

Talk of reforming the Family Court and family law system is [back in the headlines](#) , but agitation about the family law system has a long history.

Since the introduction of the Family Law Act and the establishment of the Family Court of Australia in 1976, there have been many parliamentary inquiries and numerous reforms. However, sad stories of parents who've had a tough time of the law continue to [shape public and politicians' perceptions](#) of how family law functions in Australia.

What does the empirical evidence say?

The findings from a [large research program](#) conducted by the [Australian Institute of Family Studies](#) tells many stories. One of the main ones is a good news story: most couples separate amicably, work parenting and property out for themselves and maintain good relationships with the other parent and their children after separation. This applies to more than 70% of separated parents.

There are also more complex stories in the data. One concerns the parents who do use the family law system. Where parents don't work things out themselves, about 3% use court, 6% use lawyer-based negotiation and about 10% use family [dispute resolution](#) (FDR), which is a form of mediation. Since 2006, FDR has become much more widely used, with 10% of parents in 2014 using this mechanism, compared with 3% in 2006. At the same time, lawyers are used less (11% cf 6%) and so are courts (8% cf 3%).

The families who use the family law system are troubled. They are much more likely to have a history of family violence, concerns for their own or their children's safety as a result of ongoing contact with the other parent, mental ill health, substance abuse, gambling, problematic social media or pornography use.

These characteristics are particularly concentrated among parents who use courts (85% report emotional abuse and 54% report physical violence) and to a slightly lesser extent lawyers (emotional abuse: 85%, physical violence: 38%) and to a lesser extent still family dispute resolution (emotional abuse: 74%, physical violence: 27%). Up to four in ten parents who use courts have several of these issues and it is clear from this that concerns for the well-being and safety of children in these families are particularly relevant.

What do parents think of the family law system?

Even with these complex characteristics, half or more of the parents who used the court to make parenting arrangements think it worked adequately for themselves (50%) and their children (61%). Of the three ways that parents make parenting arrangements – lawyers, courts and family dispute resolution – those who use FDR are more satisfied (73.6%) than those who use lawyers (60%) and courts.

Most satisfied of all are those who work things out for themselves (89%). The evidence does not support bald statements about the family law system, especially if you consider that when court is involved, one parent will almost invariably be a “loser” to a greater extent than the other in an adversarial system and these are families with significant problems.

There is also clear evidence that some things need to be improved in the way the system deals with some issues, including matters of risk and safety.

The 2012 family violence amendments were a step in the right direction in this respect: of the 653 family law system professionals surveyed in 2014, 77% agreed that the family law system needed the 2012 family violence amendments.

These changes were intended to support better identification of and responses to matters involving family violence and safety concerns. But the evidence from the Evaluation of the 2012 family violence amendments shows that more needs to be done.

This is evident in many ways, perhaps mostly clearly in the responses of family law system professionals to two propositions. Asked if the family law system places adequate priority on supporting children to have meaningful relationships with both parents after separation, 97%

said yes. It's a different story in relation to the other proposition – does the family law system place adequate priority on protecting children from harm? – to which 69% said yes.

Problem areas

There are several problem areas. One is screening, risk assessment and risk management. This occurs in an inconsistent and piecemeal way across the system and is recognised by family law system professionals. Asked if they thought the family law system screened adequately for family violence and child safety concerns, 46% disagreed.

About 30% of parents who used FDR, lawyers and courts in 2014 indicated that they had not been asked about family violence and safety concerns. Considering the prevalence of risk factors among such parents these findings point to a need for significant improvement.

Another issue is the legislation: legal professionals recognise that the provisions governing parenting arrangements are complex and confusing. Since the 2012 amendments, parenting arrangements have also taken longer to resolve out of court and especially in court. For parents and children where risk is an issue, this is not good news.

Separation is generally not a trauma for parents and children. For a troubled minority, the story is much more complex. There is a clear need for improvement in some areas to provide better solutions for children where risk is an issue.

The research referred to in this article was funded by the Commonwealth Attorney General's Department.

Authors: Rae Kaspiw, Senior Research Fellow, Australian Institute of Family Studies

Read more <http://theconversation.com/separated-parents-and-the-family-law-system-what-does-the-evidence-say-62826>

Separated parents and the family law system: what does the evidence say?

Written by Rae Kaspiew, Senior Research Fellow, Australian Institute of Family Studies
