation* (Commonwealth of Australia, 2001).

<sup>3</sup> *Family Law Amendment (Shared Parental Responsibility) Bill 2005*, Explanatory Memorandum, Introduction.

<sup>4</sup> Ibid, especially at 344-355; Keys-Young, Legal Aid and Family Services, *Research/Evaluation of Family Mediation Practice and the Issue of Violence* (Australian Government Attorney-General’s Department, 1996).

<sup>5</sup> N. Webb and L. Moloney, ‘Child-Focused Development Programs for Family Dispute Professionals: Recent Steps in the Evolution of Family Dispute Resolution Strategies in Australia’ (2003) 9 *Journal of Family Studies* 23; House of Representatives Standing Committee on Family and Community Affairs, *Every Picture Tells a Story: Report on the Inquiry Into Child Custody Arrangements in the Event of Family Separation* (2003) (hereafter ‘Every Picture Report’); J. McIntosh, ‘Child-Inclusive Divorce Mediation: Report on a Qualitative Research Study’ (2000) 18 *Mediation Quarterly* 55.

<sup>6</sup> England, Department of Constitutional Affairs, *Parental Separation: Children’s Needs and Parents’ Responsibilities* (Green Paper, HM Government, July 2004); Canada, Department of Justice, *Managing Contact Difficulties: A Child-Centred Approach* (2003).

<sup>7</sup> J. Kelly, ‘Changing Perspectives on Children’s Adjustment Following Divorce’ (2003) 10 *Childhood* 237; J.B. Kelly, ‘Children’s adjustment in conflicted marriage and divorce: A decade review of research’ (2000) 39 *Journal of the American Academy of Child and Adolescent Psychiatry* 963; A. Burns, and R. Dunlop, ‘Parental Marital Quality and Family Conflict: Longitudinal Effects on Adolescents from Divorcing and Non-Divorcing Families’ (2002) 37 *Journal of Divorce & Remarriage* 57; J. McIntosh, ‘Enduring Conflict in Parental Separation: Pathways of Impact on Child Development’ (2003) 9 *Journal of Family Studies* 63.

recognition of children's capacity to participate in decision-making processes.<sup>8</sup> In addition to court and community based programs, alternative dispute resolution services were also developed within Legal Aid bodies.<sup>9</sup> Parenting support programs have also been developed to enhance compliance with parenting orders.<sup>10</sup> The Family Court of Australia responded to the challenges of family disputes by incorporating PDR into the management of parenting cases, and by developing specialist procedures such as child centred inquisitorial-style court hearing processes<sup>11</sup> and special processes for cases involving allegations of child abuse.<sup>12</sup> These changes in Australia reflected the growing policy interest in diversionary dispute resolution schemes for resolving family law disputes in other jurisdictions.<sup>13</sup>

In 2003, a parliamentary inquiry was conducted into the law governing post-separation arrangements for children.<sup>14</sup> Alongside recommendations for legislative reform to enhance shared parenting of children, the parliamentary committee responsible for this inquiry suggested the need for increased reliance on non-adversarial dispute resolution services within the family law system.<sup>15</sup> In response to this recommendation, the Australian Government announced its intention in 2004 to require parents to use an alternative dispute resolution process before approaching the courts, and to establish a network of Family Relationship Centres throughout Australia that would provide low cost dispute resolution services to separating couples and make referrals to the legal profession in cases of abuse or family violence.<sup>16</sup>

In light of these proposals, it was clear that parents would increasingly seek the services of both legal and dispute resolution professionals, and that the two professions would be required to work together to a greater extent than had previously been the case. However, a number of earlier studies had suggested that inter-professional relationships within legal settings are often affected by professional tensions, which may arise from the different training and professional cultures of the two groups or a lack of familiarity with the 'other' profession's roles and

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<sup>8</sup> See for example, A. James and A. James, 'Pump up the Volume: Listening to Children in Separation and Divorce' (1999) 6 *Childhood* 189; C. Smart and B. Neale, 'It's My Life Too – Children's Perspectives on Post-Divorce Parenting' (2000) *Family Law* 163; C. Smart, 'Towards an Understanding of Family Change: Gender Conflict and Children's Citizenship' (2003) 17 *Australian Journal of Family Law* 20; A. B. Smith, N. J. Taylor, and P. Tapp 'Rethinking Children's Involvement in Decision-Making after Parental Separation' (2003) 10 *Childhood* 201.

<sup>9</sup> J. Dewar, J. Giddings, and S. Parker, 'The Impact of Legal Aid Changes on Family Law Practice' (1999) 13 *Australian Journal of Family Law* 33.

<sup>10</sup> Australian Government Attorney-General's Department, *The Contact Orders Program: A Summary of the Independent Evaluation of the Contact Orders Pilot* (Canberra, 2003).

<sup>11</sup> R. Hunter, 'Child-related proceedings under Part VII Div 12A of the Family Law Act: What the Children's Cases Pilot Program can and can't tell us' (2006) 20 *Australian Journal of Family Law* 227.

<sup>12</sup> The Magellan program in the Family Court of Australia provides a 'fast track' for residence and contact cases involving allegations of abuse. Magellan lawyers and family dispute resolution practitioners participated in Study 1 of this project.

<sup>13</sup> See for example, England, Department of Constitutional Affairs, *Parental Separation: Children's Needs and Parents' Responsibilities* (Green Paper, HM Government, July 2004); J. Walker, 'FAInS – A New Approach for Family Lawyers?' [2004] *Family Law* 436; England, Department of Constitutional Affairs, White Paper, *Parental Separation: Children's and Parents' Responsibilities: Next Steps* (2005).

<sup>14</sup> *Every Picture Report*, above n 5.

<sup>15</sup> *Ibid* at para 4.47.

<sup>16</sup> Prime Minister's Press Release, 'Reforms to the Family Law System', 29 July 2004.

responsibilities.<sup>17</sup> At the same time, anecdotal evidence indicated that successful working relationships between family lawyers and dispute resolution practitioners were a feature of a number of dispute resolution programs operating in the Australian family law sector.<sup>18</sup>

It was in this context that we decided to explore the factors that support effective collaborations between family lawyers and family dispute resolution professionals, and in this context we carried out Study 1 of this project. At the time, the foreshadowed policy reforms were being debated in parliament, and practitioners were aware that change was imminent. The *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth) (hereafter the *Shared Parental Responsibility Act*) came into effect on 1st July 2006, shortly after we conducted the interviews for Study 1, and shortly before Study 2 took place.

In introducing the *Shared Parental Responsibility Act*, the Australian Government aimed ‘to bring about a cultural shift in how family separation is managed: away from litigation and towards cooperative parenting’.<sup>19</sup> The changes include reforms to court hearing processes to make them less adversarial,<sup>20</sup> and the establishment of a network of Family Relationship Centres outside the courts to provide clients with free and low cost family dispute resolution and assist parents to agree on arrangements for their children.<sup>21</sup> Accompanying these initiatives were amendments to the *Family Law Act* which promote shared parental responsibility and shared care arrangements for children<sup>22</sup> and require parents not affected by violence or abuse to use a family dispute resolution service to help them resolve their dispute before applying for court orders.<sup>23</sup> The reforms also replaced the language of ‘primary dispute resolution’ with the term ‘family dispute resolution’,<sup>24</sup> and provided dispute resolution practitioners with a number of new obligations.<sup>25</sup>

Behind these changes, which grew out of recommendations from the 2003 inquiry,<sup>26</sup> were concerns about the apparently high levels of consumer dissatisfaction with the legal system,<sup>27</sup> and (as noted above) mounting research evidence that parental conflict is damaging for children.<sup>28</sup> The policy goals underpinning their emphasis on non-

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<sup>17</sup> These studies are discussed in more detail in Section 1.2.

<sup>18</sup> These services are discussed in more detail in Section 1.4.

<sup>19</sup> Australian Government Attorney-General’s Department, ‘Bill Marks “Cultural Shift” in Dealing with Family Breakdown’, *Press Release*, 8 December 2005.

<sup>20</sup> Family Law Act 1975 (Cth), Part VII, Division 12A.

<sup>21</sup> See [http://www.ag.gov.au/www/agd/agd.nsf/Page/Families\\_Familyrelationshipcentres](http://www.ag.gov.au/www/agd/agd.nsf/Page/Families_Familyrelationshipcentres). For a description of the background to the Family Relationship Centres see, P. Parkinson, ‘Keeping in Contact: Family Relationship Centres in Australia’ (2006) 18 *Child and Family Law Quarterly* 157.

<sup>22</sup> Family Law Act 1975 (Cth), ss.61CA and 65DAA.

<sup>23</sup> Family Law Act 1975 (Cth), s.60I(1) and Family Law Rules, Schedule 1, Part 2. Note that since the 1<sup>st</sup> of July 2007, parents have been required to produce a certificate from a family dispute resolution service before the court can hear their dispute: s.60I(7). Families are exempted from the requirement to attempt family dispute resolution and produce a certificate where there is a history or risk of family violence or child abuse: s.60I(9).

<sup>24</sup> See Family Law Act 1975 (Cth), s.10F.

<sup>25</sup> These include a responsibility to certify whether or not a parent has made a genuine effort to resolve their dispute: s.60I(8). The responsibilities of family dispute resolution practitioners are described below in Section 1.4.

<sup>26</sup> *Every Picture* Report, above n 5.

<sup>27</sup> *Ibid* at Chapter 4.

<sup>28</sup> See McIntosh, above n 7.

adversarial dispute resolution processes include a concern to achieve less conflictual separations in the interests of children,<sup>29</sup> and an attempt to ensure the involvement of both parents in children's lives after separation, provided this is safe.<sup>30</sup> As such, the family dispute resolution aspects of the *Shared Parental Responsibility Act* reforms continue the development of initiatives, referred to above, which have taken place within the Australian family law system over the past decade.

## 1.2 THE ISSUE OF INTER-PROFESSIONAL RELATIONSHIPS

Despite the growing policy emphasis on non-court based methods of dispute resolution, separating couples are likely to continue to approach family lawyers for advice on a wide range of issues.<sup>31</sup> Previous studies indicate that divorcing couples with children are more likely than childless couples to seek legal assistance,<sup>32</sup> and that parents who approach a lawyer are more likely than those without legal representation to attempt mediation.<sup>33</sup> These factors suggest that one of the consequences of the 2006 reforms will be an increased level of inter-professional contact between family dispute resolution services and family lawyers, and that their success is likely to be affected by the capacity of these two groups of professionals to collaborate effectively.

However, existing research suggests that inter-professional relationships within legal settings 'can be fraught with tension and misunderstanding, role conflict and role confusion'.<sup>34</sup> Dickens' study of lawyers and social workers working on child protection cases in England revealed 'the slippery overlaps and distinctions between legal advice and social work advice', and highlighted the importance of establishing clear role boundaries to maintaining good working relationships between the two professions.<sup>35</sup> This research also suggested that inter-professional conflict can arise from the diverse and overlapping nature of each group's professional responsibilities.<sup>36</sup> Such problems may be particularly pertinent to collaborations between family lawyers and family dispute resolution practitioners when resolving post-separation disputes about children, where the two professions have a number of similar as well as potentially conflicting responsibilities to meet.<sup>37</sup>

Other studies suggest that tensions can occur where practitioners have divergent conceptions of the client's needs, which may arise from their different training

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<sup>29</sup> See on this, Parkinson, above n 21.

<sup>30</sup> See on this, R. Chisholm, 'Making it Work: The Family Law Amendment (Shared Parental Responsibility) Act 2006' (2007) 21 *Australian Journal of Family Law* 143.

<sup>31</sup> G. Douglas and R. Moorhead, 'Providing Advice for Lone Parents: From Parent to Citizen' (2005) 17 *Child and Family Law Quarterly* 55. These include advice about benefit entitlements, mortgage releases, transfers of title, applications for child support and enforcement of child support payments, amending wills, indemnities for debts incurred before and after separation, insurance adjustments, and obtaining personal protection and intervention orders.

<sup>32</sup> J. Eekelaar, M. Maclean, and S. Beinhart, *Family Lawyers: The Divorce Work of Solicitors* (Hart, Oxford: 2002), 4-5.

<sup>33</sup> G. Davis et al., *Monitoring Publicly Funded Family Mediation: Final Report to the Legal Services Commission* (2000).

<sup>34</sup> J. Dickens, 'Risks and Responsibilities: The Role of the Local Authority Lawyer in Child Care Cases' (2004) 16 *Child and Family Law Quarterly* 17, at 17.

<sup>35</sup> *Ibid* at 22.

<sup>36</sup> *Ibid* at 25-26.

<sup>37</sup> See for a discussion of the latter point, C. Banks, 'Being a family lawyer and being *child focused* – A question of priorities?' (2007) 21 *Australian Journal of Family Law* 37, at 56.

backgrounds or professional cultures.<sup>38</sup> For example, an examination by Sheehan, a social worker, of child protection hearings in the Melbourne Children's Court, strongly criticised the legal profession's rights-oriented rather than welfare-based approach to assessments of children's protective needs.<sup>39</sup> Some surveys have also indicated a concern with hierarchical approaches to the inter-professional collaboration. Fisher's study of family lawyers and family dispute resolution practitioners communicating about children, for example, indicated that dispute resolution professionals felt they were given limited opportunities to assert their expertise when working with lawyers in a legal setting.<sup>40</sup>

A further source of potential mistrust identified in the research concerns the level of understanding of the 'other' profession's work practices and approaches to meeting professional obligations. Dickens' study concluded that successful collaborative relationships between lawyers and social workers required both groups to 'understand the way that the others think, the priorities that they have to balance, [and] the ways that they reach their decisions'.<sup>41</sup> The criticisms of the legal profession's adversarial approaches to dispute resolution that were made by some in the family mediation sector during the 2003 inquiry<sup>42</sup> do not sit comfortably with the existing empirical studies, which suggest that family lawyers normally discourage the escalation of conflict by clients.<sup>43</sup> This apparent disjunction highlights the potential for uninformed negative stereotypes to influence understanding of the 'other' profession's work practices and create barriers to positive working relationships.

The existing research thus suggests a range of areas of potential conflict and sources of tension that may inhibit the production of successful collaboration between family lawyers and family dispute resolution practitioners, including confusion about role boundaries, hierarchical approaches to the inter-professional relationship, lack of respect for the other profession's skill base, and poor understanding of the other profession's responsibilities and work practices.

### 1.3 ROLE DESCRIPTIONS AND PRACTICE OBLIGATIONS

Family lawyers and family dispute resolution practitioners each have a number of professional responsibilities and practice requirements governing their work. They also have distinct roles and legal obligations under the *Family Law Act* when working with clients in parenting matters.

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<sup>38</sup> T. Fisher, 'Family mediators and lawyers communicating about children: PDR-land and lawyer-land' (2003) 9 *Journal of Family Studies* 201; A. L. James, 'Social Work in Divorce: Welfare, Mediation and Justice' (1995) 9 *International Journal of Law Policy and the Family* 256.

<sup>39</sup> R. Sheehan, 'The Marginalisation of Children by the Legal Process' (2003) 56 *Australian Social Work* 28.

<sup>40</sup> Fisher, above n 38.

<sup>41</sup> Dickens, above n 34, at 30. This factor is also featured in Sheehan's study: see Sheehan, above n 39.

<sup>42</sup> Parkinson notes that 'antipathy for lawyers' and their work was 'part of the political context in which the proposal' for Family Relationship Centres was made: Parkinson, above n 21, at 164. See *Every Picture Report*, above n 5, at Chapter 4.

<sup>43</sup> See for example, K. Wright, 'The role of solicitors in divorce: a note of caution' (2007) 19 *Child and Family Law Quarterly* 481; R. Hunter, 'Adversarial Mythologies: Policy Assumptions and Research Evidence in Family Law' (2003) 30 *Journal of Law and Society* 156, at 158-161; Eekelaar, Maclean, and Beinhart, above n 32, at 86.

To be a practising lawyer requires attainment of a law degree (or other approved academic qualification) and admission to practice following satisfactory completion of an approved practical legal training requirement (such as an articulated clerkship).<sup>44</sup> Once admitted to practice, a lawyer becomes an officer of the court,<sup>45</sup> and as such owes his or her paramount professional duty to the court, rather than the client.<sup>46</sup> However, lawyers also have a number of professional responsibilities to the client. These include a requirement to ‘advance and protect the client’s interests to the best of the practitioner’s skill and diligence ... uninfluenced by the practitioner’s personal view of the client or the client’s activities’.<sup>47</sup> A lawyer is also required to ‘assist the client to understand the issues in the case’ and to advise the client about their ‘possible rights and obligations’,<sup>48</sup> and such advice must be ‘in accordance with the law’.<sup>49</sup>

Where appropriate, a lawyer must inform the client about reasonably available alternatives to fully contested adjudication of their case, such as mediation or family dispute resolution.<sup>50</sup> Recent guidelines developed by the Law Council of Australia provide that the role of a lawyer in relation to alternative dispute resolution processes is to provide their client with ‘practical and legal advice on the process and on issues raised and offers made, and to assist in drafting terms and conditions of settlement as agreed’.<sup>51</sup> Unlike family dispute resolution practitioners, a lawyer must not act for more than one party to the dispute,<sup>52</sup> and must not deal directly with the other party where that party is represented by another lawyer.<sup>53</sup>

Family lawyers also have a number of obligations under the *Family Law Act* that are related to meeting the interests of children. Whilst family lawyers have no direct prescribed responsibilities in relation to children (unless they are acting as an Independent Children’s Lawyer), the *Family Law Act* makes the ‘best interests’ of the child the paramount consideration for the Court when making parenting orders,<sup>54</sup> it encourages parents to reach agreement and in doing so to regard the best interests of the child as the paramount consideration,<sup>55</sup> and it requires lawyers to provide their clients with information about non-court based family services, which should include information about the legal and possible social effects of any proposed proceedings under Part VII on children.<sup>56</sup> Thus, in assisting clients to negotiate agreements, and in being effective referral agents to family dispute resolution services, lawyers must have the best interests of the children at the forefront of their minds.

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<sup>44</sup> See in relation to Victoria, Legal Profession Act 2004 (Vic), s. 2.3.2; in NSW see Legal Profession Act 2004 NSW.

<sup>45</sup> See in relation to Victoria, Legal Profession Act 2004 (Vic), s. 2.3.9; in New South Wales see Statement of Principles and Rules 17-24, Solicitors’ Rules, made under The Law Society of New South Wales Professional Conduct and Practice Rules Legal Profession Act 1987.

<sup>46</sup> *D’Orta-Ekenaike v Victoria Legal Aid* (2005) 214 ALR 92.

<sup>47</sup> Law Council of Australia, *Model Rules of Professional Conduct and Practice* (March 2002), Rule 12.1.

<sup>48</sup> *Ibid* Rule 12.2.

<sup>49</sup> *Ibid* Rule 12.1.

<sup>50</sup> *Ibid* Rule 12.3

<sup>51</sup> Law Council of Australia, *Guidelines for Lawyers in Mediations* (March 2007).

<sup>52</sup> *Ibid* Rule 8.

<sup>53</sup> *Ibid* Rule 18.

<sup>54</sup> Family Law Act 1975 (Cth) s.60CA.

<sup>55</sup> Family Law Act 1975 (Cth) s.63B.

<sup>56</sup> Family Law Act 1975 (Cth) s.12B.

For the purposes of providing legal advice to parents, the ‘best interests’ of the child are legally defined. A family lawyer should explain that the court presumes the child’s best interests are met by the parents having ‘equal shared parental responsibility’ for the child, unless there are reasonable grounds to believe that a parent of the child (or a person who lives with a parent of the child) has engaged in family violence or abuse of a child in that parent’s (or person’s) family.<sup>57</sup> The law provides children with a qualified ‘right’ to spend time with both parents on a regular basis.<sup>58</sup> Since 1st July 2006, family lawyers would usually also advise parents that if the matter goes to court and an order is made for equal shared parental responsibility, the court is required to consider whether making orders for the child to spend ‘equal time’ or ‘substantial and significant time’ with both parents is in the child’s best interests and ‘reasonably practicable’.<sup>59</sup>

Family lawyers are required to attend annual professional development seminars.<sup>60</sup> Some may have specialist accreditation from State Law Societies in family law,<sup>61</sup> and others may have qualifications in a social science-related field, but family lawyers (other than Independent Children’s Lawyers) are not required to have training in child development or family violence in order to practise family law.<sup>62</sup>

By contrast with family lawyers, there is no single disciplinary requirement for practice as a family dispute resolution practitioner. Apart from holding a relevant qualification,<sup>63</sup> a family dispute resolution practitioner must have ‘completed at least 5 days training in family dispute resolution’ and ‘engaged in at least 10 hours of supervised family dispute resolution’ before being registered,<sup>64</sup> and must undertake at least 24 hours of professional development in family dispute resolution every two years from the date of registration.<sup>65</sup> The issue of accreditation of alternative dispute resolution practitioners – of which family dispute resolution practitioners form a specialised sub-group<sup>66</sup> – is currently the subject of debate in Australia. In 2004 the National Alternative Dispute Resolution Advisory Council produced a discussion paper, *Who says you're a mediator? Towards a national system for accrediting mediators*. The Australian Government Attorney-General subsequently made a grant to the National Mediation Conference in Darwin in 2004 to further develop the issue of mediation standards and qualifications.<sup>67</sup> There is, at present, no national peak body representing mediators or setting and maintaining standards.

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<sup>57</sup> Family Law Act 1975 (Cth), s.61DA.

<sup>58</sup> Family Law Act 1975 (Cth), s.60B(2)(b).

<sup>59</sup> Family Law Act 1975 (Cth), s.65DAA; *Goode & Goode* [2006] FamCA 1346.

<sup>60</sup> Practising lawyers in Victoria are required to undertake 10 hours of compulsory professional development each year: Continuing Profession Development Rules 2007 (Vic), s. 3.2.9(3).

<sup>61</sup> Re accreditation in NSW see <http://www.lawsociety.com.au/page.asp?partID=670>.

<sup>62</sup> Training for Independent Children’s Lawyers is provided by the Family Law Section of the Law Council of Australia and National Legal Aid, and contains a child development component.

<sup>63</sup> Many family dispute resolution practitioners are qualified social workers or psychologists, while others have completed tertiary level training courses in conflict resolution. Lawyers can be registered as family dispute resolution practitioners: Family Law Regulations 1984 (Cth), Reg. 58(2)(a).

<sup>64</sup> Family Law Regulations 1984 (Cth), Reg. 58.

<sup>65</sup> <http://www.ag.gov.au/www/agd/agd.nsf/Page/RWP717CAD87EACF245CCA2572AC00002BD1#HEADING10>

<sup>66</sup> Although note that this is contested by some family dispute resolution practitioners.

<sup>67</sup> The National Mediation Conference is a biennial conference of Australian mediators, at which issues of mediator accreditation have been regularly discussed and debated for many years. The Directors of the National Mediation Conference Ltd agreed to be the vehicle for developing this discussion into the

Whilst there are presently no uniform national standards for alternative dispute resolution professionals, there are standards for *family* dispute resolution practitioners. The *Family Law Act* defines family dispute resolution as ‘a process (other than a judicial process) in which a family dispute resolution practitioner helps people affected, or likely to be affected, by separation or divorce to resolve some or all of their disputes with each other, in which the practitioner is independent of all of the parties involved in the process’.<sup>68</sup> Qualification as a legal practitioner or another appropriate qualification, training in family mediation, and a period of supervised practice are required in order to practise as a family dispute resolution practitioner.<sup>69</sup> Although some family dispute resolution practitioners have legal qualifications, and some have specialist qualifications in conflict resolution, most family dispute resolution practitioners to date have tended to have qualifications in social or behavioural science disciplines such as social work or psychology.<sup>70</sup> Regulations under the *Family Law Act* now also require registration of family dispute resolution practitioners.<sup>71</sup> To be registered, in addition to the above qualifications, the family dispute resolution practitioner must have passed checks (under State law) on their suitability to work with children and there must be access to a grievance procedure for clients who wish to complain about their services.<sup>72</sup> In 2007 the Australian Government Attorney-General’s Department asked the Community Services and Health Industry Skills Council to develop a national competency framework for family dispute resolution practitioners, family counsellors and workers in Children’s Contact Services.<sup>73</sup>

Family dispute resolution practitioners are thus more diverse than family lawyers in terms of the disciplinary backgrounds they bring to their practice. There is also diversity in their methods of working with clients. Some are instrumental, being focused on facilitating an agreement, whereas others have a more therapeutic orientation, dealing with unresolved emotional issues that might be blocking effective post-separation parenting. This diversity of practice was evident in the services surveyed in Study 1 of this project, and deliberately incorporated into its research design. For example, Unifam’s Keeping Contact program dealt with very conflicted families who had typically been involved in litigation for some time before being referred to the program by the court. The therapeutic orientation of this service focused on repairing the inter-parent relationship as a necessary precursor to achieving a workable parenting agreement. By contrast, Victoria Legal Aid’s Roundtable Dispute Management Program often works with parents to resolve disputes before they go to a court hearing, and has a dispute resolution model more

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future, in the absence of a national peak body. For further information see <http://www.mediationconference.com.au/html/Accreditation.html>.

<sup>68</sup> Family Law Act 1975 (Cth), s.10F.

<sup>69</sup> Family Law Regulations 1984 (Cth) Reg. 58.

<sup>70</sup> A new competency framework is under development by the Australian Government for all family dispute resolution practitioners, and is planned to be introduced in 2009. At this time, it is not clear what, if any, ‘baseline’ qualifications will be required under this framework.

<sup>71</sup> Family Law Act 1975 s.10A.

<sup>72</sup> Family Law Regulations 1984 (Cth) Reg. 60A.

<sup>73</sup> The family dispute resolution services offered by organisations approved through the Family Relationships Services Program are currently subject to a comprehensive performance framework that is designed to ensure that services adhere to quality standards of practice, including appropriate screening and assessment, supervision, professional development and ongoing training: Commonwealth, Family and Community Services and Indigenous Affairs, *FRSP Performance Framework 2005-2008* (May 2005), [www.facsia.gov.au](http://www.facsia.gov.au).



focused on achieving workable parenting agreements than behavioural or attitudinal change.

There are a number of professional practice obligations that are common to all family dispute resolution practitioners working in the family law sector. As noted, the legal setting within which the interface between family lawyers and family dispute resolution practitioners takes place concerns disputes about the post-separation care of children under the *Family Law Act*. Within this context, family dispute resolution practitioners work with both parents, and sometimes other family members, to arrive at an agreement about parenting. Thus the obligation of family dispute resolution practitioners is to the whole family. They work directly with both parents and often indirectly with the children.<sup>74</sup> They are not (as lawyers are) advocates representing the interests of one client.

Before proceeding to provide family dispute resolution, family dispute resolution providers are required to conduct an intake assessment and be satisfied that family dispute resolution is appropriate.<sup>75</sup> This includes a requirement to be satisfied that neither party's ability to negotiate freely is affected by a history of family violence, inequality of bargaining power, or by their own or the other party's emotional, psychological or physical health.<sup>76</sup> If, after considering these matters, the family dispute resolution provider is not satisfied that a party has the capacity to negotiate, they must not proceed to provide family dispute resolution.<sup>77</sup>

Family dispute resolution practitioners are prohibited from providing parents with legal advice, and must make it clear that this is not part of their role, unless they are a legal practitioner and the advice is limited to procedural matters.<sup>78</sup> Instead, family dispute resolution practitioners will usually draw on an understanding of conflict dynamics and family dynamics and the research evidence on child development to assist clients to settle arrangements for their children, and will adopt a child focused (and sometimes a child inclusive) approach to working with parents. Child inclusive family dispute resolution approaches, which incorporate the views of the parents' children into the dispute resolution process,<sup>79</sup> typically involve a child consultant interviewing the children about their experiences and perceptions of their parents' separation, who then feeds this information back to the parents to assist them in their negotiations.<sup>80</sup> A child focused practice, on the other hand, aims to incorporate the research literature on children's perspectives on and responses to divorce into the

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<sup>74</sup> Many family dispute resolution programs now provide child inclusive family dispute resolution processes, in which interviews with the children are conducted by specially trained child consultants who provide an oral report (and sometimes written report) on the child's views to the parents and family dispute resolution practitioner. See for example, 'Kids Talk', which is the child inclusive component of Victoria Legal Aid's Roundtable Dispute Management program. For a description of child inclusive family dispute resolution processes, see A. Grimes and J. McIntosh 'Emerging Practice Issues in Child-Inclusive Divorce Mediation' (2004) 10 *Journal of Family Studies* 113.

<sup>75</sup> Family Law Regulations 1984 (Cth), Reg. 62.

<sup>76</sup> Family Law Regulations 1984 (Cth), Reg. 62(2).

<sup>77</sup> Family Law Regulations 1984 (Cth), Reg. 62(4).

<sup>78</sup> Family Law Regulations 1984 (Cth), Reg. 63(1)(a).

<sup>79</sup> See L. Moloney and J. McIntosh, 'Child-Responsive Practices in Australian Family Law: Past Problems and Future Directions' (2004) 10 *Journal of Family Studies* 71, at 72.

<sup>80</sup> See McIntosh, above n 7.

negotiation process by encouraging parents to actively consider their children's needs and position.<sup>81</sup>

Family dispute resolution practitioners also have a number of legal obligations when working with parents in family law matters. As a consequence of the 2006 changes to the *Family Law Act*, these include a requirement to ask parents to consider the option of making an 'equal time' arrangement for their child, and where this is not reasonably practicable or in the child's best interests, to ask them to consider an arrangement in which the child will spend 'substantial and significant' time with them both.<sup>82</sup>

The area of work in which family lawyers and family dispute resolution practitioners are now most likely to come into contact concerns the issue of family dispute resolution certificates. Since July 2007, parents who wish to apply for a parenting order from the court must first make a 'genuine effort' to resolve their dispute through mediation and produce a certificate to this effect, before the court can hear the matter.<sup>83</sup> Hence, where a client wishes to proceed to court to obtain parenting orders, their lawyer must advise them that the court will not be able to hear the case unless the parents first make a genuine effort to resolve their dispute by attempting a family dispute resolution process. Exemptions apply where there are reasonable grounds to believe there is a risk of family violence or a risk of abuse to the child, or where the matter is urgent.<sup>84</sup> Family dispute resolution practitioners have been given responsibility for issuing the relevant certificates, and, provided that family dispute resolution has been assessed as appropriate, must determine whether or not a parent has made a 'genuine effort' to reach agreement.<sup>85</sup>

#### **1.4 THE FAMILY DISPUTE RESOLUTION SECTOR IN AUSTRALIA**

The family dispute resolution sector in Australia is extensive and well established. A range of services is provided by courts, by state Legal Aid Commissions, by community based agencies and by private practitioners.

Court-based alternative dispute resolution is longstanding. The Family Court of Australia, which commenced operation in 1976, was conceived as a specialist system for family law matters. The architects of the Family Court recognised that '... matrimonial disputes and their settlement required a different kind of approach: one which recognised the relevance of a range of services besides those customarily available to litigants'.<sup>86</sup> At its inception, therefore, the Court had an emphasis on conciliation. It also had an in-house counselling service,<sup>87</sup> although almost all counselling is now provided by community agencies.<sup>88</sup> Mediation was introduced to

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<sup>81</sup> Moloney and McIntosh, above n 79, at 72-3.

<sup>82</sup> Family Law Act 1975 (Cth), s.63DA.

<sup>83</sup> Family Law Act 1975 (Cth), s.60I(7); Family Law Rules 2004 (Cth), r.1.05.

<sup>84</sup> Family Law Act 1975 (Cth), s.60I(9).

<sup>85</sup> Family Law Act 1975 (Cth), s.60I(8).

<sup>86</sup> Report of the Joint Select Committee on the Family Law Act, *Family Law in Australia*, 1980, Volume 1, AGPS, Canberra, 7.7.

<sup>87</sup> A. Nicholson, and M. Harrison, 'Family Law and the Family Court of Australia: Experiences of the First 25 Years' (2000) 24 *Melbourne University Law Review* 756.

<sup>88</sup> Astor and Chinkin, above n 1, at 334.

the Court in 1991<sup>89</sup> and arbitration provisions were introduced at the same time<sup>90</sup> but not implemented until 2000. Conciliation conferences (generally with a Registrar) for property matters are also used.<sup>91</sup> In 1999 a Federal Magistrates Court was established with extensive jurisdiction in family law matters.<sup>92</sup> It shares dispute resolution services with the Family Court of Australia. The significant role of alternatives to trial was recognised in 1996 with the *Family Law Reform Act 1995* (Cth), which introduced the term Primary Dispute Resolution (PDR).

The Family Court of Australia integrates dispute resolution into its management of cases. One recent aspect of case management has been the introduction of specialist programs for particular types of cases. For example, the Magellan Program, which we surveyed in Study 1, is a specialist program that deals with parenting disputes where issues of child abuse are raised. The Court's dispute resolution practitioners in this list have the role of making a report to the Court to assist in its decision-making, and this role is often important in managing and resolving disputes pre-trial.<sup>93</sup>

Community based family dispute resolution services are widely available in Australia. These are generally well-established services that comply with standards requirements in the *Family Law Act*.<sup>94</sup> They are funded in various ways, including by the Australian Government through the Family Relationships Services Program and by fees from clients (generally charged on a sliding scale according to income). They often provide family mediation alongside other family relationships services such as counselling, parenting education, relationships skills courses, financial advice and help-lines. Many provide facilitative mediation services, while some offer a more therapeutic approach for couples with entrenched conflict around post-separation parenting. Two community services were included in Study 1 of this research – Relationships Australia (Victoria) and Unifam's Keeping Contact Program.

Legal Aid Commissions throughout Australia operate under Australian Government guidelines that require non-urgent family law disputes to be considered for dispute resolution processes other than litigation. Matters that are assessed as appropriate for a non-adversarial dispute resolution process are generally referred to an in-house family mediation scheme in which the clients' legal advisers are present to act as support persons throughout the dispute resolution process. Mediation conferences run for approximately 3-4 hours. One of our Study 1 services was a legal aid mediation program – Victoria Legal Aid's Roundtable Dispute Management program.

We began this research, and Study 1 was conducted, before the significant amendments to the *Family Law Act* were introduced in 2006. As noted above, these reforms wrought considerable changes to the dispute resolution landscape. In addition to introducing the term 'family dispute resolution',<sup>95</sup> these included the roll-out of 65 Family Relationship Centres throughout Australia, which were established in major

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<sup>89</sup> By the Courts (Mediation and Arbitration) Act 1991 (Cth).

<sup>90</sup> Courts (Mediation and Arbitration) Act 1991 (Cth).

<sup>91</sup> Family Law Rules r.12.06.

<sup>92</sup> Federal Magistrates Act 1999 (Cth).

<sup>93</sup> T. Brown, 'Magellan's Discoveries' (2002) 40 *Family Court Review* 320.

<sup>94</sup> The most well known such services in Australia are Relationships Australia, Centacare, Anglicare, and UnitingCare Burnside.

<sup>95</sup> Family Law Act 1975 (Cth), s.10F.

population centres and regions. These Centres are run by non-government organizations and were selected through an open competitive selection process. Family dispute resolution practitioners provide separating parents with family dispute resolution. The first three hours (or six hours if an interpreter is required) are free. After that fees may be charged. They are funded by, and operate in accordance with guidelines set by, the Australian Government. Study 2 took place after the first of these Centres had commenced operation.

## **1.5 THE RESEARCH QUESTION AND PROJECT DESIGN**

The aim of the project was to gain an empirical understanding of successful collaborative relationships between family lawyers and family dispute resolution practitioners and how these are formed and supported, and to gauge the extent to which such relationships are a feature of the Australian family law sector. To this end, the research employed a sequential design.<sup>96</sup> Study 1, which took place in 2006, employed a purposive sampling technique to gather detailed qualitative information from interviews with family dispute resolution practitioners and family lawyers who had an established working relationship with one another. This study therefore used a form of intensity sampling where participants were experiential experts in the area of interest.<sup>97</sup> Study 2, which took place in 2007, used a questionnaire survey to capture an understanding of a broader range of inter-professional relationships of varying quality and levels of establishment. This second study was designed to confirm the characteristics of successful collaborative relationships revealed in Study 1 and gauge the extent to which these characteristics were reflective of relationships between family lawyers and family dispute resolution practitioners working in the sector more generally. Its data also provided valuable information about the attitudes and perceptions of practitioners who do not enjoy close working relationships with the other profession.

## **1.6 TERMINOLOGY USED IN THIS REPORT**

As noted, the project straddled a period of significant change in the Australian family law system. Data collection for Study 1, which involved interviews with practitioners who had an established working relationship with the other profession, took place prior to the commencement of the *Shared Parental Responsibility Act*. Study 2, which used a questionnaire format to survey a larger number of family lawyers and dispute resolution practitioners working in the sector, was conducted after the introduction of the reforms, which introduced new terminology to denote existing concepts. What was known as ‘primary dispute resolution’ at the time the Study 1 interviews were conducted is now referred to as ‘family dispute resolution’,<sup>98</sup> and the Family Court of Australia’s dispute resolution personnel, who were known as ‘mediators’ (and before that, counsellors), are now called ‘family consultants’.<sup>99</sup> A solicitor appointed to act for the child in a parenting dispute was referred to as a ‘Child Representative’ at the time of the Study 1 interviews; they are now known as ‘Independent Children’s

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<sup>96</sup> W. L. Miller and B. F. Crabtree, ‘Clinical Research’, in N. K. Denzin and Y. S. Lincoln, *Handbook of Qualitative Research* (1994, Sage Publications: Thousand Oaks California), at 344.

<sup>97</sup> J. M. Morse, ‘Designing Qualitative Research’, in N. K. Denzin and Y. S. Lincoln, *Handbook of Qualitative Research* (1994, Sage Publications: Thousand Oaks California), at 229.

<sup>98</sup> Family Law Act 1975 (Cth) s.10F.

<sup>99</sup> Family Law Act 1975 (Cth) ss.11E and 11F.

Lawyers’.<sup>100</sup> At the time of Study 1, parenting orders were divided into orders for ‘residence’ and ‘contact’.<sup>101</sup> By the time Study 2 took place, these terms had been replaced by the 2006 reforms, and parenting orders are now delineated according to whether children will ‘live with’ or ‘spend time with’ a parent.<sup>102</sup> When the Study 1 interviews were conducted, the *Family Law Act* provided children with a ‘right of contact’ with both parents. The relevant provision now provides that children have ‘a right to spend time with’ both parents.<sup>103</sup>

In addition to these shifts in legal language, a further complexity affecting the research was the variety of terms used by family dispute resolution practitioners to identify themselves or their role. Family dispute resolution practitioners at Victoria Legal Aid’s Roundtable Dispute Management program referred to themselves as ‘chairs’ or ‘chairpersons’; family dispute resolution practitioners at Relationships Australia generally used the term ‘mediators’; practitioners working in the Keeping Contact program used a number of self-descriptors, including ‘therapists’ and ‘consultants’; and Family Court mediators were sometimes referred to (by other mediators and lawyers) in terms of their earlier incarnation as ‘court counsellors’ or by their function as ‘report writers’.<sup>104</sup>

For the purposes of this report we have used the terms ‘family dispute resolution’, ‘family dispute resolution practitioner’, ‘family lawyer’, and ‘Independent Children’s Lawyer’ throughout, even though these terms may not have been applicable at the time the data were collected, in an attempt to overcome the difficulties for readers associated with the complexity noted above. Where the general term ‘practitioner’ is used, this is intended to encompass members of both professions.

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<sup>100</sup> Family Law Act 1975 (Cth) ss.4(1) and 68L.

<sup>101</sup> Note that these terms replaced the earlier language of ‘custody’ and ‘access’ in 1996 when the *Family Law Reform Act* 1995 (Cth) came into operation.

<sup>102</sup> Family Law Act 1975 (Cth) s.64B(2).

<sup>103</sup> Family Law Act 1975 (Cth) s.60B(2)(b).

<sup>104</sup> Both in-house Family Court and external ‘family consultants’ may be asked to provide the court with a report on matters relevant to proceedings for parenting orders, including a report on the child’s views: Family Law Act 1975 (Cth), s.62G.

## **CHAPTER TWO**

### **STUDY 1**

#### **2.1 THE RESEARCH QUESTION**

Study 1 aimed to gain an empirical understanding of successful collaborative relationships between family lawyers and family dispute resolution practitioners and how these are formed. This study, which took place in 2006, employed a purposive sampling technique, which focused on family dispute resolution practitioners from four well known dispute resolution programs in the sector that had reputedly good working relationships with the legal profession, and family lawyers who had an established working relationship with one (or more) of these programs. The study therefore relied on a form of intensity sampling where participants were experiential experts in the area of interest.<sup>105</sup> Detailed qualitative data were obtained from in-depth semi-structured interviews with these practitioners. The interviews explored participants' experiences of collaboration with the other profession, with an emphasis on the issues identified in the earlier research of inter-professional relationships (discussed in Chapter 1). The sample deliberately included practitioners from a mix of community-based, court-based, and legal aid dispute resolution services, to enable us to tease out the extent to which the nature of these different programs and their location within the family law system had an impact on relationships with the legal profession. Study 1 thus provided a sophisticated understanding of the characteristics of these successful collaborations, as well as important insights into the contexts in which these relationships had flourished and the factors that supported them.

#### **2.2 METHODOLOGY**

##### **2.2.1 The Participating Dispute Resolution Programs**

The four dispute resolution programs surveyed in Study 1 were chosen for their reputedly successful working relationships with the legal profession. The services represented a diverse range of service types, with varying proximities to the formal justice system and different client bases.

##### **Relationships Australia (Victoria)**

The family mediation program run by Relationships Australia in Victoria ('RAV') provides private mediation for couples in conflict over parenting and property matters. Relationships Australia, established in 1984, is Australia's largest and most well-known community-based family counselling organisation. Services are privately purchased (although means tested) and couples may attend as many or as few mediation sessions as they like. Many clients attending Relationships Australia's mediation service are recently separated and will never have contact with the court system (except where a decree of divorce is required), although some will have previously made applications to the court or be in the process of initiating applications for orders in relation to parenting or property. While Relationships Australia (Victoria) has traditionally worked with voluntary clients, this is changing, and 20 per cent of its clients are now ordered to attend the service by the Federal Magistrates

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<sup>105</sup> Morse, above n 97.

Court. The Lawyers Panel, set up in Melbourne in 1997, is an important part of Relationships Australia's family mediation service. It involves a panel of approximately 20 family law solicitors who are selected for their willingness to work with family dispute resolution practitioners to achieve durable outcomes for clients, and incorporates a system of mutual referral between Panel members and Relationships Australia's family mediation services in metropolitan Melbourne. Members of the Lawyers Panel and RAV's family mediation personnel meet monthly to discuss issues pertaining to family law, mediation and other areas of general interest to both groups.<sup>106</sup>

### **Unifam's Keeping Contact Program**

Keeping Contact, a family dispute resolution and parenting support program run by UnitingCare Unifam in Sydney and Parramatta, was established in 1999. Keeping Contact is part of the Contact Orders Program, now known as the Parenting Orders Program, established by the Australian Government Attorney-General's Department following the Family Law Council's 1998 report on contact order enforcement.<sup>107</sup> A majority of families entering the program have been ordered to do so as a result of one parent being in breach of their obligations under court orders for contact. Referrals to Keeping Contact thus come from the Family Court and Federal Magistrates Court and indirectly from legal practitioners.<sup>108</sup> Most parents attending Keeping Contact have a long history of attendance at court in relation to child contact issues. Some will be awaiting court hearings concerning child-related or financial matters at the time of attending the program. Families are ineligible for Keeping Contact's services where either parent is subject to investigation regarding possible child abuse or neglect, there is a family history of significant child abuse, the conditions of an Apprehended Violence Order would preclude service involvement, or a parent feels unsafe meeting with the other or the child or children feel unsafe meeting with a parent.<sup>109</sup> The program provides a number of counselling and dispute resolution sessions with parents as well as one-off separate consultations with the child or children.

### **Victoria Legal Aid's Roundtable Dispute Management Program**

Victoria Legal Aid's Roundtable Dispute Management ('RDM') program, the most recently established service of the four programs, commenced service delivery in Melbourne and regional Victoria in mid-2004. Legal Aid Commissions throughout Australia operate under Australian Government guidelines that require non-urgent family law disputes to be considered for resolution processes other than litigation. Matters that are assessed as appropriate for a non-adversarial dispute resolution process are generally referred to an in-house conferencing scheme. The model used by Victoria Legal Aid's RDM service combines a range of interventions, including legal representation for clients, case management, conciliation, review and referral. The cornerstone of the program is the roundtable conference, which is attended by the parties to the dispute, their respective lawyers, the Independent Children's Lawyer

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<sup>106</sup> Members of the Lawyers Panel are required to attend at least four meetings per year.

<sup>107</sup> Family Law Council, *Child Contact Orders: Enforcement and Penalties* (Report to the Attorney-General, 1998).

<sup>108</sup> Australian Government Attorney-General's Department, *The Contact Orders Program: a Summary of the Independent Evaluation of the Contact Orders Pilot – July 2000 – April 2002* (2003).

<sup>109</sup> Unifam Counselling and Mediation Service, 'The Keeping Contact Program'.

(where one has been appointed) and the conference chairperson. Chairpersons use a hybrid conferencing process that combines facilitation with expert advice. Prior to the roundtable conference, an RDM case manager carries out screening and assessment with each parent and, where appropriate, devises a safety plan for the conference, and provides an assessment report to the chairperson. The Victorian RDM service operates with a small pool of experienced chairpersons that includes practitioners with social science qualifications and practitioners with legal training. Most clients attending RDM will be pre-litigation and have had no previous contact with the court system, although some are referred during or post-litigation. Conferences generally run for three to four hours. At the time our study commenced, clients were able to attend one conference only. This limitation has been removed since the interviews for this project were conducted, and clients are now able to attend a second conference where an agreement is not reached at the first conference.

### **The Family Court's Mediation Section and the Magellan Program**

The Family Court's Magellan program operates as a dedicated pathway for child abuse cases within the Family Court. Introduced to the Melbourne and Dandenong registries in 1999, the program's main aim is to provide a co-ordinated multi-agency approach by the Family Court, the state child protection authority (the Victorian Department of Human Services) and Legal Aid to the resolution of parenting disputes involving allegations of serious physical or sexual abuse of children. Cases are identified at their initial point of contact with the Court and referred for immediate investigation of the abuse allegations by the child protection service, which reports back to the parents and the Court within a fixed time period. In contrast to the processing of other parenting disputes by the Family Court, cases on the Magellan list are 'judge led', tightly managed and must adhere, at every stage, to strict timelines. Also unlike other parenting cases in the Family Court, cases on the Magellan list will always have an Independent Children's Lawyer appointed. Family Court Consultants have a different role to the other family dispute resolution practitioners in this survey. Their primary function in Magellan cases is to gather evidence and provide a report to the court concerning the welfare of the children. However, in doing this they liaise closely with the Independent Children's Lawyer and are also involved in assisting in settlement of disputes.<sup>110</sup>

#### **2.2.2 Recruitment**

Family dispute resolution practitioners were initially approached through service managers of the different agencies who passed on written information about the study to their staff. Members of the research team subsequently attended staff meetings to invite dispute resolution practitioners to participate in the project, and followed up with phone calls to interested practitioners. Managers of the family dispute resolution services also passed on information to family lawyers who regularly referred clients to their service or had regularly represented clients of the service in the past. Lawyers who expressed an interest were contacted by phone by a member of the research team.

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<sup>110</sup> It was originally intended to include lawyers and family dispute resolution practitioners from the Children's Cases Program at Parramatta in this survey. It was important to include Family Court family dispute resolution practitioners because of their unique position inside the court system. However, since the Children's Cases Program was already the subject of two other research projects at the time, Magellan was chosen instead.



Some lawyers, either located from lists of practitioners a service had worked with, or selected because of their well-known relationship with one of the services, were contacted directly and invited to participate in the research. Interviews were conducted in a private area at the participant's place of work. Data collection was conducted between December 2005 and April 2006.

### **2.2.3 Participants**

The sample included 59 practitioners: 30 family lawyers and 29 family dispute resolution practitioners. Each of the family dispute resolution practitioners worked at one of the four dispute resolution services chosen for this study. The sample of family lawyers comprised solicitors who regularly referred clients to or worked with one (or more) of the four dispute resolution programs. The majority of participants had a minimum of 10 years' experience practising in the family law field. Fourteen lawyers and eight dispute resolution practitioners had more than two decades of experience. The majority of participants were in their forties (n=22) or fifties (n=19). The majority of participating lawyers were male, while the majority of dispute resolution practitioners were female. All family lawyers had an undergraduate degree in law. Five also had dispute resolution qualifications and one lawyer had a degree in psychology. Family dispute resolution practitioners were drawn from a much more diverse range of disciplinary backgrounds, including social work (11), psychology (9), law (7), counselling (4), and sociology (1). Eight also had training in family therapy, and all had received significant training in family mediation or conflict resolution, child development, and family violence.

### **2.2.4 Interview Schedule and Procedure**

The project entailed semi-structured interviews of approximately one hour's duration. The main focus of the interviews was directed towards eliciting descriptive information about participants' collaborations with practitioners from the other profession. In addition, practitioners were asked to reflect on their relationships with the other profession and their perceptions and understandings of the factors that supported or inhibited these. The interviews explored a number of aspects of practitioners' inter-professional relationships, as well as their approach to the resolution of family disputes and their knowledge and attitudes towards the aims and approaches of the other profession. Participants were also questioned about their professional responsibilities regarding children's best interests, and the strategies they employed to meet these obligations, as well as their understanding of the other profession's roles and responsibilities in this regard. In addition, participants were asked about their referral and intake practices regarding family violence cases. The interviews were recorded and subsequently transcribed. All participants were given a Plain Language Statement and signed a Consent Form before the interview took place.

### **2.2.5 Analysis**

The interview transcripts were analysed using the NVivo7 data management software program. The analysis was approached in two ways. First, the interview data were sorted into 41 thematic 'nodes' for each professional grouping. Commonalities and disparities among the responses of participants, including service-specific and profession-specific trends, were identified through the formulation of 'sub-nodes' (up

to 30 per node). Second, a holistic narrative analysis of each complete interview was conducted. From these readings, common characteristics and narrative themes were identified and grouped.

## **2.3 FINDINGS**

The Study 1 interviews reinforced the findings from earlier studies of inter-professional relationships, but also revealed some additional context-specific features. Successful collaborations in the sample were characterized by a complementary services approach, in which practitioners regarded themselves and the other profession as bringing different but equally valuable skills and expertise to the resolution of family disputes that complemented or ‘filled gaps’ in their own work with family law clients. In addition to this outlook, practitioners with good working relationships espoused common goals, had a shared understanding of each profession’s roles, responsibilities and work practices, and engaged in positive inter-professional practices such as respecting role boundaries and extending professional courtesies to practitioners from the other group. The interviews indicate that these characteristics were supported through regular positive contact between practitioners from the two professions. These issues are discussed below under the following thematic sub-headings: complementary services; cross-professional understanding; positive inter-professional practices; and positive personal contact.

### **2.3.1 Complementary Services**

The successful collaborative relationships in Study 1 were characterised by a complementary services approach to working with the other profession, in which collaboration was based on a clear division of expertise. In these relationships, family dispute resolution practitioners provided parents with communication-building skills and expert input about children’s needs and family dynamics, while family lawyers provided advocacy and expert legal advice to individual clients, and there was a philosophy of mutual respect and deference to the other profession’s area of competence and knowledge base. This approach is illustrated - in different ways - by the relationships between family lawyers and family dispute resolution practitioners associated with the RDM and RAV programs.

Like other Legal Aid family dispute resolution services in Australia, the RDM program involves a multi-professional teamwork model, in which the parents’ legal representatives are present throughout the dispute resolution process to support their clients and work with the family dispute resolution practitioner to achieve a settlement. Participants from both professions praised this ‘partnership’ approach and spoke with high regard for the other profession’s ability to meet the needs of clients that they were unable to fulfil themselves, in a way that supported their own role. For example, family dispute resolution practitioners described the benefits of clients being able to seek legal advice as offers were made, and of being reassured ‘that they’re not going to get steamrolled into something that’s not okay’. RDM Chairs also described benefits to their own work in having family lawyers present during the conference, such as ‘containing’ clients’ behaviour and monitoring the process for fairness to ensure both parties’ interests are addressed. Family lawyers, in turn, described the value to their work of the RDM practitioners’ facilitation skills and expert knowledge regarding children, noting how these roles supported their work with clients. For

example, one family lawyer explained how the family dispute resolution practitioner's advice about children's developmental needs 'assists me in doing my job, and that way I am fulfilling my obligation to act on my client's instructions, but I know that I'm just a cog in this greater process that is ensuring that the child's needs are being considered'.

By contrast with RDM, RAV's family dispute resolution service does not use a direct teamwork approach. Rather, its family dispute resolution practitioners and Lawyers Panel members operate as a mutual referral service. Nevertheless, the interviews with practitioners associated with this program revealed the same complementary services approach to their inter-professional relationship as described by RDM participants. Family lawyers spoke of referring clients to RAV to help them understand the other party's position and improve communication, and were strongly supportive of RAV's relationship repair work with clients, seeing this as integral to the parents being able to settle workable arrangements for their children. In turn, RAV family dispute resolution practitioners described encouraging clients to seek legal advice about their options and entitlements before finalising agreements, and emphasised the importance of the lawyer's advocacy role for vulnerable clients: 'So, we've got a client who we're worried is feeling guilty, or is feeling depressed, or has always been in a one-down position with their partner, and has been feeling intimidated, and so the lawyer then needs to take on the responsibility that the mediator can only do to a point, and that's to support that person, advocate for that person, advocate for that person's rights'.

As these descriptions suggest, practitioners associated with these two programs did not see their roles as being incompatible with the work of the other profession, or regard themselves as the sole or more important experts in resolving family disputes. Rather, their responses conveyed a sense of working together as a 'partnership' of complementary service providers, and displayed a high degree of appreciation for the other profession's skills and area of expertise. In particular, these participants regarded this approach as an important way of addressing gaps in their own professional roles. For example, family lawyers appreciated the ability of family dispute resolution practitioners to use their social science knowledge base to help parents focus on their children's needs, as their own capacity to do so was sometimes limited by their client advocacy role. Conversely, family dispute resolution practitioners from these services valued the ability of family lawyers to protect clients' legal entitlements and ensure quality outcomes for vulnerable parents, which their own obligation of neutrality prevented them from doing.

### **2.3.2 Cross-Professional Understanding**

Another feature of the successful collaborations in Study 1 was a shared understanding of each profession's different roles, responsibilities and work practices, and congruent expectations of the dispute resolution process.

#### **2.3.2.1 Shared Goals and Expectations**

The interviews revealed that practitioners with positive collaborative relationships shared a common expectation of the dispute resolution process. Practitioners from both groups in the sample described a range of different expectations of family dispute resolution processes, which varied according to the nature of the particular

service. Reflecting the selective profile of our interview sample, the majority of practitioners from each group described broadly similar goals for the particular program they were interviewed about. Family dispute resolution practitioners and family lawyers associated with the RDM program shared a common understanding of this program as a diversionary service which aimed to achieve workable agreements about children and avoid recourse to litigation. RAV family dispute resolution practitioners and family lawyers on the Lawyers Panel identified similar goals to these, but were generally less concerned with finalizing orders and more focused on containing conflict and improving inter-parent communication. Family Court mediators and family lawyers shared a common understanding of the Magellan program's child protection aims.

In contrast to these participants, family dispute resolution practitioners from the Keeping Contact service, which has a more therapeutic orientation than the other programs in the study, perceived themselves and many of the family lawyers who used their service to be working towards different goals. One participant summarised this position this way: 'Their purpose is to get an agreement; our purpose is to get better parenting'. Family dispute resolution practitioners from this program prioritised transformative aims - 'giving people better insight into their behaviour and the impact of their behaviour' - and perceived family lawyers to be more narrowly focused on achieving enforceable contact arrangements. These practitioners regarded this gap as an impediment to effective collaborative work with family lawyers: 'We couldn't care less if people have an order or not. That's not necessarily going to help them be better parents. So in some ways our emphasis and our focus are on different things'.

To some extent this perception of different goals was borne out in the interviews with the family lawyers in our sample, with several emphasising agreement-based aims. However, these practitioners did not describe their reasons for using this service solely in these terms, and were well aware of the program's therapeutic orientation. For example, one family lawyer noted that the 'real plus' of Keeping Contact for his clients was 'the change in attitudes, a change in style, a re-opening of communication'. Nevertheless, a number of family lawyers in our sample were also aware that Keeping Contact's approach to working with clients did not always correspond with the expectations of the family law profession more generally, one noting: 'I think there's a real expectation, partially from the court, but certainly from the legal profession, that Keeping Contact will work as some means of gradually introduced monitored or supervised contact - which I'm conscious just isn't what they do'.

The interviews also suggest that family lawyers' expectations of this program may be shaped by the litigation context of the disputes that are referred to Keeping Contact, where many cases are the result of court orders. As a consequence of this referral source, family dispute resolution practitioners from this program suggested that clients' lawyers were particularly attentive to approaching court dates. This litigation perspective, and the resulting demands from legal practitioners for 'progress reports' on the dispute resolution process, was a source of frustration for Keeping Contact's dispute resolution personnel, who saw themselves as engaged in a longer-term therapeutic process with clients. The interview data suggest that this kind of 'mismatch' of aims and expectations poses a barrier to successful collaboration between the two professions.

### 2.3.2.2 Program Diversity and Dispute Resolution Approaches

As indicated in the previous section, one of the features of the good collaborative relationships in the Study 1 sample was a shared understanding of the aims of the dispute resolution process. In addition to their different program *goals*, the interviews also revealed a range of different *approaches* to working with family law clients among the surveyed programs, and suggest that a shared understanding of these is important to good collaborative relationships.

Whilst the majority of family lawyers in this study were well acquainted with both the goals and approaches of the particular program they used, some participants complained that they had little knowledge of the program's dispute resolution methods. Again, this was particularly evident in relation to the Keeping Contact program, and this problem with family lawyers' understanding of the program was confirmed by a number of family dispute resolution practitioners. For example, one family dispute resolution practitioner from Keeping Contact noted: 'I guess if you speak to solicitors and you asked them, "What do they think they're doing over there at Keeping Contact?", they might go, "Counselling?", or they don't know ... I think they might not have actually a detailed clue about what happens'. Reflecting this concern, several practitioners from this program noted the importance to good collaborative relationships of family lawyers knowing how their program works: 'I think those lawyers who have an understanding of what we do and appreciate what we do. ... Yeah so those lawyers who are informed about our practice, that are informed about the program, they're useful, it's easy to work with lawyers who know'.

A particular issue of family dispute resolution practice that was evident in the interviews was a diversity of approaches to the concept of impartiality (or 'independence'<sup>111</sup>) across the different programs. Many family dispute resolution practitioners in the sample spoke of taking an 'impartial' or 'neutral' position when working with parents, contrasting this with the family lawyer's partisan role: 'I guess the main difference between mediation and lawyers is that they act for one party, so their constraint is that they must always follow the best interests of their own client, whereas we have to remain impartial. I mean, that's our biggest constraint, is that we have to not advocate for one party or the other'. However, whilst neutrality is regarded as a core principle of mediation practice,<sup>112</sup> it is also a complex and contested concept which is used to denote a variety of meanings.<sup>113</sup> Two aspects of this concept were mentioned by family dispute resolution practitioners in this study.

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<sup>111</sup> The Family Law Act now defines this obligation as a requirement that the family dispute resolution practitioner 'is independent of all of the parties involved in the process': Family Law Act 1975 (Cth) s.10F; Family Law Act 1975 (Cth), s.10F.

<sup>112</sup> See H. Astor, 'Rethinking Neutrality: A Theory to Inform Practice – Part I' (2000) 11 *Australian Dispute Resolution Journal* 73. Note that it is not clear whether family dispute resolution is a 'mediation' process. During the course of the project, the researchers became aware that a debate on this issue is currently taking place within the family dispute resolution sector.

<sup>113</sup> For example, it has been variably used to describe the mediator's 'state of mind, attitude to change, alignment stance, [and] interventive technique': M. Furlong and J. Lipp, 'The Multiple Relationships Between Neutrality and Therapeutic Influence' (1994) 16 *Australia and New Zealand Journal of Family Therapy* 113, at 115. See also A. Taylor, 'Concepts of Neutrality in Family Mediation: Contexts, Ethics, Influence and Transformative Process' (1997) 14 *Mediation Quarterly* 215; R. B. McKay, 'Ethical Considerations in Alternative Dispute Resolution' (1989) 45 *Arbitration Journal* 15 at 21.

The first involved an obligation to be ‘unaligned’ with either party to the dispute, with family dispute resolution practitioners noting the importance of this position in maintaining clients’ trust in the process: ‘As soon as they feel you’re weighed in one person’s favour, you’ve lost them’. The second aspect of neutrality discussed in the interviews involved an obligation to be disinterested in the outcome of the dispute.<sup>114</sup> However, reflecting the literature on this topic,<sup>115</sup> there was no uniform approach to this aspect among the dispute resolution practitioners in our sample, and the extent to which practitioners were willing to intervene to ensure a quality outcome for individual parents or children varied from program to program.

For example, a number of dispute resolution practitioners from Keeping Contact, which aims to effect behavioural change, indicated they were prepared to intervene to ‘re-construct ideas and behaviours’,<sup>116</sup> and tempered their comments about neutrality with descriptions of ‘social control’ techniques, such as vetoing arrangements they believed were not safe for children or challenging men about their violent behaviour. One such practitioner noted: ‘You have to know where to draw the line and say, “I don’t think you’re a safe enough parent to parent your child at the moment. I don’t think it’s ok for you to have contact”.’ Practitioners who took this view suggested that a central part of their role was to be an advocate for the child, even though, as some observed, this might require ‘breaking’ or ‘wavering’ in their impartiality with clients. A few family dispute resolution practitioners took the same approach to the safety of outcomes for parents, and were prepared to intervene on this basis.<sup>117</sup>

In contrast to this, other family dispute resolution practitioners in the sample positioned themselves as experts in relation to their knowledge of child development, but were careful to abstain from challenging the arrangements reached by parents. These participants tended to emphasise the idea of ‘empowerment’ or ‘self determination’ for parents, highlighting the importance of the parties ‘owning’ their agreement. As one such practitioner explained: ‘Even if it might be an arrangement that I as a parent wouldn’t particularly like, because, for instance, the children might be spending quite a lot of time without seeing one of the parents, if that’s what both the parents want and they both are going to support it, that to me means it has a great chance of working, and who am I to say what is the best way to bring up people’s children? They aren’t my children’.<sup>118</sup>

Family dispute resolution practitioners in our sample were aware of this diversity of approaches within the sector. However, while family lawyers generally knew that family dispute resolution practitioners are required to be impartial, and many had some understanding of the approach taken to this obligation by the particular dispute resolution program they used, some expressed uncertainty about the extent to which

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<sup>114</sup> See on this, G. B. Walker, ‘Training Mediators: Teaching about Ethical Concerns and Obligations’ (1988) 19 *Mediation Quarterly* 33.

<sup>115</sup> See footnote 113.

<sup>116</sup> Furlong and Lipp, above n 113.

<sup>117</sup> See on this point, A. Bickerdike, ‘Allegations of Family Violence and Child Abuse in Family Law Children’s Proceedings: Implications for Family Dispute Resolution Practice’ (2007) 77 *Family Matters* 39.

<sup>118</sup> Note that the 2006 reforms to the Family Law Act, which came into operation after our interviews were conducted, require family dispute resolution practitioners to inform parents that, if it is reasonably practicable and in the best interests of the child, they could consider the child spending equal or substantial and significant time with the child: see Family Law Act 1975 (Cth) s.63DA.

family dispute resolution practitioners were able to intervene to ensure the quality of outcomes for parents. In particular, a number of family lawyers raised concerns about the implications of impartiality for clients' safety: 'I don't actually know what responsibility they assume for the content of the outcome. In other words if they see something being agreed that alarms them, I don't know if they feel an obligation to intervene'. This issue is discussed further in section 2.3.2.5 in relation to family violence practices.

### **2.3.2.3 Shared Understanding of Client Advocacy**

Reflecting the earlier studies of inter-professional relationships, one of the key features of the positive collaborative relationships in Study 1 was a shared understanding of each profession's roles and responsibilities in relation to family law disputes. In contrast, practitioners who had less well developed inter-professional relationships tended to have a relatively poor understanding of these. This was particularly evident in relation to the family lawyer's client advocacy role.

The interviews with family dispute resolution practitioners who enjoyed close working relationships with family lawyers, such as those at RDM and RAV, revealed a sophisticated understanding of client advocacy. Although other family dispute resolution practitioners in the sample also reported good working relationships with particular family lawyers, some maintained a critique of the legal profession more generally. The main critique in this regard centred on concerns about the partisan nature of the lawyer's client advocacy role, and a belief that this partisanship was not compatible with the family dispute resolution practitioner's holistic perspective of family disputes: 'I think the problem is they are only representing one part of system, whereas we are trying to represent the whole family with the children'. However, the interviews suggest that practitioners who took this view did not have a fully developed understanding of the nature of this role. In particular, these practitioners tended to confuse the concepts of 'advocacy' and 'adversarialism', suggesting that the representation of a single party to a dispute was inherently adversarial or inevitably exacerbated conflict.

In contrast to this, family dispute resolution practitioners with successful collaborative relationships with family lawyers distinguished between 'good' and 'bad' advocacy practices, rather than seeing advocacy and adversarialism as synonymous. Reflecting the descriptions provided by family lawyers themselves, these practitioners regarded 'good' advocacy practice as requiring lawyers to 'reality test' their client's instructions where these were 'unreasonable' or unmanageable or contrary to the child's interests. 'Bad' advocacy practice, on the other hand, was associated with family lawyers who 'overplayed' their advocacy role, for example, by unquestioning support for a client's instructions, however unrealistic or impracticable.

More significantly, as described in 2.3.1, family dispute resolution practitioners who collaborated effectively with family lawyers respected the value of the legal profession's client advocacy role, regarding it as beneficial for the clients and an important complement to their own work with parents. Such practitioners described this role in terms of ensuring 'the client's key concerns are put forward and not lost', or reassuring clients 'that they're not going to get steamrolled into something that's not okay', and commented on its value in protecting clients' legal entitlements from

being ‘bargained away’. In particular, these practitioners emphasised the need for advocacy for ‘less powerful’ clients, as their own obligation of impartiality constrains their own ability to protect such clients.<sup>119</sup>

In addition to these benefits for clients, a number of family dispute resolution practitioners, particularly at RDM where the clients’ legal representatives are present throughout the dispute resolution conference, described the family lawyer’s advocacy function as benefiting their own work with parents. For example, RDM family dispute resolution practitioners suggested that a central part of this role was to monitor the chairperson’s facilitation of the dispute to ensure a ‘fair process’ for their client, and to ‘contain’ inappropriate behaviour by clients which might disrupt negotiations and impede resolution of the dispute.

#### **2.3.2.4 Misunderstandings and Misconceptions about Responsibilities to Children**

A further feature of the successful inter-professional relationships in this study was an appreciation by practitioners of the differences between their own responsibilities to children and those of the ‘other’ profession. The interviews revealed that practitioners with good collaborative relationships had a clear understanding of each profession’s relative responsibilities in this regard, and respected the differences between them. On the other hand, reflecting their critiques of partisanship (discussed above in 2.3.2.3), some family dispute resolution practitioners who had less well developed relationships with family lawyers tended to be critical of the qualified and legally defined nature of the legal profession’s responsibilities to children. Notwithstanding the fact that family lawyers have no prescribed direct responsibilities in relation to children, these practitioners expected family lawyers to modify their traditional client advocacy role and prioritise the interests of the child, and wanted family lawyers to incorporate an understanding of the social and psychological science evidence base on children’s needs into their advice work with parents (this issue is discussed further in section 2.3.3.3).

Participants were asked to identify the subjects to whom they owed their primary professional duties and to describe their approach to ensuring the ‘best interests of the child’ are considered by parents. The majority of family dispute resolution practitioners in the sample identified their primary responsibility as being owed to the child. Whilst some family dispute resolution practitioners identified concurrent responsibilities to their clients (the parents) and the child, or to the family as a whole, and several described wider obligations (such as a responsibility to meet performance targets), the child was generally nominated as their overriding concern. In contrast to this focus, the majority of family lawyers described themselves as having a number of simultaneous professional responsibilities. These descriptions incorporated an understanding of the need to be ‘child focused’ when working with parents (for example, assisting them to focus on their children’s needs and perspectives)<sup>120</sup>

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<sup>119</sup> Neutrality in this sense refers to the family dispute resolution practitioner’s obligation not to align themselves with either party: see S. Cobb and J. Rifkin, ‘Practice and Paradox: Deconstructing Neutrality in Mediation’ (1991) 16 *Law and Society Review* 35.

<sup>120</sup> Lawyers who acted as Independent Children’s Lawyers also spoke of their separate advocacy responsibilities on behalf of the child.



alongside their professional duties as officers of the court and their primary duty to advance and protect the interests of their (adult) clients.<sup>121</sup>

The most common strategy used by family lawyers to balance these competing responsibilities involved a ‘reality testing’ process, where lawyers challenged clients to consider their children’s perspectives by helping them think through the day to day and longer-term implications of their proposals for the children. For example, one family lawyer noted: ‘Most parents will walk in and say “I want this” and they come at it from the wrong way around. So you sort of get them around to, “Given that [your children] should know both parents, and given that they go to school, and given that they’ve got these friends, given that they’ve got these activities, how are we going to make all that work?”’. Consistent with their role as legal advisers, family lawyers also described ‘reality testing’ the client’s proposals in terms of their fit with the relevant legislative and case law interpretations of the ‘best interests of the child’ principle, and their understanding of the court’s approach to these.

Family dispute resolution practitioners who enjoyed close collaborative relationships with family lawyers were conscious of the multiple competing responsibilities affecting family lawyers’ work with clients, and aware of the difficult juggling act and contradictory impulses this often entailed. For example, one noted: ‘Well, they have a duty to advocate for the needs of their particular client. They also, there’s a contradiction, a tension, in the system, which is they also have a duty to the best interests of the child. And that may entirely conflict with their client’s stated instructions. So there’s two things there, and tension around that’. Family dispute resolution practitioners who collaborated closely with family lawyers also revealed an understanding of the ‘reality testing’ practices they employed. As one family dispute resolution practitioner said: ‘I know when they have done that because the client has said to me, “Oh, my lawyer, you know, talked to me about shared parenting and whether it was really possible in this case, and asked me to think about that”. So I can tell the lawyer has done more than just listen and accept their client’s instructions’.

### **2.3.2.5 Referrals and Screening for Family Violence**

Participants were also asked to describe their obligations and practices in cases involving family violence, and their understanding of the obligations and practices of the other profession. The interviews suggest that despite the generally positive collaborative relationships described by participants in the sample, there was nevertheless a degree of mutual mistrust of the other profession’s screening and referral practices, with some practitioners from both groups regarding these as barriers to successful collaborative relationships.

Intake screening and ongoing monitoring of clients’ safety was clearly important to family lawyers’ sense of confidence in family dispute resolution programs. Reflecting the select nature of the Study 1 cohort, family lawyers generally praised the intake processes of the particular program with which they dealt. However, some described the intake processes of other family dispute resolution agencies as inadequate, and suggested that some programs were accepting cases that may not be appropriate for family dispute resolution, despite their screening tools. At the same time, however,

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<sup>121</sup> The various professional duties of practising family lawyers are described in Chapter 1.

the interviews also revealed an array of different referral approaches among the family lawyers in our sample. For example, whilst some suggested they would never refer a client to family dispute resolution when violence was an issue, others expressed confidence in the ability of particular family dispute resolution programs to deal sensitively with such clients, provided the client was willing and able to participate. For some family lawyers, the determinative factor in making a referral was the ‘seriousness’ of the alleged violence; for others, the client’s capacity and willingness to negotiate on their own behalf were the more important considerations; and still others noted the relevance of resource issues, such as the relative costs and delays of court processes.

However, a number of family dispute resolution practitioners (and family lawyers) complained that some family lawyers did not take clients’ concerns about family violence seriously, and/or were not competent to detect family violence when it was an issue for clients. Some family dispute resolution practitioners said that family lawyers had, at times, referred cases to them that were clearly unsuitable for family dispute resolution: ‘I think that it’s a bit like Queen Victoria who didn’t believe that there was such a thing as lesbian relationships. I just don’t actually think that a lot of them really take on board in a real sense that it has huge implications on relationships and on children’s relationships with their parents’. In particular, a number of family dispute resolution practitioners suggested that family lawyers did not understand the impact of violence on a client’s capacity to advocate for their own interests, and doubted the ability of many family lawyers to properly identify clients who should not be referred to family dispute resolution.

On the other hand, some family dispute resolution practitioners were aware that family lawyers are not required to be trained to identify family violence as family dispute resolution practitioners must be, and suggested that lawyers should not be expected to evaluate a client’s capacity to participate in family dispute resolution without such training: ‘There are cases where, to be fair to lawyers, it’s fairly difficult, and it’s not until the mediator really sees them, that they can form a view about whether mediation is going to work or how far you’re going to get. So it’s hard for lawyers to know, perhaps except in fairly obvious cases, whether or not clients are going to make progress in mediation’. These family dispute resolution practitioners believed that assessments of suitability for family dispute resolution should be left to family dispute resolution agencies.

### **2.3.3 Positive Inter-Professional Practices**

The interviews also indicated a number of respectful inter-professional practices underpinning the successful collaborative relationships in the sample. These included communication and timely feedback about clients, being careful not to over-step role boundaries, respecting the other profession’s knowledge base and area of expertise, and a non-hierarchical attitude to the inter-professional relationship.

#### **2.3.3.1 Communication and Feedback**

Participants from both professions described communication and timely feedback about clients as an important element of good collaboration. Whilst the interviews suggest that some family lawyers (especially those who used the Keeping Contact

program) were content to allow the dispute resolution process to take its course and receive feedback from clients, most indicated that the sharing of information about mutual clients, consistent with confidentiality obligations,<sup>122</sup> was critical to effective collaboration with the other profession. In particular, interviewees suggested that failure to provide feedback can undermine positive relationships by reinforcing negative stereotypes of one or other profession. For example, family dispute resolution practitioners noted the scope for clients to misrepresent the advice they had been given by their lawyers in the absence of direct communication between practitioners: ‘Clients will often present information in two ways that offers two interpretations. [So the question becomes], has the lawyer given inflammatory advice, or has the client misunderstood, or is the client being strategic here?’

However, a number of participants noted the difficulties for family dispute resolution practitioners who are not provided with information about the source of the referral to the dispute resolution program: ‘I think the feedback from mediators back to referring lawyers could be improved, but in fairness the caveat is that sometimes the mediator may not be aware of the source of the referral’.

### **2.3.3.2 Inter-Professional Respect**

The interviews also indicate the importance of inter-professional respect to good collaborative relationships. Although the majority of participants reported respectful relationships with practitioners from the ‘other’ profession, some suggested that this was not typical of the family law sector more broadly, and lamented the fact that, as one family dispute resolution practitioner put it, ‘social scientists are wary of lawyers and vice versa’. As noted in 2.3.1, underpinning the successful collaborations in this sample was a complementary services approach, in which practitioners valued and respected the different (relationships versus advocacy) skills and expert (child development versus legal) knowledge base of the two professions.

In contrast, some family dispute resolution practitioners offered vigorous critiques of the legal profession (although not the particular family lawyers with whom they worked). For example, one family dispute resolution practitioner described the family law profession as ‘warriors’ rather than ‘peacemakers’, while others complained about lawyers trying ‘to get the best deal’ for their client and ‘undermining the other person’s case’, rather than ‘listening to both sides’ and trying to build alliances. Some criticised the legal profession’s view of clients as ‘parties to a dispute’ rather than ‘people who need to co-parent’, and lawyers’ focus on ‘rights and entitlements’, rather than ‘human relationships’. As these criticisms suggest, some family dispute resolution practitioners believed that the legal system’s approach to post-separation disputes was fundamentally incompatible with their own holistic perspective and collaboration-building focus, and appeared to have little respect for the legal profession.

At the same time, a number of family dispute resolution practitioners expressed a belief that their own skills and expertise were not valued by the legal profession. For example, family dispute resolution practitioners from Keeping Contact, which has a

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<sup>122</sup> For family dispute resolution practitioners these are set out in Family Law Act 1975 (Cth), s.10H. Lawyers’ communications with clients attract legal professional privilege.

therapeutic orientation, described family lawyers (although not those who referred clients to their program) as having little respect for therapeutic processes such as ‘grief work’, and preferring ‘a quick fix’ solution. As one such practitioner noted: ‘I think some solicitors are quite dubious about therapists as do-gooders [and] they see it more as this fluffy, floaty counselling stuff and [wonder] “How’s that going to help?”. So, it’s a bit of a lack of respect for what people in this sort of area do’.

As noted above, the family lawyers in our sample who were interviewed about this program were strongly supportive of its work, offering high praise for its approach and acknowledging its positive results. Family lawyers were also highly supportive of the relationship repair and communication building work carried out at RAV, and offered these as reasons for referring clients to its service. Nevertheless, some family dispute resolution practitioners believed that this kind of positive regard was not typical of the legal profession as a whole, and suggested that disrespect for ‘relationships work’ was a barrier to effective collaboration with family lawyers. (This issue is discussed further in Chapter 3.)

### **2.3.3.3 Respect for Role Boundaries**

A related issue concerned the importance to good collaborative relationships of respecting role boundaries and deferring to the other profession’s area of professional expertise. A number of family lawyers in the interviews suggested that family dispute resolution practitioners had occasionally overstepped the boundaries of their professional role and provided clients with (inaccurate) legal advice. These practitioners described situations in which mediators with ‘a social science rather than a legal background’ had given misleading advice to clients about their likely entitlements or prospects of success in court, and regarded this as an impediment to positive inter-professional relationships. On the other hand, some family dispute resolution practitioners suggested that it was difficult at times to know where the line between legal advice and information fell. One practitioner described the following case to illustrate this dilemma: ‘I saw a lady on her own and she wanted to rearrange the parenting, and she's got a four nights/ three nights arrangement, a shared parenting arrangement of this little girl who is ten. But she's got the child all weekend and she actually wanted a bit of weekend time free. She wanted to alternate the weekends. I sort of said to her, “Look, you can speak to a lawyer but my understanding is from a legal point of view, generally if you guys can't resolve it, the court is generally in the normal sort of case going to alternate the weekends.” Am I giving her legal advice or legal information?’

As noted in 2.3.2.4, in apparent contrast with this concern a number of family dispute resolution practitioners were critical of family lawyers for failing to move beyond their traditional roles and incorporate the sociological and psychological research evidence about children’s needs into their advice work with parents. These practitioners were concerned that lawyers’ advice to parents was being informed by a narrow policy-based understanding of appropriate parenting arrangements, which did not adequately capture the complexity of the research evidence. Such responses tended to focus on the influence of the law on fathers’ proposals, and offered criticisms of family lawyers who supported clients to seek arrangements that reflected the legislative priorities (such as shared care), but which were not consistent with the child’s wellbeing in the circumstances. For example, one family dispute resolution

practitioner commented: ‘Look, the number of times that especially fathers come in going, “I am going for residence”, and it would be completely bonkers for their relationship with their children for that to actually happen, and there’s someone behind the scenes saying, “This is a good punt”, I’ve got to be a bit worried about whether in fact some family lawyers do have the best interests of children at heart in that situation’. These practitioners tended to suggest that professional training for family lawyers needed to incorporate a greater understanding of the research literature.

However, not all family dispute resolution practitioners took this view. Reflecting the complementary services approach they employed (see section 2.3.1), those who worked collaboratively with family lawyers did not support the idea of family lawyers moving outside their traditional role to this extent. Whilst these family dispute resolution practitioners saw value in family lawyers having ‘a basic understanding’ of child development principles and separation dynamics, they stressed the need for lawyers to respect the boundaries of their legal advice role and refer clients to social science professionals, such as family dispute resolution practitioners or counsellors, for appropriate advice about parenting and relationship issues: ‘So I think they can do the legal stuff and if they can’t do the relationship stuff they should send the relationship stuff to us or on to somebody else’.

#### **2.3.3.4 A Non-Hierarchical Attitude**

Another related issue involved criticisms from some family dispute resolution practitioners about the perception of their program as a ‘secondary’ or ‘support’ service to the legal profession, and the suggestion that such attitudes inhibited successful collaboration with family lawyers. One participant who described this issue complained that ‘it’s like 20 years ago in the hospital framework, where the doctors thought that they were the top of the pecking order and that everybody underneath were assisting them’.

Reflecting the generally positive collaborations in our sample, there was no evidence of this attitude among the family lawyers we interviewed. This was true even for family lawyers who worked with Family Court mediators in Magellan cases, where the dispute resolution practitioner’s role is to provide a report to the Court. In fact, practitioners from both professions associated with the Magellan program described their inter-professional relationship in strongly positive terms, conveying a sense of mutual respect and emphasising the value to both professions (and to clients) of the tradition of consultation and dialogue between Family Court mediators and family lawyers.<sup>123</sup>

In contrast to this, the interviews with Keeping Contact family dispute resolution practitioners conveyed a strong sense of frustration with their program being situated as a service to the courts. For example, practitioners noted the tension associated with attempting to carry out therapeutic work within a legal setting that had litigation-

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<sup>123</sup> Note that a number of family lawyers complained about the impact of the changes to the Family Law Rules in 2004, which reduced the scope of information that Family Report writers may share with legal practitioners: see Family Law Rules, r. 15.65, which require questions about the report to be put in writing within 21 days. Note that this restriction does not apply to communication between Family Court Consultants and Independent Children’s Lawyers: r. 15.41

centred demands (such as providing progress reports for the court). Whilst practitioners from this program offered some complaints about family lawyers' attitudes, they were also aware that these were linked to the positioning of their program as a service to the legal system. For example, one practitioner noted with annoyance that solicitors 'will ring us and say "Where are things up to, what's happening with this case?"', and in fact what we've discovered is that they're probably at the court and the judge has said "Where are things up to, what's happening with this case?", and so the solicitor is getting a hard time and so rings us up and gives us a hard time'.

### **2.3.4 Positive Personal Contact**

The successful collaborative relationships surveyed in this study were supported by regular positive contact between practitioners from each group. However, the interviews also suggest that contact with practitioners from the other profession can sometimes inhibit rather than enhance the production of good inter-professional relationships. For example, a number of family dispute resolution practitioners recounted stories of patronising or bullying encounters with legal practitioners: 'It's like they are trying to ring and tell us what to do and how to run the case, and it's like [we need to say] "Well actually we are not part of the law system and we are not part of your legal firm so you can't really do that".'

On the other hand, the interview data also indicate that positive personal contact can be transformative. For example, one family dispute resolution practitioner described conversations with family lawyers as having changed her previous perception of the legal profession's client advocacy role: 'And that's been refreshing to me because I think I've thought that the legal profession have a nicer job in that they can entirely - this was my belief - entirely support their client's view and their client's wishes and they only have to listen to one side of the situation. But as I talk to more legal professionals I realise that they think more broadly than just their client's view and their client's wishes so they do have a sense that there's another party here who may in fact have an entirely different view and so how do I work knowing that. So I think the legal profession, I'm finding that I have to give them more credit for that'.

The interviews suggest that the successful collaborative relationships revealed in Study 1 had been developed through a number of different forms of positive personal contact. These included working together with clients as a multi-professional team (at RDM), regular information sharing meetings (at RAV), and dialogue and consultations about mutual clients (at the Family Court). Each of these forms of contact had been strongly productive of cross-professional respect and understanding. For example, one family dispute resolution practitioner from RDM noted, 'working together and actually doing the work together ... creates the best sort of rapport because you get a hands on understanding of each other's roles and each other's backgrounds and each other's approaches.' Similar positive reflections on the importance of personal contact to maintaining good working relationships with the other profession were made by participants associated with the RAV program, where practitioners attend monthly joint professional development meetings.<sup>124</sup>

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<sup>124</sup> It should be noted that solicitors on the Lawyers Panel benefit economically from Panel membership, in that RAV will refer clients to Panel members. However the family lawyers interviewed

Whilst family lawyers and family dispute resolution practitioners from RAV have little direct contact with one another on individual cases, the interviews indicated a number of ways in which their regular joint professional development meetings had improved relationships between the two professions. Firstly, practitioners from both groups spoke about the information-sharing benefits of these meetings, noting, for example, how both groups had used the meetings to keep the other profession up to date with legal or policy developments affecting their practice, or to inform practitioners from the other profession about ‘practical problems’ that constrain their work. Family lawyers also described the benefit of seeing videos produced by RAV of their dispute resolution methods: ‘it’s been very useful to see how the mediators work with the clients’.

Secondly, practitioners from both groups described the regular professional development forums as having helped to allay their fears about the ‘other’ profession and break down negative stereotypes. For example, one RAV family dispute resolution practitioner explained that through the monthly meetings ‘we get to hear what is going on for lawyers, so we get an understanding of what they’re presented with, and they of us. So that’s really good learning, and it removes that barrier of “us and them”. A lot of people fear the legal profession because they feel a bit intimidated by it, but you know, I think it’s good that we do get to understand the legal profession, and what issues they’re grappling with’.

A third flow-on benefit reported by these participants was improved communication between practitioners. One family lawyer associated with the RAV explained that the joint meetings had helped to improve the level of feedback between practitioners: ‘[W]hen the group was first formed, there were quite a number of us family lawyers referring clients off to mediation at Relationships Australia and we wouldn’t then hear much more about it unless the client came back saying “We’ve resolved the matter”. As a result of that Panel, we made it known to the mediators we’d like a little bit more feedback’.

Fourthly, practitioners provided examples of how the meetings had been used to address specific concerns about the practices of one or other profession. One family lawyer illustrated this point by describing how family dispute resolution practitioners had responded to family lawyers’ concerns about RAV’s proposal to commence using a child inclusive mediation process: ‘We’ve also been able to let the mediators know about concerns we have about some of the things they are doing. For example, some time ago Relationships Australia made it known that they were going to involve children in mediation and we had a bit of a concern about that ...because we thought that that would put children in the firing line... We thought that would create a conflict of loyalty situation for the child. Now as a result of [the meetings], we’ve been able to be reassured that the mediators are mindful of the pressures that can build up on children and they wouldn’t actually put a child in that position. They would often speak to the child, get an idea of what’s happening in the child’s world and then the mediator could then present that back to the couple, and it was very helpful. We sort of reacted to the concept and then we were able to be reassured that it wasn’t as bad as we first thought’.

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for this study did not talk about referral of work as a benefit of the Panel. Rather they reported improved relationships and understandings that helped them in their work with clients.

A final element of the RAV meetings which practitioners (particularly family lawyers) perceived to be critical to their success in generating positive inter-professional relationships was the spirit of inclusiveness in which they were run. One family lawyer described this view this way: 'They are really articulate and informative and free with their information in the context of the group, and they have a very trusting and open attitude towards the lawyers in the group, and I think they make us feel utterly welcome and spoilt and it's a very positive environment and I've had no contact with a mediator, in a general sense, which has left me feeling cold or sort of critical'. This factor was also mentioned by family dispute resolution practitioners from this program, who spoke about the importance of building 'inter-professional trust'.

It is also instructive to note that when asked to offer suggestions for improving their inter-professional relationships, many participants in the study suggested the need for more 'collaborative discussions' between the two professions about their respective roles and work with family law clients: 'I think some forums where we talk about our ideas and we talk about how we approach the sort of work would be useful, so some joint forums and some facilitated forums where we share our expertise and continue to find the commonalities and how we could work together I think would be really useful'.

Two caveats need to be made regarding the relevance of contact to inter-professional relationships. Firstly, the data suggest that whilst positive personal contact between practitioners may promote successful collaborative relationships, it is not of itself sufficient to break down negative stereotypes of the 'other' profession as a whole. This was illustrated in the interviews with several family dispute resolution practitioners who distinguished the family lawyers with whom they had regular contact - who they regarded warmly - from the 'legal profession' generally - which they linked to negative stereotypes. For example, one family dispute resolution practitioner exempted legal practitioners with whom she had collaborated, who she described as 'trying hard to look at this as a family issue', from family lawyers generally, who she described as being more interested in 'lining their pockets'.

The second qualification regarding the importance of contact is that the interviews suggest that family lawyers' satisfaction with family dispute resolution programs, and positive regard for their work, can exist in the absence of personal contact between practitioners. For example, several of the family lawyers in our sample who spoke about the Keeping Contact program offered high praise for its dispute resolution service, despite reporting minimal contact with individual practitioners. For these family lawyers, their positive regard stemmed from their clients' satisfaction with the program and its proven results.

## **2.4 STRENGTHS AND LIMITATIONS OF THE STUDY**

The strength of this study is its grounding in the experiences of practitioners who had an established working relationship with the other profession. By focusing on practitioners and services with reputedly successful collaborative relationships, this study was able to gain detailed qualitative information about the features of these relationships and how they were supported. The interviews were conducted with practitioners associated with four well-known dispute resolution programs operating



in Melbourne and Sydney/Parramatta, and the majority of participants were highly experienced practitioners with a considerable history of working in the family law system. The data are therefore not necessarily reflective of the kinds of inter-professional relationships or collaborations between family lawyers and family dispute resolution practitioners working in the Australian family law system more generally. This was a major part of the rationale for conducting Study 2 (see Chapter 3).

It should be noted that participants' responses to questioning about their inter-professional relationships generally assumed that family dispute resolution practitioners had a thorough knowledge of the relevant social and psychological literature on children and families. However, a number of the family dispute resolution practitioners interviewed for Study 1 had a disciplinary grounding in law (n=7). Nevertheless, all of the family dispute resolution practitioners in the study, including those with legal qualifications, had received significant training in family mediation or conflict resolution, child development and separation dynamics, and family violence. Five of the dispute resolution practitioners with a law degree were 'lapsed lawyers' who had been working in the family dispute resolution sector for some years and had not practised law during that time. Only two family dispute resolution practitioners were also currently practising solicitors. This overlap was incorporated into the research design by asking these participants to provide responses (e.g., to questions about their professional responsibilities) in their capacity as a family dispute resolution practitioner *and* as a family lawyer, and to distinguish their practices in each role.

One of the dispute resolution programs surveyed in Study 1 was the Family Court's Magellan Program. It was important to include a Family Court dispute resolution program because of its unique position inside the court system. Family dispute resolution practitioners in the Magellan program have an important dispute resolution function, in that by seeing the parties and the children, collecting information and liaising with the Independent Children's Lawyer, settling of disputes is frequently achieved without the need for a court hearing. However, the main function of these practitioners is to gather information about the child's welfare and provide a report for the court, and inter-professional relationships within this context are different to those of practitioners working with the other services in our study. Further, at the time of the interviews these practitioners, along with the other dispute resolution practitioners in the sample, were all identified as PDR professionals. By the time Study 2 was conducted, non-court based PDR professionals in the family law system had been re-badged as 'family dispute resolution practitioners', and accorded different responsibilities and professional identities than those assigned to court-based dispute resolution practitioners (who are now known as Family Consultants). The findings described here therefore focus predominantly on the relationships between family lawyers and family dispute resolution practitioners associated with the three non-court based dispute resolution services in the sample, who fall within the definition of family dispute resolution practitioners. A more detailed discussion of the interviews with family lawyers and Family Court mediators is provided in Rhoades, Sanson, Astor and Kaspiw, *Working on their relationships: A study of inter-professional practices in a changing family law system, Research Report 1* University of Melbourne, December 2006.

Data collection for Study 1 was conducted prior to the introduction of the *Shared Parental Responsibility Act 2006*. The findings, therefore, do not provide any insights into the relationships between the legal profession and dispute resolution personnel at Family Relationship Centres, which had not yet commenced operation. Further, we cannot assume that the practices of the ‘primary dispute resolution practitioners’ we interviewed for this study remain the same now that they are ‘family dispute resolution practitioners’. For example, there is currently a debate within the family dispute resolution sector about the extent to which the concept of ‘mediator neutrality’ described by some dispute resolution participants in this study entails the same obligations as the concept of ‘independence’ now applicable to family dispute resolution practitioners.

## **CHAPTER THREE**

### **STUDY 2**

#### **3.1 RESEARCH AIMS**

Study 2 was conducted in early 2007. It used a web-based questionnaire to follow up a number of the key themes elicited from the analysis of the Study 1 data with practitioners from a wider range of agencies and locations across Australia. As we have seen, Study 1 involved in-depth interviews with a relatively small group of practitioners associated with four different dispute resolution services chosen because of their reputedly good working relationships with the legal profession. These interviews elicited detailed qualitative information about the characteristics of successful collaborative relationships and how these were formed and supported.

Study 2 used this information to survey a more representative sample of practitioners working in the sector. By contrast with the insights gained from the select sample of practitioners in Study 1, this study aimed to capture an understanding of a broader range of inter-professional relationships of varying quality and levels of establishment. Its questionnaire was designed to confirm the characteristics of successful collaborative relationships revealed in Study 1, and gauge the extent to which these characteristics were reflective of relationships between family lawyers and family dispute resolution practitioners in the sector more generally. In particular, this predominantly quantitative investigation sought to gather information about the importance of cross-professional understanding, inter-professional practices, and inter-professional contact to successful collaborations between the two professions. To this end, practitioners were asked specific questions about satisfaction with their relationships with the other profession, the nature of these relationships, and understandings of their own and the other profession's responsibilities and work practices. This approach was designed to limit the impact of idiosyncratic interpretations and social desirability biases in the data,<sup>125</sup> and to allow us to disentangle and clarify how different factors operate independently or together to predict satisfaction with relationships. The Study 2 data also provided important insights into the attitudes and perceptions of practitioners who had limited contact with the other profession.

#### **3.2 CHANGED PRACTICE AND POLICY CONTEXT**

The *Shared Parental Responsibility Act 2006* came into operation between the collection of the first and second data sets. Consequently, the family dispute resolution landscape and the legal obligations of both professions changed between the two phases of this project. Whereas Study 1 investigated dispute resolution services operating under the pre-reform system, Study 2 took place shortly after the implementation of the reforms described in Chapter 1. As a result, some of the survey responses, particularly to the open-ended questions, reflect a level of critique and anxiety about these changes which was not evident in the Study 1 interviews.

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<sup>125</sup> A. Edwards, *Techniques of attitude scale construction* (Appleton-Century-Crofts, New York: 1957).

### 3.3 METHODOLOGY

#### 3.3.1 Participants

A total of 456 participants completed the questionnaire, including 134 family dispute resolution practitioners and 322 family lawyers. The majority of practitioners were in their forties (n=143). More participants from both professions were female, including 56.8% (n=183) of family lawyers and 62.7% (n=84) of family dispute resolution practitioners. The majority of family lawyers (n=178, 55.6%) indicated that 0-25% of their cases involve violence issues, whereas the majority of family dispute resolution practitioners (n=47, 35.9%) indicated that 26-50% of their cases involve violence issues.<sup>126</sup> The sample was drawn from a diverse range of locations, including rural areas (n=39), regional cities (n=116), capital city CBDs (n=170), and suburban areas (n=122). Practitioners had on average been working in the family law field for 13.7 years.

By definition, all family lawyers in the sample had an undergraduate degree in law. Many lawyers had undertaken some training in conflict resolution or mediation (n=99). It is probable that many of these training courses were short courses of a few days' duration, not equivalent to an undergraduate or graduate degree. The qualifications of the family dispute resolution practitioners covered a much wider range of disciplines (such as social science, social work, and psychology). Nearly a third of family dispute resolution practitioners (n=37, 29.1%) had a law degree.

The majority (n=67) of family dispute resolution practitioners in the sample worked in the community family relationships sector, while 36 dispute resolution practitioners worked in a Family Relationships Centre and 29 worked for Legal Aid. The majority of family lawyers in the sample (n=174) worked as solicitors in a small firm, 72 lawyers worked as sole practitioners, 45 worked as solicitors in a large firm, 23 worked for Legal Aid, and 5 worked in the community legal sector.

#### 3.3.2 Recruitment

Community-based family dispute resolution agencies were contacted by the research team in January 2007 and asked to support the project by forwarding an email containing an invitation to complete the questionnaire, as well as a web-link to the questionnaire, to their family dispute resolution personnel and the Family Relationship Centres with which they were involved. The National Legal Aid Secretariat also supported the project, inviting the Legal Aid Commission in each state to distribute the questionnaire by email. Family lawyers were also recruited with the assistance of the Chair of the Family Law Section of the Law Council of Australia, who forwarded an email to the Section's members inviting them to complete the questionnaire. The questionnaire was administered on-line using the SurveyMonkey questionnaire software package.<sup>127</sup> Due to confidentiality issues, practitioners were not asked to state the name of their workplace or agency. Hence, the response rates from each of the organisations could not be determined.

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<sup>126</sup> It should be noted that in the questionnaire 'violence' and 'cases' were not defined.

<sup>127</sup> R. Kinley, *SurveyMonkey* (2007).

### **3.3.3 Questionnaire**

The questionnaire was developed using the descriptive information obtained from the Study 1 interviews, and included questions relating to the extent and kind of contact practitioners had with members of the other profession as part of their work on parenting matters. The questionnaire also canvassed the nature of practitioners' working relationship with the other profession, facets of their 'typical interactions' with members of the other profession, and their level of satisfaction with their inter-professional relationships. Practitioners were also asked about their understanding of their own professional responsibilities in parenting matters as well as those of the other profession, and the extent to which they perceived their professional responsibilities were understood by members of the other profession (the questionnaires are reproduced in Appendix A and Appendix B).

### **3.3.4 Analysis**

The quantitative data were analysed using the SPSS statistical software package. A range of statistical procedures were used. Those of relevance to this report include multivariate analysis of variance, correlation, regression, and t-tests.<sup>128</sup> Although exact numbers of family lawyers and family dispute resolution practitioners working on parenting matters in Australia are unknown, the greater number of family lawyers than family dispute resolution practitioners in the sample appears to reflect the population distribution of each profession. The assumptions for all tests were carefully checked, and the tests used were robust for unequal cell sizes. Without exact information on the current number and characteristics of the population of each profession, weightings were not appropriate. The analysis of practitioners' responses to the open-ended questions proceeded thematically, and this material was used to contextualize and extend the analysis of the quantitative data.

## **3.4 FINDINGS**

Study 2 confirmed the relevance of the characteristics identified in Study 1 to successful collaborative relationships. In particular, the use of positive inter-professional practices, such as respectful communication and feedback about clients, was an important variable in predicting successful inter-professional relationships. In contrast, negative inter-professional practices, such as moving beyond one's area of competence, appear to be important variables in predicting less successful inter-professional relationships. Furthermore, the results confirm the Study 1 findings which suggest that there is a lack of cross-professional understanding in some areas, and that this is related to less successful inter-professional relationships.

The Study 2 data also suggest that positive collaborative practices of the kind surveyed in Study 1, where practitioners worked together as a partnership and/or viewed themselves as providing equally valuable complementary services, are not widespread in the sector, and that many practitioners have little direct contact with members of the other profession. The responses also suggest that many practitioners

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<sup>128</sup> Details of the results of the multivariate analysis of variance, t-test, regression, and correlation analyses are footnoted in the following discussion. The full results of the correlation and regression analyses are provided in Appendix E.

harbour negative attitudes and perceptions of the other profession's practices. These issues are discussed in more detail below.

### 3.4.1 Inter-Professional Contact

Whereas participants in Study 1 were selected because they had an established working relationship with members of the other profession, Study 2 accessed a much wider and more representative sample of practitioners in the family law system. Its results indicate that many practitioners working in the sector have limited first-hand contact with practitioners from the other profession.<sup>129</sup> On average, a relatively low level of inter-professional contact was evident: 24.6% of family dispute resolution practitioners indicated that they had no contact with family lawyers, and a further 28.5% had contact only 1-2 times per month. Amongst family lawyers, 10.3% indicated that they had no contact and 32.5% indicated that they had contact only once or twice per month.

When statistically examining factors associated with satisfaction with the inter-professional relationship, participants who reported that they had no contact with the other profession were excluded from the analyses. Following this exclusion, the average level of contact reported by family dispute resolution practitioners rose to 5-6 times per month, and the average level of contact reported by family lawyers was 3-4 times per month.<sup>130</sup> However, it is important to note here how contact was measured for the purposes of the questionnaire, and the significant differences between the nature of the contact reported by many of the Study 2 respondents and that which underpinned the successful collaborative relationships in Study 1. In particular, in addition to the low incidence of contact in this sample, most practitioners reported having predominantly *indirect* contact with the other profession. The primary form of inter-professional contact reported by Study 2 respondents consisted of referrals to and acceptance of referrals from the other profession. As is well known in the sector, this practice generally involves minimal if any direct communication between individual practitioners, with referrals from family lawyers typically being made to a dispute resolution service rather than a particular practitioner. As participants in Study 1 noted, family dispute resolution practitioners are often unaware of the identity of their clients' legal representatives (see section 2.3.3.1).

Another common form of contact reported by Study 2 respondents consisted of attendance at joint professional development seminars. Again it is important to distinguish these seminars from the intimate dialogue-driven monthly information sharing meetings which supported the positive inter-professional relationships between RAV family dispute resolution practitioners and Lawyers Panel solicitors in Study 1. In contrast to those meetings, joint professional development forums for

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<sup>129</sup> Ratings were coded as a 7-point scale where 0=no contact, 1=1-2 times per month, 2=3-4 times per month, 3=5-6 times per month, 4=7-8 times per month, 5=9-10 times per month, and 6=over 10 times per month. On average, family dispute resolution practitioners ( $M=2.2$ ,  $SD=2.2$ ) and family lawyers ( $M=2.1$ ,  $SD=1.6$ ) reported having contact with the other profession 3-4 times per month. However, 24.6% of family dispute resolution practitioners and 10.3% of family lawyers indicated that they did not have any contact with the other profession.

<sup>130</sup> Following the exclusion of practitioners who reported 'no contact' with the other profession, the average level of contact rose for family lawyers ( $M=2.4$ ,  $SD=1.5$ ) and family dispute resolution practitioners ( $M=2.93$ ,  $SD=2$ ).

professionals working in the family law sector typically have a large attendance and may provide few opportunities for personal interaction between attendees.

Hence, although many participants reported contact with the other profession beyond referral or acceptance of referrals at least occasionally,<sup>131</sup> overall the nature of inter-professional contact experienced by Study 2 respondents differed markedly from that enjoyed by the practitioners in Study 1. As a result, many respondents' views about the other profession's practices were based on indirect sources of information, such as feedback from clients, or reflect perceptions gained from other sources, such as conference presentations, rather than actual experiences of working or conferring with practitioners from the other profession. This was confirmed in the open-ended responses. For example, one family dispute resolution practitioner's open-ended response noted: 'A lot of my ideas about lawyers come from information that clients give me about what their lawyers have said, and I have no way of knowing how much of that is accurate'.

Thus, in addition to confirming the importance of the characteristics of good collaborative relationships found in Study 1, the Study 2 responses provide important information about the attitudes and perceptions of practitioners who do not work closely with the other profession.

### **3.4.2 Satisfaction with the Inter-Professional Relationship**

Overall, Study 2 participants indicated a generally lower level of satisfaction with their inter-professional relationships than did the interview participants in Study 1. On average, Study 2 participants were 'somewhat' satisfied with their inter-professional relationships, although it is noteworthy that 11.8% of participants were very or somewhat dissatisfied with the relationship and 28.9% were about 50/50.

However, it is important to note that the open-ended responses indicated that some practitioners enjoyed highly satisfactory collaborative working relationships with particular family lawyers or family dispute resolution practitioners and unsatisfactory relationships with other practitioners: 'It was difficult to answer the questions regarding the approach and skills of the mediators as this varies greatly from mediator to mediator. I regularly refer clients to some mediators who are excellent and I have a long-standing good working relationship with them. My experience of other services is in stark contrast to that'.

### **3.4.3 Collaborative Relationships**

Consistent with Study 1, working together with the other profession as a partnership and a complementary services approach to the inter-professional relationship were strongly associated with successful inter-professional relationships in Study 2. However, the data indicate that such positive collaborative approaches are not widespread in the family law system.

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<sup>131</sup> 74.8% of participants who reported some contact with the other profession indicated that this involved contact other than making referrals or receiving referrals at least occasionally.

The quantitative analytic techniques employed in Study 2 clarified the Study 1 findings in relation to the importance of practitioners' attitudes to the inter-professional relationship in a number of ways. As expected, practitioners who identified working together in partnership with the other profession (ie, those who endorsed the statement 'We work as a partnership'), were the most satisfied of the sample.<sup>132</sup> Viewing the two professions' roles as complementary (that is, that the professions make an 'equal but different contribution to resolving post-separation parenting disputes') was also significantly associated with satisfaction,<sup>133</sup> albeit to a lesser extent than working directly together as a partnership.<sup>134</sup> Hence, although both a complementary services outlook and working directly with the other profession as a multi-professional team were associated with positive collaborative relationships, a partnership approach, such as the teamwork model used by RDM in Study 1, appears to be more strongly related to the success of inter-professional relationships between the two groups.

However, by contrast with the Study 1 sample, less than half of the participants in Study 2 (45.6%) indicated that a 'complementary services' approach was 'very much' their experience of working with the other profession.<sup>135</sup> The partnership model of collaboration was even less commonly reported, with only 13.2% of participants indicating that this was 'very much' their experience of working with the other profession.<sup>136</sup> In this respect, Legal Aid family dispute resolution services are atypical, in that these programs involve family dispute resolution practitioners working together with the clients' legal representatives during the dispute resolution process. This was the practice model associated with the successful inter-professional relationships found at Victoria Legal Aid's RDM program in Study 1 (discussed in section 2.3.1). As anticipated on the basis of the RDM interviews, this multi-professional teamwork model did appear to be influential, with Legal Aid family dispute resolution practitioners in Study 2 reporting a slightly higher level of satisfaction with their inter-professional relationships than the non-Legal Aid family dispute resolution practitioners.<sup>137</sup> Practitioners' satisfaction with the Legal Aid approach was also evident in the open-ended responses. For example, one Legal Aid family dispute resolution practitioner noted: 'The Legal Aid model means I feel – with good lawyers – that we are a team, with our various skills working together to help these people develop a really good plan for their children'.

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<sup>132</sup> Ie, this variable emerged as both significantly associated with and a significant predictor of satisfaction with the inter-professional relationship.  $r=.4$ ,  $p<.001$ ,  $Beta=.22$ ,  $p=.008$ .

<sup>133</sup>  $r=.2$ ,  $p<.001$ .

<sup>134</sup>  $Beta=.1$ ,  $p=.2$ , n.s.

<sup>135</sup>  $M=4.2$ ,  $SD=.9$ .

<sup>136</sup>  $M=3.1$ ,  $SD=1.2$ ;  $t(359)=17.5$ ,  $p<.001$  (excluding the variables of amount of contact per month and attendance at joint professional development meetings, all variables in this and the following analyses were coded on a 5-point scale, with 1 indicating less importance/frequency/relevance and 5 indicating more importance/frequency/relevance).

<sup>137</sup> Family dispute resolution practitioners working at Legal Aid, community based organisations and Family Relationship Centres were compared using analyses of variance with between group comparisons of their level of satisfaction with the inter-professional relationship. Legal Aid family dispute resolution practitioners ( $M=4.1$ ,  $SD=1.2$ ) reported a higher level of satisfaction with their inter-professional relationships than did community-based and Family Relationship Centres family dispute resolution practitioners ( $M=3.6$ ,  $SD=1.2$ ;  $F(4, 108)=3.4$ ,  $p=.04$ ). However, the magnitude of the difference was fairly slight, averaging around half a point on the 5-point scale.



### **3.4.4 Positive Inter-Professional Practices**

Confirming the characteristics identified in Study 1, inter-professional practices, which here refer to characteristics of typical inter-professional contact, emerged as the most powerful predictor of practitioners' satisfaction with the inter-professional relationship in Study 2. Participants rated the frequency of different characteristics of inter-professional contact. A factor analysis revealed two factors underlying their responses and two scales were created to reflect these factors. The first scale was labelled positive inter-professional practices and included respectful communication, being provided with timely information and feedback, having their role understood by the other professional, perceiving the other professional as willing to amend their views, helping to focus the client on the child, and having a non-adversarial approach. The second scale was labelled negative inter-professional practices and included perceptions of the other profession as moving outside their area of competence and giving inappropriate advice.

The positive and negative inter-professional practices scales were the strongest predictors of satisfaction with the inter-professional relationship.<sup>138</sup> That is, when all other variables were taken into account, practitioners' responses to these items made the largest unique contribution to the prediction of their level of satisfaction with the inter-professional relationship. The importance of inter-professional practices was also evident in practitioners' open-ended responses. For example, some family dispute resolution practitioners complained about a lack of feedback from family lawyers: 'the only feedback...from family lawyers is via their clients'.

### **3.4.5 Cross-Professional Understanding**

The importance of mutual understanding of professional roles and responsibilities to good collaborative relationships was also reinforced by the Study 2 data, where practitioners' perceptions of the other profession as not understanding their role were significantly related to lower levels of satisfaction.<sup>139</sup> The Study 2 responses also suggest that many practitioners in the sector do not have a well developed understanding of the other profession's roles and responsibilities.

#### **3.4.5.1 Professional Responsibilities**

Study 2 confirmed that both family lawyers and family dispute resolution practitioners see the two professions as having different sets of professional responsibilities. The fact that the two professions have different hierarchies of professional responsibilities was recognised by most practitioners (83.6%). As in Study 1, the majority of family dispute resolution practitioners in Study 2 (84.2%) identified a duty to the child as their highest professional responsibility, although, as noted in section 2.3.2.4, a number of the family dispute resolution practitioners in Study 1 contextualised this duty within a broader responsibility to the family as a whole. The identification of the child as their primary responsibility was also reflected strongly in the open-ended responses to the questionnaire. Most commonly, addressing the child's needs was described as the underlying rationale of family dispute resolution, with family dispute

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<sup>138</sup> Beta=.24, p=.006 and Beta=-.24, p<.001, respectively.

<sup>139</sup> r=.34, p<.001.

resolution practitioners explaining that the overarching aim of the work they engaged in, and the purpose behind the organisations they were employed by, was to address the needs of children whose separating parents were in dispute. This perspective appeared to be reasonably well understood by family lawyers, close to half of whom (49.8%) identified the child as family dispute resolution practitioners' chief responsibility. Family lawyers' open-ended responses also showed that many regarded family dispute resolution practitioners' ability to prioritise the needs of the child in extremely positive terms.

In contrast to this level of understanding, the Study 2 findings suggest that family lawyers' professional responsibilities are not as well understood by family dispute resolution practitioners. Whereas the majority of family lawyers (72.3%) identified their duty to the court as their paramount professional responsibility, reflecting their position as officers of the court,<sup>140</sup> family dispute resolution practitioners' responses suggest that almost half (48.6%) believe family lawyers are required to put the interests of their clients first, with some suggesting that lawyers are obliged to follow the client's instructions because the client is paying for their services. Also related to the perception that lawyers owe their primary duty to their client were family dispute resolution practitioners' perceptions of family lawyers as adversarial in their approach,<sup>141</sup> and a perception that client advocacy and adversarialism are inevitably connected: 'Lawyers work in an adversarial system to represent their individual client /parent to gain the best possible outcome for them within the law. This generates the fight to win/lose situation often resulting in conflict'.

The qualitative data collected during Study 2 also confirm the picture of family lawyers' professional duties found in Study 1, revealing a complex mix of responsibilities to the court, client, and child, including a commitment to child focused practice, rather than a clear hierarchy of obligations. As in Study 1, family lawyers who made open-ended responses tended to comment that their professional obligation as officers of the court had necessarily determined the way in which they ranked their duties in the closed-question part of the questionnaire, but that the practical reality of their responsibilities was far more complex than this. The questionnaire data indicate that family lawyers' practice experience of 'juggling' these multiple responsibilities was not well understood by many family dispute resolution practitioners.

Responses to the open-ended questions also suggested that many family dispute resolution practitioners regarded the family lawyer's duty to their client as an unambiguous priority. This contrasts with those family dispute resolution practitioners in Study 1 with well-developed positive inter-professional relationships with family lawyers, whose interviews revealed an awareness of family lawyers' multiple responsibilities and the need to balance these in practice. This understanding was also evident in a number of the open-ended responses of family dispute resolution practitioners who described *experiences* of working with family lawyers rather than

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<sup>140</sup> See Section 1.3.

<sup>141</sup> Almost half (48.6%) of family dispute resolution practitioners felt that lawyers took a non-adversarial approach to post-separation conflicts *never* or only *occasionally*. However, it should be noted that the term 'adversarial' was not defined in the questionnaire, and it appears from the open-ended responses that family dispute resolution practitioners use this term to convey a variety of different meanings.

*perceptions* of family lawyers' practices: 'In my experience the majority of family lawyers focus the client's attention on the best interests of the children...the most effective family lawyer will balance all three responsibilities whilst advising clients'.

### 3.4.5.2 Approaches to Children's Best Interests

Participants in Study 1 were asked to describe their approach to ensuring the child's interests are considered by parents. Study 2 followed this up by asking respondents to rate the relative importance they placed, and the importance they believed the other profession placed, on a number of different factors when assessing children's 'best interests' in parenting matters. Reflecting their different practice requirements,<sup>142</sup> the questionnaire data indicate that the most significant difference between the two professions when assessing children's best interests lies in their relative reliance on research evidence versus law, with family dispute resolution practitioners reporting that they place greater importance on the former criterion than do family lawyers.<sup>143</sup> However, it is important to note that the questionnaire data show that in assessing children's interests, family lawyers place most reliance on (Family or Expert) reports on children, which are prepared by social science professionals, with 96% placing moderate to great importance on these.<sup>144</sup>

As well as differences between the professions in their approach to assessing children's best interests, the analyses reveal that practitioners held some inaccurate perceptions about how the other profession approaches children's best interests. Specifically, family dispute resolution practitioners rated family lawyers as placing more importance on parents' views than family lawyers themselves indicated they did.<sup>145</sup> This may be related to the perception expressed by many family dispute resolution practitioners that family lawyers have a straightforward obligation to their client (that is, one of the parents). Family dispute resolution practitioners also rated family lawyers as placing less importance on research evidence than lawyers rated themselves as placing on this criterion.<sup>146</sup> The perception that lawyers place little emphasis on research evidence was also evident in the open-ended responses and was a source of some frustration for many family dispute resolution practitioners.

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<sup>142</sup> Family lawyers are required to base their advice to clients about the 'best interests' of the child on the relevant legislative considerations governing this issue. See for a discussion of this obligation, P. Parkinson, 'The values of parliament and the best interests of children' (2007) 21 *Australian Journal of Family Law* 213. Whilst practising lawyers are required to undertake a number of hours of compulsory professional development each year, and this may include, for family lawyers, units in child development (e.g., see Continuing Profession Development Rules 2007 (Vic), s. 3.2.9(3)), they are not required to have training in child development, unless they act as an Independent Children's Lawyer. By contrast, family dispute resolution practitioners' advice to parents will typically draw on the relevant social science evidence regarding child development and children's post-separation needs, rather than the law. This issue is discussed in more detail in Chapter 4.

<sup>143</sup> In this and the following analyses, family lawyers and family dispute resolution practitioners were compared using multivariate analyses of variance with between group comparisons on the relevant variables.  $M=4.3$ ,  $SD=1.1$  and  $M=3.7$ ,  $SD=1$ ;  $F(1, 422)=29$ ,  $p<.001$ . As noted previously, responses to the variables included in the following analyses were coded on a 5-point scale.

<sup>144</sup> Family Reports are prepared by a psychologist or social worker who interviews the child and observes the child with each parent and provides information to the court and the parents' legal advisers about the child's wishes and needs: Family Law Act 1975 (Cth) s.62G.

<sup>145</sup>  $M=4.5$ ,  $SD=.8$  and  $M=3.9$ ,  $SD=.9$ ;  $F(1, 425)=27.5$ ,  $p<.001$ .

<sup>146</sup>  $M=3.2$ ,  $SD=1$  and  $M=3.8$ ,  $SD=1$ ;  $F(1, 425)=21.1$ ,  $p<.001$ .

In contrast, family lawyers rated family dispute resolution practitioners as placing less importance on parents' views than family dispute resolution practitioners themselves indicated.<sup>147</sup> Family lawyers also rated family dispute resolution practitioners as placing more importance on personal experience than family dispute resolution practitioners indicated.<sup>148</sup> These findings reinforce the conclusion that the two professions often have inaccurate perceptions of each other's practices.

### 3.4.5.3 Comparative Family Violence Practices

Study 1 noted the impact of the differences between the professions in training about family violence and professional obligations regarding family violence on their practices. Similar differences were also evident in the Study 2 data. Whilst the differences between the two professions in the importance they placed on various factors in their decisions regarding referral and acceptance of cases involving family violence were generally not extensive, family dispute resolution practitioners placed significantly greater emphasis on research evidence about family violence than did family lawyers.<sup>149</sup>

The analyses revealed a number of apparent inaccuracies in perceptions of the other profession's approach to cases involving suspected violence. Reflecting the concerns expressed by some family dispute resolution practitioners in Study 1 about the perceived failure of family lawyers to understand the dynamics of family violence, family dispute resolution practitioners in Study 2 perceived family lawyers to place less importance than family lawyers reported for themselves on non-verbal cues, the client's willingness to mediate, and the client's capacity to mediate.<sup>150</sup> They also perceived family lawyers to place less importance on cost than family lawyers themselves indicated,<sup>151</sup> perhaps related to the view espoused by some family dispute resolution practitioners in the open-ended responses that family lawyers benefit financially from family breakdown and so are not motivated to reduce costs for clients.

Family lawyers also appeared to have misconceptions about family dispute resolution practitioners' approach to family violence cases, with extensive differences between the importance family lawyers believed family dispute resolution practitioners placed on criteria and the importance that family dispute resolution practitioners themselves indicated. Family lawyers rated family dispute resolution practitioners as placing less importance on the alleged victim's views, the perpetrator's views, non-verbal cues, the client's willingness to mediate and capacity to mediate, research evidence, court orders, and the availability of appropriate protection and support at the family dispute resolution agency than family dispute resolution practitioners themselves reported.<sup>152</sup>

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<sup>147</sup> Parents' views: M=3.5, SD=1 and M=4.2, SD=1; F(1, 400)=30.8, p<.001.

<sup>148</sup> M=3.7, SD=1 and M=3.1, SD=1.3; F(1, 400)=27.6, p<.001.

<sup>149</sup> M=4.3, SD=.8 and M=3.5, SD=1.1; F(1, 431)=61.9, p<.001.

<sup>150</sup> Non-verbal cues: M=3.4, SD=1.1 and M=4.2, SD=.9; F(1, 320)=16.2, p<.001). The client's willingness to mediate: M=3.8, SD=1 and M=4.4, SD=.8; F(1, 320)=8.8, p=.003. The client's capacity to mediate: M=3.6, SD=1.2 and M=4.6, SD=.7; F(1, 320)=11.6, p<.001.

<sup>151</sup> M=3.1, SD=1.3 and M=3.9, SD=1.1; F(1, 320)=9.7, p=.002.

<sup>152</sup> The alleged victim's views: M=4.4, SD=.9 and M=4.8, SD=.6; F(1, 388)=22.6, p<.001. The perpetrator's views: M=3.3, SD=1.1 and M=4, SD=1; F(1, 388)=49.8, p<.001. Non-verbal cues: M=3.9, SD=1 and M=4.6, SD=.7; F(1, 388)=52.9, p<.001. The client's willingness to mediate: M=3.9, SD=1 and M=4.3, SD=.9; F(1, 388)=21.2, p<.001. The client's capacity to mediate: M=3.6, SD=1.1

Conversely, family lawyers rated family dispute resolution practitioners as placing more importance on cost than family dispute resolution practitioners themselves reported.<sup>153</sup>

Practitioners were also asked to ‘estimate the proportion of your clients with violence issues’ (0-25%; 26-50%; 51-75%; 76-100%), and they responded as follows.

<b>Cases involving violence</b>	<b>FDRPS</b>	<b>LAWYERS</b>
0-25%	33.6%	55.6%
26-50%	35.9%	27.8%
51-75%	22.9%	11.9%
76-100%	7.6%	4.7%

Although not relevant to inter-professional relationships this result is worth noting because it is surprising. Comparison of these results with levels of violence identified by Sheehan and Smyth are pertinent,<sup>154</sup> since Sheehan and Smyth’s study is comparatively recent, is Australian, and studies the separating and divorcing population – the population who would be clients of lawyers and family dispute resolution practitioners responding to this survey.<sup>155</sup> In Sheehan and Smyth’s study, where violence was defined as actions considered offences under criminal law (such as the occurrence of, attempt or threat of physical or sexual violence) 65% of women and 55% of men reported violence. Where violence was defined as conduct causing fear for well-being and safety, 53% of women and 24% of men reported violence. Where a definition was based on actions resulting in injury requiring medical treatment, 14% of women and 3% of men report violence. Moloney et al.’s more recent study of the prevalence and nature of allegations of family violence in children’s proceedings filed in the Family Court and Federal Magistrates Court showed that more than half of the cases filed contained allegations of violence or child abuse.<sup>156</sup> Moloney and his research team were studying a different population (i.e. those who filed in court rather than the separating and divorcing population) but Sheehan and Smyth’s study was a national random survey of separating and divorcing couples. We might have expected therefore that most practitioners would be identifying violence in 26–50% or 51-75% of cases, not 0-25%.

However, these data should be treated with caution. First, we did not set out to survey the capacity of either group of practitioners to identify violence – this is an incidental finding of a question designed to gather demographic information. Second, our

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and M=4.8, SD=.5; F(1, 388)=122.2, p<.001. Research evidence: M=3.9, SD=1 and M=4.4, SD=.7; F(1, 388)=18.9, p<.001. Court orders: M=4.2, SD=.9 and M=4.5, SD=.8; F(1, 388)=14.9, p<.001. The availability of appropriate protection and support at the family dispute resolution agency: M=4.2, SD=.9 and M=4.8, SD=.7; F(1, 388)=40.8, p<.001.

<sup>153</sup> M=3.2, SD=1.3 and M=2.6, SD=1.3; F(1, 388)=11.5, p<.001.

<sup>154</sup> G. Sheehan and B. Smyth, ‘Spousal violence and post-separation financial outcomes’ (2000) 14 *Australian Journal of Family Law* 102.

<sup>155</sup> Sheehan and Smyth conducted a national random survey of 398 Australian men and women separating after 1988, the majority with one child under 18. The survey was conducted by telephone. 65% had settled their property disputes with some involvement of the Family Court. 35% settled with some or not legal assistance.

<sup>156</sup> L. Moloney, B. Smyth, R. Weston, N. Richardson, L. Qu, and M.Gray, *Allegations of Family Violence and Child Abuse in Family Law Children’s Proceedings: A Pre-Reform Exploratory Study* (Australian Institute of Family Studies, 2007). This study was of cases filed, not cases tried where allegations were more frequent and more severe.

questionnaire did not define violence, which is a contested term. It is not unreasonable to suppose, given the context and the results reported on the first part of this project, that the understandings of practitioners about what violence meant in this question would be informed by the definition in section 4 of the *Family Law Act*. Family dispute resolution practitioners may also be informed by the behavioural science literature (where there is extensive debate about the parameters of violence<sup>157</sup>). But we cannot be sure how those responding to our questionnaire understood the term. Third, it is possible that other sample characteristics influenced the levels of violence identified. For example, the lawyers in our sample spent more time with clients who had property disputes and the family dispute resolution practitioners spent more time on children matters. However this difference should not affect the levels of violence identified, since violence is potentially relevant to property disputes<sup>158</sup> and family lawyers should routinely identify whether violence has taken place, and consider its relevance, in advising clients in property matters. Fourth, practitioners' responses to this question reflect their impressions of their case load, and may not accurately represent their actual practice.

These limitations indicate caution. Nevertheless the results raise a question as to whether family lawyers are reliably identifying violence in their client population.

### **3.4.6 Hierarchical Inter-Professional Attitudes**

By contrast with the participants in Study 1 who reported positive working relationships with the other profession, a large number of Study 2 family dispute resolution practitioners (68.1%) suggested that family lawyers often treated their role as secondary to that of the legal profession's role in settling post-separation disputes. As noted in Chapter 1, Fisher's study of family lawyers and family dispute resolution practitioners communicating about children also indicated that dispute resolution professionals felt they were given limited opportunities to assert their expertise when working in a legal setting.<sup>159</sup> This view was reiterated in the open-ended responses of Study 2, where, for example, one family dispute resolution practitioner commented that: 'It is galling to experience how dismissive of our work some members of the legal profession can be'. In contrast to the impression gained from family lawyers in Study 1 who worked closely with family dispute resolution practitioners, who suggested that this was rarely the case for them, many family lawyers in Study 2 (72.4%) identified the family dispute resolution practitioner's role as being sometimes or usually secondary to their own role within the family law system.

It should be noted that lawyers' meanings in characterising the family dispute resolution practitioners' role as secondary could vary. At times, they might reflect the location of the family dispute resolution service within the family law system, for example, as a service to the courts, such as the Keeping Contact program surveyed in Study 1 (see section 2.3.3.4). At others, it could reflect a dismissive and disrespectful attitude to the profession. Family dispute resolution practitioners' open ended

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<sup>157</sup> See for example M. Johnson "Patriarchal Terrorism and Common Couple Violence: Two Forms of Violence Against Women" (1995) 57 *Journal of Marriage and the Family*, 283; J. Johnson 'Domestic Violence and Parent-Child Relationships in Families Disputing Custody' (1995) 9 *Australian Journal of Family Law* 12.

<sup>158</sup> See *Kennon and Kennon* (1997) 22 Fam LR; *Marando and Marando* (1997) 21 Fam LR 841.

<sup>159</sup> Fisher, above n 38.

responses suggest that the latter explanation is how practitioners experienced family lawyers' attitudes. Not surprisingly, the belief that the other profession viewed one's role as secondary to their own significantly predicted lower satisfaction with the inter-professional relationship for both professions.<sup>160</sup>

### 3.4.7 Concerns about Role Boundaries

Confirming the Study 1 findings, a number of practitioners expressed concerns about the boundaries between the two profession's roles, and this was related to satisfaction with their inter-professional relationships. Over half of the family lawyer respondents (57.3%) felt that family dispute resolution practitioners at least sometimes overstepped their professional boundaries by providing legal advice to clients, their open-ended responses revealing criticism of this practice.<sup>161</sup> In contrast, only 25% of family dispute resolution practitioners reported that family lawyers moved outside their professional boundaries 'sometimes', and none reported that this occurred more often than 'sometimes'. For both professions, the view that the other profession moved outside their area of competence was significantly associated with lower satisfaction with the inter-professional relationship.<sup>162</sup>

As found in Study 1, the open-ended responses indicate that some family dispute resolution practitioners were concerned that lawyers did *not* move beyond their primary area of competence. In the same way that some family dispute resolution practitioners in Study 1 did, some family dispute resolution practitioners in Study 2 wanted lawyers to incorporate the social/psychological research evidence about separation dynamics and children's needs into their advice to clients, even though this is not part of the family lawyer's area of professional competence or responsibilities. Indeed, for some family dispute resolution practitioners, family lawyers' 'failure' to draw on the evidence base was the subject of criticism. For example, one family dispute resolution practitioner commented that, 'Legal practitioners live the law...they do not wish to get involved with or understand their clients' emotional turmoil. They label it as "not my role".'

## 3.5 STRENGTHS AND LIMITATIONS OF THE STUDY

One of the most important strengths of the study is the size and representativeness of the sample. While no claims are made that the sample was entirely representative of the populations of Australian family dispute resolution practitioners and family lawyers respectively, it did cover a wider range of services, and participants were sampled nationally and were not confined to urban areas. Hence the Study 2 sample was more representative of the two professions than the selected Study 1 sample. In particular, the range of services that practitioners were associated with was not limited to agencies with reputations for successful inter-professional relationships. This allowed us to capture an understanding of a broader range of inter-professional relationships of varying quality and levels of establishment than was possible in Study

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<sup>160</sup> Beta=-.15, p=.03.

<sup>161</sup> It should be noted that perceptions that this practice takes place do not necessarily equate to evidence of it occurring, especially when these perceptions are at times based on relatively little contact between professionals. However, in terms of impact on the inter-professional relationship, such perceptions appeared to result in lower satisfaction.

<sup>162</sup> r=-.4, p<.001.

1. Study 2 therefore provides an indication of the extent to which the successful collaborative relationships surveyed in Study 1 are reflected in the wider community of family law professionals.

Another important feature of the Study 2 data is the relatively modest amount and qualitatively different nature of contact with the other profession reported by many respondents, by comparison with the Study 1 sample. As a consequence, many of the views expressed in the questionnaire responses regarding the other profession were based on indirect sources of information, such as feedback from clients, rather than first-hand experience of working closely with practitioners from the other group. This aspect of the data provided valuable information about the attitudes and perceptions of practitioners who have not established successful inter-professional relationships, which were not evident, or were less evident, in Study 1.

Many practitioners indicated that the closed format of some questions made it difficult to reflect the variations in their experiences depending on the agency or practitioner with which they were dealing. Furthermore, due to confidentiality issues, participants were not asked to indicate the name of their workplace. Hence it was not possible to examine whether practitioners associated with different services differed in their inter-professional relationships. The general picture about the relationships of family lawyers and family dispute resolution practitioners which emerged from the Study 2 data therefore needs to be refined through further research on the particular strengths and tensions in inter-professional relationships which are associated with different service providers, as well as different types of services. For example, it would be of interest to examine the inter-professional relationships of local family lawyers and family dispute resolution practitioners working at Family Relationships Centres.

There were also some minor caveats associated with the questionnaire design. The questionnaire sought data only about referrals from lawyers to family dispute resolution practitioners, and not vice versa: lawyers were asked about their referral practices, and family dispute resolution practitioners were asked about their acceptance of referrals. Practices of both professions regarding family dispute resolution practitioners' referrals to lawyers may therefore warrant further investigation. Another issue was that, when asking practitioners to rate the importance they and the other profession placed on various criteria when assessing children's best interests and cases involving family violence, the terms 'violence' and 'reports on children' were not defined. These terms may have meant different things to different practitioners.



## **CHAPTER FOUR**

### **DISCUSSION AND CONCLUSIONS**

The research indicates that whilst some family lawyers and family dispute resolution practitioners enjoy positive collaborative relationships, many practitioners have little contact with members of the other profession and there are significant misunderstandings and tensions between the two groups. The successful inter-professional relationships surveyed in this project were characterised by a number of features, including:

- Practitioners described a complementary services approach to their relationship, in which each group saw themselves and the other profession as contributing different but equally valuable and complementary skills and expertise to the dispute resolution process;
- Practitioners understood and respected the nature of each profession's roles, responsibilities and ways of working with family law clients;
- Practitioners had a shared expectation of the dispute resolution process and a clear understanding of the dispute resolution program's aims and approach to working with family law clients;
- Family lawyers engaged in 'positive' advocacy practices;
- Practitioners trusted the intake screening and referral practices of the other profession in cases involving family violence;
- Practitioners engaged respectfully with members of the other profession and extended professional courtesies, such as the provision of timely feedback about clients.

The interview data indicate that these characteristics were supported and enhanced through regular positive contact between practitioners from each profession, such as working together as a multi-professional team or through participation in information sharing forums or joint professional development meetings. The research therefore offers important insights into how such positive inter-professional relationships might be developed more widely in the sector.

#### **4.1 THE NEED FOR UNDERSTANDING AND ROLE CLARITY**

Key to the successful collaborative relationships in this project, whether practitioners worked directly together as a 'partnership' or operated along the more traditional lines of a mutual referral relationship, was a complementary services outlook, in which practitioners from both groups valued the contributions made by the 'other' profession to the dispute resolution process. In these relationships, practitioners did not regard themselves as being in competition with each other for family law work or as the sole or more important experts in resolving post-separation disputes. Central to this complementary services approach was an understanding of, and respect for, the different roles and responsibilities of the other profession, and how these 'filled gaps' in the practitioner's own roles when working with family law clients.

The Study 2 data suggest that many practitioners do not have a well developed understanding of the other profession's roles and responsibilities. In particular, the research revealed some misunderstanding and misconceptions of the nature of the family lawyer's client advocacy role and responsibilities to children among family

dispute resolution practitioners. In addition, the project indicates that some family lawyers may not be aware of the diversity of services and approaches to working with family law clients across the range of family dispute resolution programs in the sector, and that some family lawyers and family dispute resolution practitioners may have different expectations of the dispute resolution process or be working towards different goals. The data also suggest that inappropriate advocacy practices by family lawyers, and disrespect for family lawyers' roles by family dispute resolution practitioners, present barriers to the production of successful collaboration between the two professions.

### ***The Need to Enhance Understanding of Client Advocacy***

The Study 2 data suggest there is widespread dissatisfaction among family dispute resolution practitioners with the partisan nature of family lawyers' client advocacy role. However, the data also suggest that some (although not all) family dispute resolution practitioners who offered critiques of partisanship did not have a clear understanding of client advocacy. In particular, some practitioners conflated 'advocacy' with 'adversarialism', suggesting that the representation of a single party to a dispute was inherently adversarial or inevitably exacerbated conflict. In contrast to this view, family dispute resolution practitioners who enjoyed good collaborative relationships with family lawyers understood that partisanship on behalf of a client is 'one of the core principles of legal professionalism'<sup>163</sup> and had a clear understanding of the nature of this role and its requirements and benefits. These practitioners distinguished between 'good' and 'bad' advocacy practices, rather than seeing advocacy and adversarialism as synonymous.

The research also suggests that some family dispute resolution practitioners have little respect for the family lawyer's client advocacy role. This was particularly evident in Study 2, where there was a lower level of collaborative contact between the two professions by comparison with the Study 1 sample. For example, a number of family dispute resolution practitioners in Study 2 suggested that advocacy required family lawyers to act as 'hired guns' for their clients, and expressed frustration with family lawyers for 'failing' to move beyond their traditional partisan role and 'put the child first'. In contrast, family dispute resolution practitioners in Study 1 who worked collaboratively with family lawyers supported the need for client advocacy within the context of their service, and respected and drew on family lawyers' advocacy role for their clients as a complement to their own work. The Study 1 interviews revealed that family dispute resolution practitioners in that sample considered advocacy particularly important for 'less powerful' clients, and in cases where there could be no relationship-based solution and some certainty for the parties/parents was needed in the form of a registered parenting agreement or consent order. This suggests that the finality provided by the law (its coercive role) was acknowledged as important in dealing with very difficult cases.

The poor understanding and respect for client advocacy exhibited by some family dispute resolution practitioners surveyed for this project needs to be addressed. As suggested by our findings, such negative perceptions of the legal profession's roles

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<sup>163</sup> Wright, above n 43, at 483. See also L. Mather, C. A. McEwen and R. J. Mainman, *Divorce Lawyers at Work: Varieties of Professionalism in Practice* (Oxford University Press, 2001).

are not conducive to successful collaborative relationships with family lawyers. Moreover, as recognised by the family dispute resolution practitioners who worked closely with family lawyers, client advocacy is often critical for individual parents in family law disputes. As the family dispute resolution practitioners at RAV and RDM understood, clients who use family dispute resolution need legal advice and representation so that they are aware, amongst other things, of the content of the law, the protective provisions relating to violence and abuse, and the application of the law to their situation.<sup>164</sup> Whilst the provision of information by family dispute resolution providers (for example, about children and conflict) may suffice in some cases, many family law disputes present complex issues. For example, the levels of violence in the separating and divorcing population are high,<sup>165</sup> some cases involve allegations of abuse, mental illness or incapacity, or substance abuse,<sup>166</sup> complex issues of property may be intertwined with children's issues, and issues of language and culture may make some clients vulnerable if they lack advice and representation.<sup>167</sup>

Although family dispute resolution practitioners are not permitted to give legal advice to clients,<sup>168</sup> they may use techniques such as 'doubt creation' to suggest flaws in one party's position, which might entail 'alluding to' the state of the law.<sup>169</sup> As Fisher concedes, such techniques can come 'close to crossing the line' between dispute resolution and legal advice.<sup>170</sup> As discussed in Chapter 2, the interview data suggest that family dispute resolution practitioners sometimes grapple with knowing where the line is between legal advice and legal information, and family lawyers in both studies complained of clients sometimes being given misleading 'information' about the law during dispute resolution conferences. Given these limitations, it is important that family dispute resolution practitioners understand and incorporate the family lawyer's advocacy role into their work with family law clients as needed.<sup>171</sup>

As well as being prohibited from giving legal advice, family dispute resolution practitioners' obligation of impartiality prevents them from advocating for one party to the dispute.<sup>172</sup> Although parents who do not have the requisite capacity to negotiate on their own behalf are screened out of family dispute resolution processes, many of the family dispute resolution participants in Study 1 (and numerous commentators<sup>173</sup>)

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<sup>164</sup> Hazel Genn's UK study showed that there is a higher rate of legal involvement in the UK in divorce matters than any other category of justiciable problem, and that this is because of the seriousness with which the parties regard the issues as well as the availability of public funding for advice and assistance: see H. Genn, *Paths to Justice: What People Do and Think About Going to Law* (Oxford University Press, 1999), 115.

<sup>165</sup> Sheehan and Smyth, above n 154.

<sup>166</sup> Moloney, et al., above n 156.

<sup>167</sup> Hunter, above n 43.

<sup>168</sup> Family Law Regulations 1984 (Cth), Reg 63.

<sup>169</sup> T. Fisher, 'Advice by Any Other Name...' (2001) 19 *Conflict Resolution Quarterly* 197, at 198 and 204-05.

<sup>170</sup> *Ibid* at 205.

<sup>171</sup> Australian Government Attorney-General's Department, *Guidelines for Referrals to Legal Advice by Staff in Family Relationship Centres* (2007).

<sup>172</sup> See for discussion of this issue, section 2.3.2.2.

<sup>173</sup> See for example, R. Field, 'Using the feminist critique of mediation to explore "the good, the bad and the ugly" implications for women of the introduction of mandatory family dispute resolution in Australia' (2006) 20 *Australian Journal of Family Law* 45; Z. Rathus, 'Shifting the Gaze: Will Past Violence be Silenced by a Further Shift of the Gaze to the Future under the New Family Law System?' (2007) 21 *Australian Journal of Family Law* 87; D. Flynn, 'The social worker as family mediator:

have suggested that cases involving family violence have become increasingly common in family dispute resolution processes in recent years. Previous research has shown that non-representation is a major disadvantage for women in this situation, increasing the risk that they will ‘sacrifice their own interests’ for a quick settlement.<sup>174</sup> Even absent concerns about family violence, a number of studies have demonstrated that the failure of clients to appreciate their legal entitlements is ‘pervasive’ in family law disputes,<sup>175</sup> and indicate that unrepresented clients often ‘settle too easily, or refuse to settle at all out of suspicion of being taken for a ride’.<sup>176</sup>

The majority of family dispute resolution practitioners in our project saw themselves as having a clear advocacy responsibility for the child, but otherwise regarded themselves as obliged to be impartial (in the sense of not advocating for either party). It is important that parents also have an advocate to represent and protect their interests when necessary, given the documented dangers associated with a system of ‘private negotiations’ where client advocacy is absent.<sup>177</sup> The lesson from the positive collaborative relationships surveyed in Study 1 is that the relevant dispute resolution services operated in a way that ensured the child had an advocate and that the parents’ attention was focused on their child’s best interests, while also valuing the input of family lawyers as client advocates and legal advisers for parents when needed. In terms of facilitating positive collaboration with family lawyers, as well as ensuring the safety and entitlements of adult family members, this appears to be the optimal approach.

However, it is important to reiterate that some family dispute resolution practitioners who had a good understanding of client advocacy and appreciated the need for this role were nevertheless critical of the *practice* of this role by some family lawyers. A number of family dispute resolution practitioners in Study 1 who worked well with family lawyers noted that they occasionally encountered solicitors who were over-enthusiastic in support of their client’s instructions or who did little to discourage hostilities between the parents or prevent ‘further corrosion’ of the inter-parent relationship. Whilst the task of advancing a client’s interests ‘to the best of the practitioner’s skill and diligence’<sup>178</sup> while also discouraging the escalation of conflict will sometimes be difficult to manage, particularly with ‘difficult clients’, the data from this project indicate that poor advocacy practices, such as ‘bullying tactics’ on behalf of a client, are not conducive to successful collaboration with family dispute resolution practitioners and contribute to the lack of respect for lawyers’ client advocacy role.

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Balancing power in cases involving family violence’ (2005) 58 *Australian Social Work* 407; Bickerdike, above n 117.

<sup>174</sup> Hunter, above n 43, at 174. See also G. Sheehan, ‘What Counts? The “Other” Factors that Influence Property Allocation on Divorce’, 9<sup>th</sup> *National Family Law Conference Handbook* (2000), 545, at 550; C. Smart, ‘Losing the Struggle for Another Voice: The Case of Family Law’ (1995) 18 *Dalhousie Law Journal* 173, at 185; T. Grillo, ‘The Mediation Alternative: Process Dangers for Women’ (1991) 100 *Yale Law Journal* 1545, at 1550; Field, above n 173, at 53-58.

<sup>175</sup> Eekelaar et al, above n 32, at 92. See also J. Dewar, J. Giddings, and S. Parker, ‘The Impact of Legal Aid Changes on Family Law Practice’ (1999) 13 *Australian Journal of Family Law* 33.

<sup>176</sup> Hunter, above n 43, at 170.

<sup>177</sup> Smart, above n 174, at 185. See also on this point, Rathus, above n 173.

<sup>178</sup> Law Council of Australia, *Model Rules of Professional Conduct and Practice* (March 2002), Rule 12.1.

On the other hand, criticisms of ‘adversarial’ advocacy practices by family lawyers were predominantly reported in Study 2, where many family dispute resolution practitioners had limited contact with family lawyers on individual cases. This context, and the substance of the open-ended explanations of these claims, suggests that many such complaints may be proxy for other concerns about the legal profession (such as concerns about partisanship or professional status), or reflect a misunderstanding of the concept of adversarialism. This issue is discussed in more detail in section 4.5 under ‘Further Research’.

### ***The Need to Clarify Responsibilities to Children***

The research also revealed that some practitioners hold inaccurate perceptions about how the other profession approaches their obligations regarding the ‘best interests of the child’ in family law disputes. In his study of inter-professional relationships between lawyers and social workers working on child protection cases, Dickens concluded,

Sometimes they might seem to have the same responsibility – for example, they both have a responsibility to the child – but those apparently identical responsibilities can still clash, because each profession understands them differently in the light of all the other responsibilities that they have. Each of the responsibilities has a different type of character and a different level of significance for each profession.<sup>179</sup>

Our research suggests the existence of a similar dynamic regarding the differences between family lawyers’ and family dispute resolution practitioners’ professional responsibilities to children. In particular, the data suggest that some family dispute resolution practitioners lack a clear understanding of the differences between their own child focused responsibilities to children and the qualified and legally defined nature of family lawyers’ responsibilities in this regard, and that many do not respect these differences.

The majority of family dispute resolution practitioners surveyed during the project identified a primary or overriding duty to the child, although this was sometimes situated within the context of a wider responsibility to the family as a whole. As many family dispute resolution practitioners saw it, safeguarding the child’s wellbeing is the foundation of family dispute resolution, and imports an obligation to work with parents in a child focused way. In contrast to this, the majority of family lawyers in our project described a more complex array of multi-layered obligations<sup>180</sup> to the court,<sup>181</sup> client,<sup>182</sup> and child.<sup>183</sup> The project data indicate that whilst most participants

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<sup>179</sup> Dickens, above n 34, at 29.

<sup>180</sup> This finding was also noted by Cate Banks in her research of family lawyers’ approaches to child focused practice: see Banks, above n 37.

<sup>181</sup> Once admitted to practice, a lawyer becomes an officer of the court: see in relation to Victoria, Legal Profession Act 2004 (Vic), s. 2.3.9; in New South Wales see Statement of Principles and Rules 17-24, Solicitors’ Rules, made under The Law Society of New South Wales Professional Conduct and Practice Rules Legal Profession Act 1987. As such, a lawyer owes his or her paramount professional duty to the court, rather than the client: *D’Orta-Ekenaike v Victoria Legal Aid* (2005) 214 ALR 92.

<sup>182</sup> As practicing lawyers, family lawyers are required to ‘advance and protect the client’s interests to the best of the practitioner’s skill and diligence ... uninfluenced by the practitioner’s personal view of

generally recognised the two professions do not share the same responsibilities, and that each draws on a different knowledge base in meeting their obligations to children, the nature of these differences were not well understood by some practitioners, and were regarded as unacceptable by others.

In particular, some family dispute resolution practitioners appeared to be unaware that family lawyers have potentially competing duties, and have no direct responsibilities to children unless they act as an Independent Children's Lawyer. As a result, some family dispute resolution practitioners were dissatisfied with family lawyers who they regarded as having 'failed' to prioritise the interests of the child when representing parents. As suggested above, some of these practitioners appeared not to understand that family lawyers' responsibility to advise clients about the paramountcy of the 'best interests of the child' principle under the *Family Law Act* is qualified by their professional duty to 'advance and protect' the client's interests 'to the best of the [their] skill and diligence'.<sup>184</sup> Others appeared to be aware of this qualification but believed it needed reform. This was especially evident in Study 2, where participants reported lower levels of collaboration with the other profession than in Study 1. In contrast to these views, family dispute resolution practitioners who enjoyed close working relationships with family lawyers revealed a clear understanding of family lawyers' multiple professional responsibilities and the 'balancing act' involved in being child focused, and were aware of the 'reality testing' techniques used by family lawyers to help clients to consider their children's perspectives.

The research also revealed that some family dispute resolution practitioners were particularly critical of the law's approach to children's 'best interests'. These practitioners offered robust criticisms of family lawyers who supported clients to seek post-separation parenting arrangements that were congruent with the legislative and case law interpretations of the 'best interests of the child' but which, according to the family dispute resolution practitioner, were not conducive to the child's wellbeing in the circumstances. In particular, these participants were concerned that parents were being given advice based on narrow legal policy-based criteria which did not reflect the complexity of children's post-separation needs evident in the research literature. The suggestion from these practitioners was that family lawyers needed to incorporate an understanding of the relevant social and psychological science evidence about children's needs into their advice work.

However, as noted, the successful collaborative relationships in Study 1 were based on a clear division of expertise, in which practitioners from each profession respected and deferred to the other's area of competence. Family dispute resolution practitioners from this cohort did not support the idea of family lawyers moving beyond their expert knowledge base and emphasised the importance of lawyers referring clients to 'social science professionals', such as family dispute resolution practitioners or

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the client or the client's activities': Law Council of Australia, *Model Rules of Professional Conduct and Practice* (March 2002), Rule 12.1.

<sup>183</sup> When advising clients in relation to making a parenting plan, family lawyers must inform clients that decisions made in developing parenting plans should be made in the best interests of the child: Family Law Act 1975 (Cth), s.63DA(2)(c).

<sup>184</sup> Law Council of Australia, *Model Rules of Professional Conduct and Practice* (March 2002), Rule 12.1. See for a recent research-based discussion of the family lawyer's advocacy role, Wright, above n 43.

counsellors, to ensure parents are properly informed about their children's developmental and post-separation needs.

The lack of understanding by some family dispute resolution practitioners of family lawyers' multiple responsibilities, and the links between this and dissatisfaction with their inter-professional relationships, indicate the need for family dispute resolution practitioners to better understand the nature of family lawyers' responsibilities to children and how and why these differ from their own responsibilities to children. For example, family dispute resolution practitioners who work with a social science knowledge base are capable of responding to the 'problem' of children's care arrangements in a fluid, flexible, and contingent way,<sup>185</sup> while law, particularly in this area, is intended to function normatively.<sup>186</sup> At the same time, it may assist inter-professional relationships if family dispute resolution practitioners are familiar with the relevant law (both statutory provisions and case law) governing children's 'best interests', so that they have a clearer understanding of the extent to which family law in this area is informed by the research evidence on the effects of separation and conflict on children, and so that they better appreciate the constraints on family lawyers' advice work.

The apparent lack of knowledge about the links between family law and the social and psychological research base by some family dispute resolution practitioners suggests that, whilst not permitted to give legal advice, they may nevertheless benefit from an increased familiarity with the law that guides family lawyers and the courts in advising parents and making decisions about the 'best interests of the child'. Such education could include, for example, the relevant case law regarding relocation applications and the use of the 'unacceptable risk test' in disputes involving allegations of child abuse.<sup>187</sup> Familiarity with this law has the potential to enhance inter-professional relationships with family lawyers by providing family dispute resolution practitioners with a better understanding of the source of family lawyers' advisory and advocacy work with clients. Knowledge of the law governing the 'best interests of the child' would also illustrate the limits of law in providing solutions to personal relationship-based problems and, hence, the importance of the family dispute resolution practitioner's role in assisting parents to formulate appropriate arrangements – and appropriately flexible arrangements – for their children.

In a similar fashion, family lawyers may benefit from a greater familiarity with the relevant research evidence on children's developmental and post-separation needs. Whilst there are dangers in family lawyers purporting to give expert advice about children beyond their area of competence, knowledge of the factors that inform family dispute resolution practitioners' work with parents may also enhance inter-professional relationships by instilling an appreciation of the source of family dispute resolution practitioners' advisory work with clients.

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<sup>185</sup> See on this, A. Tucker, 'Children and their Suitcases', *Family Law Section – Members Newsletter*, 24 January 2008.

<sup>186</sup> See on this, P. Parkinson, 'The values of parliament and the best interests of children' (2007) 21 *Australian Journal of Family Law* 213.

<sup>187</sup> See on the latter point, *M v M* 1988) 166 CLR 69.

### *The Need for Understanding of Program Aims and Approaches*

It is clear, particularly from the Study 1 interviews, that different family dispute resolution programs provide different services and have different goals and methods of working with family law clients. This diversity has implications for inter-professional relationships. The successful collaborative relationships in this project were characterised by shared expectations of the dispute resolution process. Family lawyers with good inter-professional relationships also had a clear understanding of the aims and processes employed by the family dispute resolution services they used and understood how practitioners at these services worked with family law clients.

However, some family dispute resolution practitioners suggested that legal practitioners did not always understand how they worked with family law clients, and were unhappy that their program's aims and processes were not understood. Some family lawyers agreed that the legal profession's expectations of family dispute resolution did not always match the goals of particular dispute resolution programs. In both Study 1 and Study 2, there were clear links between this lack of understanding and poor inter-professional relationships.

As was evident in the Study 1 interviews, there is also a diversity of approaches within the family dispute resolution community to the concept of impartiality (or 'independence'<sup>188</sup>) when working with parents to facilitate arrangements for children. There was no uniform approach to this issue among the family dispute resolution practitioners in the interview sample, and the extent to which individual practitioners were willing to intervene to influence the shape of parenting agreements,<sup>189</sup> or to deal with power relations between the parties, varied from program to program. For example, some practitioners tempered their comments about impartiality with descriptions of vetoing arrangements they believed were not safe for children, and were prepared to challenge parents about their proposals and behaviour,<sup>190</sup> while others took a facilitative-empowerment approach.

These differences in practice were not always apparent to family lawyers. The family lawyers in our sample generally understood that family dispute resolution practitioners are required to be 'impartial' and some had a good understanding of how this concept operated at the particular service they used. Family lawyers also generally understood that family dispute resolution practitioners' obligation of impartiality does not prevent them from being child focused, or from seeing their primary responsibility as being owed to the child. However, some family lawyers expressed uncertainty about how this obligation operated in practice, and/or expressed concerns about the capacity of family dispute resolution practitioners to intervene in negotiations to protect clients' safety interests and ensure quality outcomes for

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<sup>188</sup> Family dispute resolution is a process in which the family dispute resolution practitioner 'is independent of all of the parties involved in the process': Family Law Act 1975 (Cth), s.10F.

<sup>189</sup> See on the issue of dispute resolution professionals shaping the outcomes of family mediation, R. Dingwall and D. Greatbatch, 'Who is in Charge? Rhetoric and Evidence in the Study of Mediation' (1993) *Journal of Social Welfare and Family Law* 365; D. Greatbatch and R. Dingwall, 'Selective Facilitation: Some Observations on a Strategy Use by Divorce Mediators' (1989) 23 *Law and Society Review* 613; Fisher, above n 169.

<sup>190</sup> See on this point, Bickerdike, above n 117.



parents. This concern was associated with family lawyers' trust of family dispute resolution processes.

These findings suggest that it is important to family lawyers' inter-professional relationships that they have some understanding of how family dispute resolution practitioners work with parents to facilitate an agreement that takes the interests of the children into account whilst maintaining impartiality. This understanding of the methods (and limits) of family dispute resolution is also important if family lawyers are to make appropriate referrals to family dispute resolution services. An understanding of differences between family dispute resolution services, including differences in the level of relationship repair and therapeutic work they provide, is also important (see further below). The evidence from Study 2 is that many family dispute resolution practitioners have little direct interaction with family lawyers, and that the primary source of 'contact' between the two groups consists of referral of clients to and from family dispute resolution programs, in which there may be no direct communication between practitioners about individual cases. Hence it is not surprising that family lawyers may not be as aware of the changing landscape of family dispute resolution and the debates currently taking place within the sector, some of which are challenging the core concepts of traditional mediation such as 'neutrality'.<sup>191</sup>

In making the recommendation below that family dispute resolution practitioners take responsibility for informing family lawyers about their dispute resolution model and approaches to working with clients, we are aware that we are placing the burden on family dispute resolution practitioners, rather than lawyers. However this seems inevitable, given the local, diverse and fluid nature of the processes used and the consequent inappropriateness of generic education.

### **Recommendations:**

1. Education is indicated for family dispute resolution practitioners in the multiple professional roles and responsibilities required of family lawyers. In particular, education is needed about the importance of the family lawyers' client advocacy and legal advice roles for family law clients.
2. Education is also indicated for family lawyers on the nature of different family dispute resolution processes, their advantages and limits, and the ways in which family lawyers' roles of legal advice and client advocacy can best fit with family dispute resolution. In particular, family lawyers need to have an understanding of the ways in which family dispute resolution practitioners approach their obligation of impartiality. Where necessary, this information will need to be service-specific, with a focus on the particular aims and approaches used and the legal practitioners' roles within this context. Family dispute resolution services should consider how they may best educate family lawyers about the services they provide and how they work with family law clients.

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<sup>191</sup> See Field, above n 173; Bickerdike, above n 117.

3. The research also indicates that cross-professional development opportunities designed to familiarise family dispute resolution practitioners with the relevant law governing the ‘best interests of the child’ and familiarise family lawyers with the relevant research evidence that informs family dispute resolution practitioners’ work with parents may enhance inter-professional collaboration.

#### 4.2 DEVELOPING MUTUAL UNDERSTANDING AND RESPECT

The mutual understanding and respect underpinning the successful collaborative relationships surveyed in Study 1 was supported through regular positive contact between practitioners from each profession. We found these characteristics most markedly at RAV where the family dispute resolution practitioners and family lawyers on the Lawyers Panel held regular joint professional development meetings, and at Victoria Legal Aid’s RDM program, where the two professional groups work together with clients during roundtable conferences. In contrast, family dispute resolution practitioners at the Keeping Contact program, who had relatively little personal contact with family lawyers, were the least satisfied with their inter-professional relationships of the family dispute resolution sample, and generally held the most negative perceptions of the family law profession. The transformative potential of positive personal contact, such as respectful dialogue and information sharing meetings, was captured well by one Keeping Contact family dispute resolution practitioner who described these features as having altered her previous negative perceptions of family lawyers’ advocacy role:

And that’s been refreshing to me because I think I’ve thought that the legal profession have a nicer job in that they can entirely - this was my belief - entirely support their client’s view and their client’s wishes and they only have to listen to one side of the situation. But as I talk to more legal professionals I realise that they think more broadly than just their client’s view and their client’s wishes so they do have a sense that there’s another party here who may in fact have an entirely different view and so how do I work knowing that. So I think the legal profession, I’m finding that I have to give them more credit for that.

Nevertheless, the interview data clearly demonstrate that positive contact with individual practitioners may not of itself be sufficient to challenge negative opinions of the other profession. In Study 1, a number of family dispute resolution practitioners from Keeping Contact who had little contact with family lawyers, and several family dispute resolution practitioners from RAV who had regular contact with solicitors on the Lawyers Panel, maintained negative views of the family law profession as a whole and made exceptions to this general view for particular family lawyers they knew. Moreover, contact with practitioners from the other profession can sometimes inhibit rather than enhance the production of good inter-professional relationships, for example, where practitioners are bullying or discourteous. These data indicate the importance of the *quality* of the contact to the production of positive inter-professional relationships, and the need for inter-professional contact to extend beyond referral communications about individual clients.

Legal Aid Commissions around Australia are the main providers of family dispute resolution services that use a ‘partnership’ or teamwork approach to family dispute

resolution. The Legal Aid model, which was illustrated by Victoria Legal Aid's RDM program in Study 1, involves clients' legal advisers being present throughout the dispute resolution process to represent and support their clients and work together with family dispute resolution practitioners to help resolve the dispute. As revealed in the Study 1 interviews, this approach has been highly successful in producing good working relationships between family lawyers and family dispute resolution practitioners associated with the RDM program. This approach was also associated with high levels of satisfaction with the inter-professional relationship for practitioners in Study 2 who worked at Legal Aid family dispute resolution services.

However, the Legal Aid model is not typical of family dispute resolution services in the sector. More commonly, as reflected in our Study 2 sample, inter-professional 'contact' between family lawyers and family dispute resolution practitioners is largely limited to referrals and acceptance of referrals of clients. This was the model used by the RAV family dispute resolution practitioners and Lawyers Panel solicitors surveyed in Study 1, who enjoyed highly successful collaborative relationships. Although these practitioners had little contact with one another on individual cases, they met regularly at RAV for joint professional development and information sharing meetings. As we noted in Chapter 2, members of the Lawyers Panel at RAV benefit financially from being on the Panel, in that RAV will refer clients who need legal advice and representation to Panel members. However the RAV family lawyers interviewed for this study did not talk about referral of work as a benefit of the Panel – rather the benefits they reported were improved relationships and understanding that helped them in their work with clients.<sup>192</sup> Characteristics of the RAV meetings which both groups reported were supportive of respectful relationships included:

- They **shared information** about their work practices with each other, including how they work and the constraints on their roles. For example lawyers spoke of learning from videos of mediators at work and family dispute resolution practitioners of '... mixing with lawyers at a learning level ...'
- They **built trust and respect** and allayed fears of the 'other' by honesty and openness in speaking about their work and the challenges they faced. Interestingly these challenges, such as dealing with difficult clients, often turned out to be common to both groups. This 'humanised' the other profession, as one family dispute resolution practitioner put it, and helped break down the sense of 'us and them'.
- They **responded sensitively to** the other profession's **concerns**, so that each felt they could raise concerns they might have about the other's practices and not be demonized. For example, one family dispute resolution practitioner said 'it doesn't mean we don't have healthy differences, but we respect each other.'
- The forums were run in a **positive spirit of inclusiveness**. One lawyer said 'They make us feel utterly welcome and spoilt.'

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<sup>192</sup> It should also be noted that the RAV lawyers we interviewed were invited to be on the Lawyers Panel, and are therefore not necessarily representative of other family lawyers. However, RAV has subsequently successfully replicated this method of developing positive relationships with the legal profession in the two Family Relationship Centres it runs in Victoria, on the basis of a general invitation to local lawyers, rather than an invitation to selected practitioners to work with the service.

- There was a **social aspect**, which built a sense of camaraderie. One family dispute resolution practitioner pointed out that, ‘... you get to know them as human beings and that’s important, they’re people like everybody else.’

As noted in Chapter 2, the majority of participants in our interviews proposed the need for positive personal contact and information sharing in order to enhance collaboration between the professions: ‘I think we have to have a few cross-disciplinary conferences so we actually just spend time together talking about what we do each day and how we go about addressing different problems. Basically spending time together is pretty much the best way, the only way we’re going to do it, and reading each others’ material, so we understand where we’re both coming from and what our respective agendas are’.

Creating opportunities for dialogue and information sharing presents more of a challenge for some groups of professionals than others. The practitioners associated with RAV were working with a referral service model and the RDM practitioners were working within a Legal Aid model which relies on the presence of a multi-professional team. By way of contrast, Keeping Contact, which is part of the Contact Orders Program, is funded to work with high conflict court-ordered clients who have been involved in litigation over parenting arrangements, and has a strongly therapeutic orientation to its work. Its focus is on behavioural change and its time frames may be different to those of courts and lawyers. Keeping Contact family dispute resolution practitioners raised concerns about the tensions this creates in their inter-professional relationships, although the family lawyers who worked with Keeping Contact did not express difficulties themselves. However, the family lawyers in Study 1 who were familiar with Keeping Contact’s approach to working with family law clients acknowledged that some members of the legal profession were not aware of this orientation and had more litigation or enforcement focused expectations of its service. The therapeutic nature of this service also means that it is harder for the two professions to work as a team.

The diversity of family dispute resolution services means that initiatives to support good inter-professional relationships will need to be tailored to their individual needs and practices. For example, information about family dispute resolution processes provided to family lawyers may be misleading and contribute to inter-professional misunderstandings if it is of a generic nature. Consequently it appears that initiatives to support inter-professional relationships may need to be individually tailored to reflect the goals and approach to working with clients of the particular dispute resolution provider, and education for family lawyers on these issues will need to be provided by family dispute resolution services. This will have consequences, including financial consequences, to which further consideration should be given.

#### **Recommendations:**

4. The Australian Government Attorney-General’s Department, family dispute resolution providers, the Family Law Section of the Law Council of Australia, and state family law associations should consider how to facilitate regular joint meetings for family dispute resolution practitioners and family lawyers for information-sharing purposes. These should:
  - be conducted in a spirit of openness and inclusiveness; and

- explore ways of family lawyers and family dispute resolution practitioners working together and sharing information about how they work, including the challenges they face in their practices.
5. There should be further exploration of the professional development meetings conducted by RAV and its Lawyers Panel and of the RDM teamwork model to tease out what can be replicated more generally across the sector.
  6. Service providers and professional organisations should take responsibility for ensuring that prejudiced and uninformed attitudes about the other profession are challenged.

### **4.3 IMPROVING COMMUNICATION AND FEEDBACK**

Concerns about communication and feedback between lawyers and family dispute resolution practitioners were found in both groups, as well as evidence that good communication and timely feedback was conducive to improving inter-professional relationships. Whilst some practitioners in Study 1 were content to allow the dispute resolution or legal advice process to take its course and receive feedback from clients, others regarded the lack of feedback from service providers as discourteous and problematic. In Study 2, respectful communication and timely information and feedback were positively associated with satisfaction with the inter-professional relationship, and were components of the scale ‘positive inter-professional practices’, which was one of the strongest independent predictors of satisfaction with the inter-professional relationship.

We are conscious that referrals of clients by family lawyers to family dispute resolution programs are normally made to the agency, rather than to individual practitioners, and that family dispute resolution practitioners are not always provided with information about the source of the referral. In these circumstances, communication between practitioners about individual cases will not be possible. However, where practitioners are aware of one another, direct communication and feedback, consistent with confidentiality obligations, would avoid the problems of inaccurate or misleading feedback from clients, which may serve to reinforce negative perceptions of the ‘other’ profession.

In terms of possible mechanisms for inter-professional feedback, one family lawyer suggested the need for more structured feedback about mutual clients. There is potential to create mutual understandings or protocols to guide inter-professional communication and feedback for particular services. For example, the Law Institute of Victoria has commenced discussions with several family dispute resolution agencies in Melbourne about a possible protocol for these purposes. Such protocols could include, for example, provisions about mutual responsibilities when making referrals, likely time frames for dispute resolution processes, and the kinds of information that will be exchanged about agreements. The boundaries of confidentiality could be dealt with and there may, in some cases, be scope for exchange of information between lawyers and family dispute resolution practitioners about the likelihood of success of family dispute resolution. Ensuring equal sharing of information with all lawyers involved in a case would be important.

The diversity of family dispute resolution services means that protocols will need to be tailored to each dispute resolution service. For example, whilst there is little need for feedback initiatives at services like RDM, where both professions are present throughout the dispute resolution process, it will be much more difficult for progress information about clients to be provided for the type of cases dealt with by a service such as Keeping Contact. Such protocols are not likely to be a substitute for good inter-professional relationships. As the responses of family lawyers and family dispute resolution professionals at Keeping Contact made clear, if a legal practitioner (or the court) asks for information about the progress of a case there may be very good reasons why that information cannot be provided. Familiarity with the service and the ways it works with clients, and trust in a co-operative relationship, seem likely to be needed in addition to the type of protocols mentioned above.

**Recommendation:**

7. Consider developing a model of structured feedback for practitioners from each profession that is consistent with each profession's confidentiality obligations and the nature of the dispute resolution service.

**4.4 SCREENING FOR FAMILY VIOLENCE**

There was criticism in Study 1 that, in cases involving violence, family lawyers sometimes made what family dispute resolution practitioners regarded as inappropriate referrals, and that family dispute resolution practitioners sometimes proceeded with cases which family lawyers believed were not appropriate for family dispute resolution. Study 2 demonstrated that there were extensive misperceptions of the other profession's approach when making decisions to refer or accept cases involving suspected violence. Frustration at such misperceptions was evident in Study 1: family dispute resolution practitioners were frustrated that family lawyers did not understand the inappropriateness of family dispute resolution for clients affected by violence or how well they screened for this issue; and some family lawyers expressed mistrust of family dispute resolution practitioners in this respect.

Family dispute resolution practitioners are required to have training in screening for, and working with, violence.<sup>193</sup> Some family dispute resolution practitioners understood that family lawyers are not trained in screening for family violence. They suggested that family lawyers should not screen, but send clients to family dispute resolution services for family dispute resolution practitioners to do an intake assessment. Others suggested that family lawyers should screen out cases where violence obviously made the case unsuitable for family dispute resolution, but that there would be a 'middle ground' where there was room for doubt and family dispute resolution services should make the judgment. Family lawyers who had good working relationships with family dispute resolution services trusted them to screen and work safely with victims of family violence.

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<sup>193</sup> A comprehensive screening and assessment framework has been developed by the Australian Government Attorney-General's Department and is compulsory under the Operational Guidelines for Family Relationship Centres: see Australian Government Attorney-General's Department, 'Screening and assessment in the Family Relationship Centres and the Family Relationship Advice Line: Practice Framework and Guidelines' (2006), [www.ag.gov.au/publications](http://www.ag.gov.au/publications).

We assume here that both professions should screen effectively for violence, since either professional group may be the first port of call for clients. Family lawyers should screen for violence because the existence or otherwise of violence will affect their legal advice and because they should not send obviously unsuitable cases to family dispute resolution to avoid waste of time and resources. Family dispute resolution providers are required to screen all cases for capacity.<sup>194</sup> Revealing violence is notoriously difficult for clients and it is inevitable that some cases will be missed,<sup>195</sup> making it vital that legal advisers engage in effective screening of clients before referral to family dispute resolution.

In this respect, one matter of concern arising from Study 2 was the low level of violence identified, especially by family lawyers, in their cases. We know that a decade ago mediators believed themselves to be reliably identifying violence when that was not the case,<sup>196</sup> and it may be that the capacity of lawyers in this respect would be worthy of further scrutiny, given the known serious impact of violence on spouses and on children, the emphasis of the 2006 amendments to the *Family Law Act* on violence,<sup>197</sup> and that violence is a reason to exclude disputes from family dispute resolution.

#### **Recommendations:**

8. Consideration should be given to further research to assess whether family lawyers are, or are not, reliably identifying cases of violence and are, or are not, able to identify cases which are appropriate for referral to family dispute resolution.
9. Consideration should be given to the development of further training courses for family lawyers in violence, appropriate referral and the ways in which family dispute resolution agencies deal with violence.
10. The ways in which dispute resolution services screen for and work with violence should be included in the inter-professional meetings as recommended above at Recommendation 4.

#### **4.5 FURTHER RESEARCH**

As noted in section 4.1, a number of family dispute resolution practitioners were critical of the way family lawyers practised their advocacy role, suggesting that lawyers were sometimes over-enthusiastic in support of their client's instructions and failed to manage clients' unreasonable expectations. Such criticisms were particularly evident in Study 2, where a large number of family dispute resolution practitioners suggested that family lawyers were rarely 'non-adversarial'. However, as many of the family dispute resolution practitioners in that Study had little direct contact with

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<sup>194</sup> Family Law Regulations 1984 (Cth), Reg. 62.

<sup>195</sup> H. Astor 'The Weight of Silence: Talking About Violence in Family Mediation' in M. Thornton (ed), *Public and Private: Feminist Debates* (Oxford University Press, Oxford: 1995), at 174.

<sup>196</sup> Keys-Young, above n 4.

<sup>197</sup> For example, the presumption of equal shared parental responsibility does not apply where there are reasonable grounds to believe that a parent has engaged in family violence: Family Law Act 1975 (Cth), s.61DA(2)(b).

family lawyers on individual cases, these criticisms are likely to be based in many instances on indirect information, such as feedback from clients, which may not accurately reflect practice. Where contact levels were higher, comments by family dispute resolution practitioners were more positive. Moreover, the project's data suggest that some family dispute resolution practitioners confuse the concepts of 'advocacy' and 'adversarialism', and some perceive the concept of partisanship on behalf of individual parents as inherently problematic.

These interpretations of the data are not mutually exclusive, and it is likely that family dispute resolution practitioners' complaints reflect a mix of these issues, including experiences of 'bad' advocacy practices by family lawyers. However, the claims of adversarialism in Study 2 sit uncomfortably with the numerous empirical studies of family law practice, which suggest that family lawyers normally discourage the escalation of conflict by clients,<sup>198</sup> and that the principle of partisanship does not 'fully permeate legal practice in the sphere of family law'.<sup>199</sup> This research demonstrates that a central part of family lawyers' work involves modifying clients' expectations.<sup>200</sup> Eekelaar and Maclean's study of English practitioners, for example, revealed family lawyers were striving to provide parents with advice that reflected the current legal understandings of the welfare of the child and 'responsible' post-separation parenting, while also attempting to advance their client's interests.<sup>201</sup> Our research revealed a similar tension, with lawyers endeavouring to fulfil their traditional partisan role while also exhorting parents to consider their children's needs and perspectives.

What is clear is that whatever family dispute resolution practitioners are attempting to convey when they complain of 'adversarialism' by family lawyers, this perception is linked to their satisfaction with their inter-professional relationships. This suggests the need for further research to clarify more precisely what family dispute resolution practitioners mean when they criticise lawyers for adversarial behaviour.

### **Recommendation:**

11. Further research is indicated into family dispute resolution practitioners' understandings of adversarial practices and client advocacy.

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<sup>198</sup> See for example, Wright, above 43; Eekelaar et al, above n 32; Hunter, above n 43, at 158-161. Earlier studies showing the same results include R. Ingleby, *Solicitors and Divorce* (Clarendon Press, 1992); W. Felstiner and A. Sarat, 'Enactments of Power: Negotiation Reality and Responsibility in Lawyer Client Interactions' (1992) 77 *Cornell Law Review* 1447; K. Kressel, A. Hochberg and T. Meth 'A Provisional Typology of Lawyer Client Attitudes Towards Divorce Practice – Gladiators, Advocates, Counsellors and Journeymen' (1983) *Law and Human Behaviour* 31.

<sup>199</sup> Wright, above n 43.

<sup>200</sup> See for example, Eekelaar et al, above n 32, at 76.

<sup>201</sup> Ibid at 103. See also J. Dewar, 'The Normal Chaos of Family Law' (1998) *Modern Law Review* 467, at 483; J. Dewar, 'Family Law and its Discontents' (2000) 14 *International Journal of Law Policy and the Family* 59, at 71; H. Reece, 'Divorcing Responsibly' (2000) 8 *Feminist Legal Studies* 65; A. Diduck, *Law's Families* (2004, LexisNexis), at 103-104; J. Eekelaar, 'Family Law: Keeping Us "On Message"' (1999) 11 *Child and Family Law Quarterly* 387.





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## APPENDIX A

### INTERVIEW GUIDE FOR FAMILY DISPUTE RESOLUTION PRACTITIONERS

**Introduction:** Our study of inter-professional practices in family law matters is concerned with child-focused practice and parenting disputes (but excludes other matters such as property matters). We are seeking to understand the nature of the work of professionals in this area, their working relationships across professions, and the factors that affect these working relationships.

#### Section 1: Demographic and descriptive information

- (a) Gender:    Male                      Female
- (b) Age group (20's / 30's / 40's / 50's): .....
- (c) Primary discipline/ qualification: .....
- (d) When did you qualify / receive your degree?
- (e) Do you have qualifications in another discipline? If so, what discipline(s)?
- (f) Do you belong to any professional associations?
- (g) What is your current position or role at [Roundtable Dispute Management / Relationships Australia / the Family Court / Unifam's 'Keeping Contact' program]?
- (h) How long have you worked at / with this program?
- (i) When you introduce yourself to the parties at this service, how do you describe your role, and what title do you use?
- (j) Have you worked elsewhere in a related area before and/or are you working elsewhere in a related area now? (ie, work related to family law parenting disputes)

List services

If so, how long were you / have you been there?

If so, what is / was your role there?

(k) How much of your work as a family dispute resolution practitioner is devoted to dealing with family disputes involving residence and contact issues?

Would you be able to put a percentage on it?

## **Section 2: Nature of the program**

1. Could you describe the [Roundtable Dispute Management program/ the Family Court's Magellan program / Relationships Australia's family mediation service / the Keeping Contact program]?
2. What do you think are this program's core aims?
3. What attracted you to work for this program / to do this sort of work?
4. What do you like about working in this program? Or, what do you get out of it? (eg, helping families)
5. What counts as a 'resolution' for a dispute in the context of this program?
6. What do you consider to be a good outcome of a residence or contact dispute – particularly for children - in terms of your work in this program?
7. Could you describe for me a typical case in this program and how you approach it?
8. Is there anything that frustrates you about working with / as part of this program or service, and anything you would change if you could?

## **Section 3: Nature of professional contact with the legal profession**

*The next series of questions is about the nature of your professional interaction with family lawyers in the context of your work at/with this program.*

9. Apart from other family dispute resolution practitioners working at this service, is the legal profession the main professional group that you come into contact with when dealing with residence and contact disputes at this service / in this program?  
  
If not, what is the main professional group you have most contact with?
10. How much contact do you have with lawyers in your work as a family dispute resolution practitioner at this service/program?
11. How do you normally come into contact with family lawyers in this program? (eg, do you meet with them face to face; have telephone contact; written correspondence; only via what the client tells you)
12. What are the main professional guidelines that direct your work in resolving disputes at this program?

What about the main legal constraints or requirements that direct your work?

What rules or regulations for this workplace direct your work in resolving disputes? (eg. time or funding available for certain tasks)



13. What do you believe are the main professional guidelines and constraints that direct lawyers in their work in relation to this service or program?

**Section 4: Issues that may arise in inter-professional work**

14. What do you understand to be the lawyer's role in helping to resolve a residence and contact dispute in this program / service?

Could you give a case example of this?

15. What are some of the *main* issues or problems that arise when you work with family lawyers in your role at / when working with this service/program?

Could you give a case example?

16. Are there other, less common, inter-professional issues that have arisen in your work with family lawyers in this job?

Could you give a case example?

**Section 5: Satisfaction/dissatisfaction with working relationship**

17. Overall, are you satisfied with your working relationships with family lawyers in relation to this service/program?

18. Do you find that the involvement of a lawyer generally assists the resolution of residence and contact disputes at this service? (yes, no, sometimes)

In what ways does their involvement help or hinder resolution?

19. Are there any factors that you think have helped you to have a good working relationship with family lawyers?

20. Are there any factors which you think have worked against you having a good working relationship with family lawyers?

*(If any factors identified)* What do you think is needed for these problems to be resolved?

21. *(If not already identified)* Do you think you and family lawyers understand language and terminology in the same way in relation to residence and contact disputes?

Why / why not? Can you give examples?

If you are using different language or understanding the same language differently, do you think this creates problems? Can you provide examples?

## **Section 6: Child-focused practice**

22. How do you go about ensuring the 'best interests of the child' are met in your role at this program?

23. How do you understand your obligation to be 'child-focused' when helping to resolve parenting disputes? Do you think 'best interests' and 'child-focused' are the same thing or involve different obligations?

24. What is your understanding of children's needs in the context of separation and divorce?

25. Do you think this understanding is shared by family lawyers you work with in this service / program?

26. In your work in this service or program, who do you consider your primary responsibility is owed to – the client, the child (if the child is not your client), the court?

Is there anything else you want to say about how you balance these in practice?

27. (*If applicable*) Is this different to your primary responsibility as a family dispute resolution practitioner in your other work?

If different, explain how.

28. If you also practice as a lawyer, does your primary responsibility when working at this service differ to your primary responsibility as a lawyer in children's matters?

29. What additional information or training would be helpful to you in undertaking child-focused practice in relation to this service/program?

30. What additional information or training do you think would be helpful to family lawyers in undertaking child-focused practice in relation to this service/program?

## **Section 7: Family violence practice**

31. How do you understand your obligation to clients where there is an issue of family violence in relation to this service/program?

32. Do you believe family lawyers understand these to be your obligations?

33. Do you believe family lawyers have similar obligations to clients where there is an issue of family violence in relation to this service/program?

34. Does this differ from your obligation to clients regarding this issue in your other work at this service (ie; if at RA, work on non-family law disputes; or if at the Family Court, in your non-Magellan work)?

35. If you also work elsewhere as a family dispute resolution practitioner, does your obligation to clients regarding family violence at that service / in that role differ from your obligation at this service? (If so, explain how)

36. If you also work as a family lawyer, does your obligation to clients in relation to family violence at this service differ from your obligation to clients as a family lawyer?

**Last words**

37. Do you have any recommendations concerning the manner in which professional relationships between family lawyers and family dispute resolution practitioners might be better managed in the future? Or do you have advice for other services based on your experience here?

38. Do you have any other thoughts on this study you would like to offer?

## APPENDIX B

### INTERVIEW GUIDE FOR FAMILY LAWYERS

**Introduction:** Our study of inter-professional practices in family law matters is concerned with child-focused practice and parenting disputes (but excludes other matters such as property matters). We are seeking to understand the nature of the work of professionals in this area, their working relationships across professions, and the factors that affect these working relationships.

#### Section 1: Demographic and descriptive information

(a) Gender:    Male                  Female

(b) Age group (20's / 30's / 40's / 50's): .....

(c) When did you complete your law degree?

(d) Are you a:

- Solicitor in private practice
- Community legal sector solicitor
- Legal Aid lawyer
- Barrister

(e) How long have you been practising family law?

(f) How much of your work is family law related? And how much is devoted to dealing with residence and contact issues?

Would you be able to put a percentage on it?

(g) Do you have training in any other disciplines besides law? (*record other disciplines*)

(h) Do you belong to any professional associations? (*record any named*)

(i) How long have you been doing [RDM/ Magellan] work, or representing clients who use Keeping Contact, or been a member of the Lawyers Panel?

(j) Do you also do work (or have you previously worked) as a family dispute resolution practitioner (mediator) in children matters elsewhere in the family law system?

If so, which service?

How long were you / have you been there?

## **Section 2: Nature of the program**

1. Could you describe the [Roundtable Dispute Management program/ the Family Court's Magellan program / Relationships Australia's family mediation service / the Keeping Contact program]?
2. What do you think are this program's core aims? Or what do you think was the idea behind setting up this program?
3. What attracted you to refer clients to /use this program / be involved in this sort of work / be part of the Lawyers Panel?
4. What do you like about working in this program or service? Or, what do you get out of it?
5. What counts as 'resolution' for a dispute in the context of this program?
6. What do you consider to be a good outcome of a residence or contact dispute – particularly for children - in terms of your experience of this program?
7. Could you describe for me a typical case in this program and how you approach it?
8. Is there anything that frustrates you about working with / as part of this program or service, and anything you would change if you could?

## **Section 3: Nature of inter-professional contact**

*The next series of questions is about the nature of your professional interaction with family dispute resolution practitioners in the context of your work at/with this program.*

9. Apart from other lawyers, are family dispute resolution practitioners (example, mediators) the main professional group that you come into contact with when dealing with residence and contact disputes at this service / as part of this program?

If not, what is the main professional group you have most contact with?

10. How much contact do you have with family dispute resolution practitioners in your work with this program?
11. How do you normally come into contact with family dispute resolution practitioners in this program? (eg, do you meet with them face to face; have telephone contact; written correspondence)
12. What are the main professional guidelines that direct your work in resolving disputes at this program?  
What about the main legal constraints or requirements that direct your work?

What rules or regulations for this workplace direct your work in resolving disputes?  
(eg. time or funding available for certain tasks)

13. What do you believe are the main professional guidelines and constraints that direct family dispute resolution practitioners in their work at [RDM / RA / Keeping Contact] or in the Magellan program?

#### **Section 4: Issues that may arise in inter-professional work**

**Introduction to Sections 4 and 5** In the following questions we ask you to consider issues that may arise in your inter-professional work with family dispute resolution practitioners, and about your levels of satisfaction with your inter-professional relationships. In your answers to some of these questions you may want to distinguish between or amongst different professional groups you work with in relation to this program (for example, between Family Court mediators and DHS case workers, or between mediators and therapists). For other questions you may feel you can generalise about dispute resolution practitioners as a whole.

14. What do you understand to be the role of the family dispute resolution practitioner (example, mediator) in helping to resolve a residence and contact dispute in this program / service?

Could you give a case example of this?

15. What are some of the *main* issues or problems that arise when you work with family dispute resolution practitioners in your role at / when working with this service/program?

Could you give a case example?

16. Are there other, less common, inter-professional issues that have arisen in your work with family dispute resolution practitioners in this job?

Could you give a case example?

#### **Section 5: Satisfaction/dissatisfaction with working relationship**

*(Note: remind respondent to differentiate between different professional groups in answering these questions if necessary.)*

17. Overall, are you satisfied with your working relationships with family dispute resolution practitioners at this service/program?

18. Do you find that the involvement of a family dispute resolution practitioner generally assists the resolution of residence and contact disputes at this service?

In what ways does their involvement help or hinder resolution?

19. Are there any factors that you think have helped you to have a good working relationship with family dispute resolution practitioners at this service?

20. Are there any factors which you think have worked against you having a good working relationship with family dispute resolution practitioners?

*(If any factors identified)* What do you think is needed for these problems to be resolved?

21. *(If not already identified)* Do you think you and family dispute resolution practitioners understand language and terminology in the same way in relation to residence and contact disputes?

Why / why not? Can you give examples?

If you are using different language or understanding the same language differently, do you think this creates problems? Can you provide examples?

## **Section 6: Child-focused practice**

22. How do you go about ensuring the ‘best interests of the child’ are met in your work with this program?

23. How do you understand your obligation to be ‘child-focused’ when helping to resolve parenting disputes? Do you think ‘best interests’ and ‘child-focused’ are the same thing or involve different obligations?

24. What is your understanding of children’s needs in the context of separation and divorce?

25. Do you think this understanding is shared by family dispute resolution practitioners you work with in this service / program?

26. In your work in this service or program, who do you consider your primary responsibility is owed to – the client, the child (if the child is not your client), the court?

Is there anything else you want to say about how you balance these in practice?

27. *(If applicable)* Is this different to your primary responsibility as a lawyer in your other work? (ie, other than children’s matters)

If different, explain how.

28. If you also practice as a family dispute resolution practitioner from time to time, does your primary responsibility when working as a lawyer in children matters differ to your primary responsibility as a family dispute resolution practitioner in children’s matters?

If different, explain how.

29. What additional information or training would be helpful to you in undertaking child-focused practice in relation to this service/program?

30. What additional information or training do you think would be helpful to family dispute resolution practitioners in this service/program?

### **Section 7: Family violence practice**

31. How do you understand your obligation to clients where there is an issue of family violence in relation to this service/program?

32. Do you believe family dispute resolution practitioners understand these to be your obligations?

33. Do you believe family dispute resolution practitioners have similar obligations to clients where there is an issue of family violence in relation to this service/program?

34. Does this obligation (in relation to family violence) differ from your obligation to clients in other matters (ie, other than children matters)?

35. If you also work as a family dispute resolution practitioner somewhere in the family law system, does your obligation to clients in relation to family violence in that role differ from your obligation as a lawyer?

### **Last words**

36. Do you have any recommendations concerning the manner in which professional relationships between family lawyers and family dispute resolution practitioners in handling children's matters might be better managed in the future?

37. Do you have any other thoughts on this study you would like to offer?



# APPENDIX C

## QUESTIONNAIRE FOR FAMILY DISPUTE RESOLUTION PRACTITIONERS

### FDR practitioners survey

Thank you for taking the time to complete this survey. We are interested in your views on how FDR professionals and family lawyers work together on parenting cases in the family law system. Please leave blank any questions you do not wish to answer.

**1. On average, how many times per month do you have contact with (e.g. receive a referral from) family lawyers on parenting matters?**

- 0 (No contact)    
  1-2    
  3-4    
  5-6    
  7-8    
  9-10    
  More than 10

**2. When you do have contact with your clients' legal representatives on parenting cases, is it to**

	Never	Occasionally	Sometimes	Usually	Always/almost always	Not applicable (I do not have contact with family lawyers)
Receive a referral	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Give feedback to the lawyer	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Confer on how to proceed	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Seek clarification of advice given	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Get information about family violence orders or court orders	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Co-mediate disputes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other (please specify in the box below)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**3. How many professional development activities have you attended in the past year where you learned about family law issues?**

- None    
  1    
  2 or more

**4. How many activities (social or professional development) have you attended in the past year where you interacted with family lawyers?**

- None    
  1    
  2 or more

**5. To what degree do the following statements reflect your experience of family lawyers?**

	Not at all	Mostly not	Somewhat	Mostly	Very much	Not applicable (I do not have contact with family lawyers)
We compete for the same work	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
We make a valuable but different contribution	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
We work as a partnership	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
We are worlds apart in our understanding of post-separation parenting disputes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**6. To what degree do the following occur in your typical interactions with family lawyers?**

	Never	Occasionally	Sometimes	Mostly	Always/almost always	Not applicable (I do not have contact with family lawyers)
I know the family lawyer (s) involved in the case beforehand	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
They understand the FDR practitioner's role	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
There is respectful communication between us	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
They give me timely information and feedback	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
They are willing to amend their views	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
They give inappropriate advice	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
They move outside their area of competence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
They suggest practical solutions to the case	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
They help to focus the client on the children	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
They have a non-adversarial approach	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
They view my role as secondary and their role as primary	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**7. Overall, how satisfied are you with your relationship with the family lawyers you have contact with?**

- Very dissatisfied  
  Somewhat dissatisfied  
  About 50/50  
  Somewhat satisfied  
  Very satisfied  
  Not applicable (I do not have contact with family lawyers)

8. Please indicate to whom you believe FDR professionals owe their:

**Highest responsibility**

- Court  
 Client  
 Child  
 Other (please specify)

**Second highest responsibility**

- Court  
 Client  
 Child  
 Other (please specify)

**Third highest responsibility**

- Court
- Client
- Child
- Other (please specify)

**9. Please briefly state your reasons for ranking the responsibilities of FDR professionals in this way in question 8**

  

10. Please indicate to whom you believe family lawyers owe their:

**Highest responsibility**

- Court
- Client
- Child
- Other (please specify)

**Second highest responsibility**

- Court
- Client
- Child
- Other (please specify)

**Third highest responsibility**

- Court
- Client
- Child
- Other (please specify)

**11. Please briefly state your reasons for ranking the responsibilities of family lawyers in this way in question 10**

  

**12. To what degree do you think these differences in the responsibilities of the two professions are understood and respected by the family lawyers you work with?**

**If you gave the same ranks to each profession, please select Not Applicable (No difference).**

- Not at all
- Mostly not
- Somewhat
- Mostly
- Very much
- Not applicable (I do not work with family lawyers)
- Not applicable (No difference)

**13. What importance do you place on the following factors when making an assessment of a child's best interests?**

	No importance	Little importance	Some importance	Moderate importance	Great importance	Not applicable (I do not assess children's best interests)
The parents' views	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Your professional experience	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Research evidence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Reports on children (e.g., Family Reports, psychiatrists' reports, child consultants' reports)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Personal experience	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**14. What importance do you think family lawyers place on the following factors when making an assessment of a child's best interests?**

	No importance	Little importance	Some importance	Moderate importance	Great importance
The parents' views	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Professional experience	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Research evidence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Reports on children (e.g., Family Reports, psychiatrists' reports, child consultants' reports)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Personal experience	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**15. Under the recent family law reforms, family members affected by violence will not be required to attempt mediation. In cases of suspected violence, what importance do you and/or your service place on the following factors when deciding whether to accept a case for mediation?**

	No importance	Little importance	Some importance	Moderate importance	High importance
The alleged victim's views	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The alleged perpetrator's views	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The clients' demeanour and non-verbal cues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The clients' willingness to mediate	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The clients' capacity to negotiate	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Research evidence about family violence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Presence of intervention orders	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cost of litigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Court hearing delays	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The court's likely approach (e.g. to contact orders)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Availability of appropriate protection and support for clients at the FDR service	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**16. In cases of suspected violence, what importance do you think family lawyers place on the following factors when deciding whether to refer a case for mediation?**

	No importance	Little importance	Some importance	Moderate importance	High importance
The client's views if they are the alleged victim	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The client's views if they are the alleged perpetrator	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The client's demeanour and non-verbal cues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The client's willingness to mediate	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The client's capacity to negotiate	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Research evidence about family violence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Presence of intervention orders	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cost of litigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Court hearing delays	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The court's likely approach (e.g. to contact orders)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Availability of appropriate protection and support for clients at the FDR service	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**17. Do you think it is part of your professional duty to encourage perpetrators of violence to consider or acknowledge the impact of their violence on family members?**

No  Yes

**18. Do you think it is part of family lawyers' professional duty to encourage perpetrators of violence to consider or acknowledge the impact of their violence on family members?**

No  Yes

Finally, please provide the following background information

**19. Your age group**

20's  30's  40's  50's  60's

**20. Your gender**

Male  Female

**21. Degree/Diploma**

**22. Year completed**

**23. Do you have any legal qualifications?**

No  Yes

**24. If yes, please specify the nature and date of the qualification(s)**

  

**25. Years working in family law field**

**26. Average percentage of your work time spent on parenting matters**

0-25%       26-50%       51-75%       76-100%

**27. Proportion of your clients with violence issues**

0-25%       26-50%       51-75%       76-100%

**28. Type of workplace**

**29. Location of most work**

**We welcome any additional comments you may have about this survey or in general regarding inter-professional relationships in family law. If you are willing to be contacted by the research team for further consultation, please provide your name and phone number or email contact details.**

  

## 'Thank you' page

Thank you for completing this survey. Your participation is greatly appreciated.

The results of this survey will help us to gain a better understanding of the nature of the work of family lawyers and family dispute resolution practitioners, and identify the factors that improve and hinder their working relationships.

If you have any further questions about this research, please feel free to contact the research team. Helen Rhoades can be contacted by phone at the University of Melbourne Law Faculty on (03) 8344 5589, or by email at [h.rhoades@unimelb.edu.au](mailto:h.rhoades@unimelb.edu.au). Associate Professor Ann Sanson can be contacted at the University of Melbourne Paediatrics Department on (03) 9345 4517, or by email at [annvs@unimelb.edu.au](mailto:annvs@unimelb.edu.au), and Professor Hilary Astor can be contacted at the University of Sydney Law School on (02) 9351 0212, or by email at [hilarya@law.usyd.edu.au](mailto:hilarya@law.usyd.edu.au).

If you have any concerns about the conduct of this research project, please feel free to contact the Executive Officer, Human Research Ethics, The University of Melbourne, ph: 8344 2073; fax 9347 6739.

## Family lawyers survey

Thank you for taking the time to complete this survey. We are interested in your views on how family lawyers and family dispute resolution practitioners (e.g., family mediators) work together on parenting cases in the family law system. Please leave blank any questions you do not wish to answer.

**1. On average, how many times per month do you have contact with (e.g., make a referral to) family mediation or family dispute resolution services such as Relationships Australia, a Legal Aid family mediation service, or a Family Relationship Centre, on parenting matters?**

0 (No contact)  
  1-2  
  3-4  
  5-6  
  7-8  
  9-10  
  More than 10

**2. When you do have contact with your clients' family mediation or family dispute resolution service on parenting cases, is it to**

	Never	Occasionally	Sometimes	Usually	Always/almost always	Not applicable (I do not have contact with FDR services)
Make a referral	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Receive feedback	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Confer on how to proceed	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Clarify advice given	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Give information about family violence orders or court orders	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Co-mediate disputes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other (please specify in the box below)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**3. What types of family mediation or family dispute resolution services have you had contact with or referred clients to?**

Family Relationship Centre  
  Legal Aid  
  Private or Community based agency  
  Not Applicable (I have not had contact with FDR services)

**4. How many professional development activities have you attended in the past year where you learned about family mediation or family dispute resolution?**

None  
  1  
  2 or more

**5. How many activities (social or professional development) have you attended in the past year where you interacted with family mediators or family dispute resolution professionals?**

None  
  1  
  2 or more

**6. To what degree do the following statements reflect your experience of family mediation or family dispute resolution services?**

	Not at all	Mostly not	Somewhat	Mostly	Very much	Not applicable (I do not use FDR services)
We compete for the same work	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
We make a valuable but different contribution	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
We work as a partnership	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
We are worlds apart in our understanding of post-separation parenting disputes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**7. To what degree do the following occur in your typical interactions with family mediation or family dispute resolution services?**

	Never	Occasionally	Sometimes	Mostly	Always/almost always	Not applicable (I do not use FDR services)
I know the family dispute resolution or family mediation professional(s)/services involved in the case beforehand	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
They understand the lawyer's role	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
There is respectful communication between us	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
They give me timely information and feedback	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
They are willing to amend their views	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
They give inappropriate advice	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
They move outside their area of competence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
They suggest practical solutions to the case	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
They help to focus the client on the children	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
They have a non-adversarial approach	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
They fulfil a secondary role to my primary role as a family lawyer	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**8. Overall, how satisfied are you with your relationship with the family mediation and family dispute resolution services you have contact with?**

Very dissatisfied  
  Somewhat dissatisfied  
  About 50/50  
  Somewhat satisfied  
  Very satisfied  
  Not applicable (I do not have contact with FDR services)

9. Please indicate to whom you believe family lawyers owe their:



**Highest responsibility**

- Court
- Client
- Child
- Other (please specify)

**Second highest responsibility**

- Court
- Client
- Child
- Other (please specify)

**Third highest responsibility**

- Court
- Client
- Child
- Other (please specify)

**10. Please briefly state your reasons for ranking the responsibilities of family lawyers in this way in question 9**

11. Please indicate to whom you believe family mediators and family dispute resolution professionals owe their:

**Highest responsibility**

- Court
- Client
- Child
- Other (please specify)

**Second highest responsibility**

- Court
- Client
- Child
- Other (please specify)

**Third highest responsibility**

- Court
- Client
- Child
- Other (please specify)

**12. Please briefly state your reasons for ranking the responsibilities of family mediators and family dispute resolution professionals in this way in question 11**

**13. To what degree do you think these differences in the responsibilities of the two professions are understood and respected by the family mediators and family dispute resolution practitioners you work with?**

**If you gave the same ranks to each profession, please select Not Applicable (No difference).**

- Not at all   
  Mostly not   
  Somewhat   
  Mostly   
  Very much   
  Not applicable (I do not work with FDR services)   
  Not applicable (No difference)

**14. What importance do you place on the following factors when making an assessment of a child's best interests?**

	No importance	Little importance	Some importance	Moderate importance	Great importance	Not applicable (I do not assess children's best interests)
The parents' views	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Your professional experience	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Research evidence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Reports on children (e.g., Family Reports, psychiatrists' reports, child consultants' reports)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Personal experience	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**15. What importance do you think family mediators and family dispute resolution practitioners place on the following factors when making an assessment of a child's best interests?**

	No importance	Little importance	Some importance	Moderate importance	Great importance
The parents' views	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Professional experience	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Research evidence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Reports on children (e.g., Family Reports, psychiatrists' reports, child consultants' reports)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Personal experience	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**16. Under the recent family law reforms, family members affected by violence will not be required to attempt mediation. In cases of suspected violence, what importance do you place on the following factors when deciding whether to refer a case for mediation?**

	No importance	Little importance	Some importance	Moderate importance	High importance	Not applicable (I do not refer cases for mediation)
The client's views if they are the alleged victim	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The client's views if they are the alleged perpetrator	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The client's demeanour and non-verbal cues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The client's willingness to mediate	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The client's capacity to negotiate	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Research evidence about family violence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Presence of intervention orders	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cost of litigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Court hearing delays	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The court's likely approach (e.g. to contact orders)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Availability of appropriate protection and support for clients at the mediation service	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**17. In cases of suspected violence, what importance do you think family mediators and family dispute resolution services place on the following factors when deciding whether to accept a case for mediation?**

	No importance	Little importance	Some importance	Moderate importance	High importance
The alleged victim's views	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The alleged perpetrator's views	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The clients' demeanour and non-verbal cues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The clients' willingness to mediate	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The clients' capacity to negotiate	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Research evidence about family violence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Presence of intervention orders	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cost of litigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Court hearing delays	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The court's likely approach (e.g. to contact orders)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Availability of appropriate protection and support for clients at the mediation service	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**18. Do you think it is part of your professional duty to encourage perpetrators of violence to consider or acknowledge the impact of their violence on family members?**

No  Yes

**19. Do you think it is part of family mediators and family dispute resolution practitioners' professional duty to encourage perpetrators of violence to consider or acknowledge the impact of their violence on family members?**

No  Yes

Finally, please provide the following background information

**20. Your age group**

20's  30's  40's  50's  60's

**21. Your gender**

Male  Female

**22. Year admitted to practice**

**23. Do you have any family mediation qualifications?**

No  Yes

**24. If yes, please specify the nature and date of the qualification(s)**

**25. Years working in family law field**

**26. Average percentage of your work time spent on parenting matters**

0-25%  26-50%  51-75%  76-100%

**27. Proportion of your clients with violence issues**

0-25%  26-50%  51-75%  76-100%

**28. Type of workplace**

**29. Location of most work**

**We welcome any additional comments you may have about this survey or in general regarding inter-professional relationships in family law. If you are willing to be contacted by the research team for further consultation, please provide your name and phone number or email contact details.**

### 'Thank you' page

Thank you for completing this survey. Your participation is greatly appreciated.

The results of this survey will help us to gain a better understanding of the nature of the work of family lawyers and family dispute resolution practitioners, and identify the factors that improve and hinder their working relationships.

If you have any further questions about this research, please feel free to contact the research team. Helen Rhoades can be contacted by phone at the University of Melbourne Law Faculty on (03) 8344 5589, or by email at [h.rhoades@unimelb.edu.au](mailto:h.rhoades@unimelb.edu.au). Associate Professor Ann Sanson can be contacted at the University of Melbourne Paediatrics Department on (03) 9345 4517, or by email at [annvs@unimelb.edu.au](mailto:annvs@unimelb.edu.au), and Professor Hilary Astor can be contacted at the University of Sydney Law School on (02) 9351 0212, or by email at [hilarya@law.usyd.edu.au](mailto:hilarya@law.usyd.edu.au).

If you have any concerns about the conduct of this research project, please feel free to contact the Executive Officer, Human Research Ethics, The University of Melbourne, ph: 8344 2073; fax 9347 6739.

## APPENDIX E

### Study 2 data analysis

#### Correlation analysis

Table 1. Pearson product moment correlations between satisfaction with the inter-professional relationship and attitude and demographic variables for all participants and for each profession separately<sup>202</sup>

Variable	Total group	FDRP	FL
Age group	.08	.15	.06
Years in family law field	.11	.20	.09
Contact per month	.14**	.14	.14*
Make/Receive a referral	-.03	-.15	.03
Receive/Give feedback	.07	.05	.07
Confer on how to proceed	.13*	.01	.18**
Clarify/Seek clarification of advice given	.02	-.01	.04
Give/Get information about family violence or court orders	.05	.04	.06
Co-mediate disputes	.17**	.25*	.12
Activities attended in past year where learned about other profession	.08	.12	.07
Activities attended in past year where interacted with other profession	.10	.17	.09
We compete for the same work	-.27**	-.32**	-.25**
We make a valuable but different contribution	.19**	.11	.22**
We work as a partnership	.41**	.32**	.45**
We are worlds apart in our understanding of post-separation parenting disputes	-.40**	-.33**	-.44**
I know the [other professionals/services] involved in the case beforehand	.20**	.07	.26**
They understand [my profession's] role	.34**	.26*	.39**
There is respectful communication between us	.33**	.26**	.37**
They give me timely information and feedback	.32**	.35**	.32**
They help focus the client on the children	.22**	.23*	.25**
They suggest practical solutions to the case	.30**	.19	.37**
They have a non-adversarial approach	.18**	.31**	.18**

<sup>202</sup> Only participants who indicated they had contact with the other profession were included in the correlation and regression analyses.

They are willing to amend their views	.24**	.19	.26**
They give inappropriate advice	-.29**	-.27**	-.29**
They move outside their area of competence	-.40**	-.39**	-.41**
Family dispute resolution practitioners have/perceived as having secondary role to lawyer	-.08	-.45**	.10
Average difference perceived between professions when assessing children's best interests	-.28**	-.26*	-.29**
Average difference perceived between professions when assessing cases involving suspected violence	-.29**	-.14	-.35**
Overall difference perceived between the profession's responsibilities	-.05	-.01	-.07
Degree differences in professional responsibilities understood by other profession	.34**	.27**	.37**

\* $p < .05$

\*\* $p < .01$

## Regression analysis

Table 2. Summary of linear hierarchical multiple regression analysis predicting satisfaction with the inter-professional relationship across both professions<sup>203</sup>

Variable	$\beta$
<b>Step 1</b>	
Age	.05
Gender	.05
<b>Step 2</b>	
Years in family law field	.00
Qualifications in other profession's field	-.11
Proportion of work time spent on parenting matters	.14
Proportion of cases involving violence	-.06
Activities attended in past year where learned about other profession	.13
Activities attended in past year where interacted with other profession	-.09
Contact per month	.05
Make/Receive a referral	.02
Co-mediate disputes	.06
Information exchange	-.06
Positive inter-professional practices	.24**
Negative inter-professional practices	-.24**
We compete for the same work	-.05
We make a valuable but different contribution	.10
We work as a partnership	.22**
We are worlds apart in our understanding of post-separation parenting disputes	-.03
Family dispute resolution practitioners have/perceived as having secondary role to lawyer	-.12
Degree of difference perceived between the professions responsibilities	-.07
Degree differences in professional responsibilities understood by other profession	.04
Average difference perceived between professions when assessing children's best interests	-.06
Average difference perceived between professions when assessing cases involving suspected violence	-.07

\* $p < .05$

\*\* $p < .01$

<sup>203</sup> The number of variables included in the analysis is consistent with Stevens' suggested ratio of 15 participants per predictor: see J. Stevens, *Applied multivariate statistics for the social sciences*, 3rd ed. (Lawrence Erlbaum, Mahway, New Jersey: 1996).