

FAMILY LAW
CASE PROFILES

Rosemary Hunter

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Summary of Key Findings

This report sets out detailed profiles of family law cases handled by Legal Aid Commissions, private solicitors, Community Legal Centres, and the Family Court, which were finalised during the 1997-98 financial year. Profiling data, collected by means of a survey of family law files, included client and litigant demographics, case characteristics, dispute resolution processes, and clients' and litigants' funding and representation statuses. Following are the key findings from this profiling study.

General conclusions

The typical family law case –

- concerned the breakdown of a marriage
- involved an average of 2.5 matters, including at least one of residence, contact or property
- where children were involved, concerned one or two children
- involved the filing of an application for final orders
- included an average of 3.6 court attendances, combined with negotiations between solicitors
- was resolved at the directions hearing stage, by means of a negotiated settlement embodied in consent orders.

The median case disposition time in the Family Court was 5 months. However in most Registries, the longest 25% of cases experienced significant delays before finalisation.

Client characteristics such as age, country of birth, ability to speak English, income and disability were not generally related to dispute resolution time. Disposition time was more likely to be related to the type of case (with property matters taking longer to resolve than children's matters), and to

other features of dispute resolution, eg. which court was used, and which and how many dispute resolution processes were used.

Incidence of legal aid and pro bono work in family law

Approximately 25% of cases handled by the solicitors who participated in the survey were legally aided.

There was little formal pro bono work undertaken in family law, although solicitors indicated that work was often done pro bono on individual files, particularly legal aid files.

Litigant demographics

Self-funded family law litigants had moderate incomes, with a median gross income of \$35,000 per annum. Moreover, there was a significant sex difference in incomes, with female self-funded clients having a median income around \$10,000 lower than male self-funded clients. 17% of self-funded clients were reliant on social security. The majority of these were involved in a property dispute, and were apparently excluded from legal aid for that reason.

There were also significant sex differences in litigants' ages (female litigants were younger), and in matters on which applications were made (men were more likely to be applicants in children-only cases, while women were more likely to be applicants in property-only and mixed children and property cases).

Clients of Sydney suburban firms travelled further from their homes to reach their lawyer than did clients of Melbourne and Brisbane suburban firms. Queensland country clients travelled the furthest distances, on average, to reach their lawyers. In all country areas, clients often travelled further afield than their own town or the closest large town to find a family lawyer.

Marriages involved in the cases were of generally longer duration than de facto relationships.

Domestic violence and child representation

Allegations of domestic violence tended to be recorded when violence was considered relevant to the case – ie. particularly in children’s cases rather than in property cases. Thus, for example, allegations of violence were present in 60% of private solicitors’ legal aid cases (which mainly concerned children), but only 25% of private solicitors’ self-funded cases (which were more likely to concern property). In around 70% of all cases involving allegations of violence there was also a history of violence in the relationship, and in 60–65% of cases involving allegations of violence, a State domestic violence order had been obtained.

Cases involving allegations of domestic violence were more likely than other cases to involve some form of primary dispute resolution (PDR), such as Family Court counselling or mediation. It appears that the Family Court’s policy of holding separate counselling sessions in cases of fear of violence is being implemented appropriately. Safeguards relating to other forms of PDR are less open to scrutiny.

Allegations of domestic violence did not have a direct impact on case processing times or propensity to go to hearing. However, cases involving domestic violence allegations tended to have more matters in dispute, and/or to include more court stages and attempted forms of resolution, and hence to consume greater solicitor and court resources.

Cases involving a child representative did tend to take longer to resolve and have a greater propensity to go to hearing. In the Family Court data set, the presence of a child representative was the single largest predictor of a case going to hearing. This appears to reflect the fact that child representatives are appointed in complex cases, involving difficult questions about the best interests of the child.

Dispute resolution

A State Magistrates Court or Local Court was used in 21% of private solicitors’ cases. About one third of cases commenced in a State Court were subsequently transferred to the Family Court.

Several other studies have identified a pattern of “litigotiation” – a strategic combination of court processes and out-of-court negotiation – used by solicitors to resolve family law disputes. The same pattern was clearly evident in this study.

There was little use of PDR processes other than Family Court counselling. This finding is qualified, however, by the fact that we were unable to gain sufficient information from Queensland solicitors to be able to comment on the impact of quasi-compulsory legal aid conferencing in that State. In addition, the methodology of gathering information from solicitors meant that we did not have access to users of PDR services (eg. community-based mediation) who did not have any legal representation.

Community Legal Centres tended to pursue consensual solutions and avoid litigation, but this did not necessarily result in more speedy resolutions of family law matters. In some CLC cases the litigation process yielded quicker results.

Relatively few cases were resolved at or after a conciliation conference or pre-hearing conference in the Family Court.

The expectation in Section 117 of the Family Law Act 1975 (Cwlth) that costs will only be awarded in exceptional cases was borne out by the study. While applications for costs were made in 18% of cases, costs were awarded in only about 2% of Family Court cases.

Legal representation and self representation

Parties’ representation status tended to mirror each other. Thus, a self-funded litigant was most likely to face another self-funded litigant; a legally-aided litigant was most likely to face another legally-aided litigant; and an unrepresented litigant was most likely to face another unrepresented litigant.

15% of applicants and 33% of respondents were wholly or partially unrepresented in the Family Court. Unrepresented applicants were more

likely to be male, but there was no significant gender difference between unrepresented respondents.

The time taken to finalise a case in the Family Court was longer where the applicant was unrepresented at the end of the case, although the opposite was true where the applicant was unrepresented at the commencement of the case. The most salient impact of representation status on disposition time, however, was the fact that the presence of an unrepresented respondent decreased the length of time taken to finalise a case in the Family Court. Cases with unrepresented respondents tended either to settle early, or to be determined by means of an uncontested or default judgment when the respondent failed to appear at a hearing or to contest the case.

Major sources and forms of variability

Legally-aided and self-funded cases

There were major differences in client demographics, case characteristics and dispute resolution processes between legally-aided and self-funded cases, often but not always referable to the effect of legal aid funding guidelines. Differences included –

- legally-aided clients were younger, more likely to be reliant on social security, and more likely to have been born overseas
- self-funded clients had longer marriages than legally-aided clients
- only around 10% of legal aid cases concerned property
- legally-aided cases were more likely to involve a Form 7 (application for final orders) while self-funded cases were more likely to involve a Form 12A (application for consent orders)
- when a Form 7 was filed, legally-aided cases were more likely to go to hearing while self-funded cases were more likely to be resolved by negotiated settlement and consent orders
- self-funded cases took longer to resolve on average (median resolution time 11 months) than legally-aided cases (median resolution time 4-6

months). This difference was almost entirely referable to the fact that property matters took much longer to resolve than children's matters.

Legally-aided cases handled by Legal Aid Commissions and private solicitors

Within the group of legal aid cases, there were also differences between those handled in-house by Legal Aid Commissions (LACs) and those handled by private solicitors, including—

- a higher proportion of LAC clients were born in a non-English speaking country, needed an interpreter and had a disability
- a higher proportion of private solicitors' cases involved de facto relationships
- a higher proportion of private solicitors' cases were resolved out of court
- a higher proportion of LAC cases involved unrepresented opponents and undefended hearings
- LAC cases were resolved more quickly (median 4 months) than private solicitors' cases (median 6 months). This difference may be at least partly referable to the previous point, and partly also to the transaction time involved in private solicitors dealing with the Legal Aid Commission
- a higher proportion of LAC cases remained unresolved, due to the client's legal aid grant being terminated, or the client losing contact.

Cases handled by different law firms and legal aid offices

There were further differences between LAC offices in relation to client demographics, case characteristics and dispute resolution processes. These differences were associated with, for example, demographic characteristics of local areas, local office policies concerning the types of matters handled and court usage (eg. the NSW Legal Aid Commission had a policy of using

a State Court rather than the Family Court if possible) and the characteristics of the local Family Court Registry.

There were fewer differences between law firms – for example firms in city, suburban and country areas; firms with and without family law accredited specialists; and firms in different socio-economic areas. Differences between firms were more likely to relate to client demographics than to dispute resolution. The one exception was that firms in high income areas appeared to provide a greater quantity of services to their clients than other firms.

Cases handled by Community Legal Centres

Community Legal Centres (CLCs) generally dealt with clients who were ineligible for legal aid, but who were unable to afford other legal representation. In addition, each had their own casework guidelines, which tended to result in different kinds of clients, cases and dispute resolution processes. In general, however, CLCs tended to encourage non-litigious forms of dispute resolution, and sought to maximise their services across the greatest number of clients rather than devote resources to complex disputes. Moreover, only about half the time of the CLCs surveyed was devoted to case work, with other activities including legal advice, community legal education, and policy and law reform initiatives. CLC services thus were not comparable to and did not compete with other legal service providers in family law.

Cases handled by different Family Court Registries

There were extensive and important differences in client demographics, case characteristics and court processes between different Registries of the Family Court. These included –

- the Adelaide Registry had a relatively high proportion of Australian-born litigants, a relatively high proportion of litigants in lower blue

- collar occupations and out of the work force, a relatively high proportion of residence applications, a relatively high proportion of interim orders and a low proportion of final hearings, and the greatest problem of delay
- the Melbourne Registry had a relatively high proportion of litigants born overseas (in both English-speaking and non-English speaking countries), a relatively high proportion of litigants in white collar occupations, a relatively high proportion of cases proceeding to final hearing, and the second longest time to finalisation
 - the Brisbane Registry had a relatively high proportion of Australian-born litigants, a relatively high proportion of litigants in upper blue collar occupations, a relatively high proportion of cases involving a notification of risk of child abuse, a relatively high proportion of cases involving a child representative, a relatively high proportion of interim orders and a low proportion of final hearings, and a disposition time longer than the average
 - the Parramatta Registry had a relatively high proportion of NESB litigants, a high proportion of 'difficult' cases, involving, for example, applications for location/recovery orders or for variation of previous orders, and a relatively high proportion of cases proceeding to final hearing
 - the Sydney Registry had a relatively high proportion of litigants in professional and upper white collar occupations, a relatively high proportion of NESB litigants, a relatively high proportion of property applications, a relatively low proportion of interim orders, and the least problem of delay.

The significant differences between Registries suggest that Family Court research which focuses on one Registry, or which fails to test for differences between Registries, may present misleading results.

Introduction

- 1 The research presented in this report forms part of a wider project, the aim of which is to systematically compare the legal services received by legal aid recipients with those purchased by private clients in family law. In order to determine the parameters within which meaningful comparisons could be made, the first part of the project involved profiling family law cases brought to a range of Family Court Registries and handled by the private profession, Legal Aid Commissions and Community Legal Centres. The objective of the exercise was to gain an accurate and detailed profile of cases and clients in family law, in order to understand the similarities and differences between –
 - privately-funded and legally-aided cases and clients
 - cases handled and clients dealt with by private practitioners, and cases handled and clients dealt with by Legal Aid Commissions and Community Legal Centres
 - cases filed and litigants filing in different Registries of the Family Court.

This report sets out the results of the profiling phase of the study. The Introduction provides background information regarding the profiling research.

Scope of the study

Geographical coverage

- 2 The study covers four States: New South Wales, Victoria, Queensland and South Australia. These States were chosen for a variety of reasons – New South Wales because it has the highest State population, has both city, suburban and regional registries of the Family Court, and also has a relatively high degree of Local Court usage in family law dispute processing; Victoria because of the early introduction in that State of ceilings and other restrictions on legal aid funding, the effects of which might be evident there but not yet in other States; Queensland because of its mandatory conferencing requirement for legal aid recipients; and South Australia as smaller, non-eastern State with a relatively high level of legal aid applications.¹

Legal services included

- 3 Within these States, we were interested to examine the broad range of models of family law legal service delivery. Legal services may be provided either by a private practitioner to the individual purchaser of services, or according to a variety of public funding methods. Most commonly a person will be granted legal aid to be represented by a private practitioner, who is then paid at legal aid rates to act for the client.² Alternatively, cases may be handled in-house by the relevant Legal Aid Commission. Grants of aid for family law cases are subject to Commonwealth funding guidelines which specify priority areas and the types of matters that will be funded; means and merits tests that must be satisfied; and an overall cost ceiling per case. A summary of the legal aid guidelines is included in Appendix 2.

1 In 1996–97, the Legal Services Commission of South Australia received 11.1 applications per 1000 head of population, compared to 9.85 per thousand in Queensland and 8.77 per thousand in NSW. Legal Aid and Family Services, *Legal Aid in Australia: 1996–97 Statistical Yearbook* (Attorney-General's Department, July 1998), Table C, p.8.

2 For example, in 1996–97, between 77% and 90% of legal aid cases finalised in the four States under discussion were handled by private practitioners. *Ibid*, Table 10, p.47.

- 4 Community Legal Centres (CLCs) are separately funded by the Commonwealth government via the State Legal Aid Commissions. Their major purposes (although these vary from place to place) are to provide advice and referral services to inquirers with legal problems, and to engage in legal policy work, including community legal education and law reform activities. They may also undertake casework for family law (and other) clients whose cases fall outside the legal aid guidelines but who are otherwise unable to afford legal representation. Each individual centre determines the amount and the nature of the casework it is prepared to take on.
- 5 As an alternative to all of these, legal services may be provided free ("pro bono") by private solicitors, or a litigant may choose (or be forced) to conduct their case without legal representation. The focus of this study is on funded services provided by legal professionals. However, incidental to this focus, some data has been gathered on the level of pro bono services and self-representation in the cases studied.
- 6 In addition, the study was concerned with legal representation rather than other kinds of legal services. Thus advice and referral work undertaken by CLCs was not included in the research, nor was advice only and duty solicitor³ work undertaken by Legal Aid Commission in-house lawyers. Information sessions, group forums and do-it-yourself kits provided by Legal Aid Commissions or CLCs were also not included.
- 7 Finally, the focus was upon representation of adults rather than of children. Where a family law dispute relates to children, the Family Court may appoint a child representative, and this role may be filled either by a private practitioner (often funded by legal aid) or by a Legal Aid Commission in-house solicitor. It was decided not to include child representation work in the profiling exercise, since it

3 A duty solicitor is a solicitor located at the court who assists people without their own legal representation with their court appearances on the day.

would not be possible to include this kind of work in the second part of the study comparing legally-aided and self-funded services.⁴

Family law matters covered

- 8 The term 'family law' may be used to refer to a wide range of legal provisions, covering arrangements on the breakdown of a marriage or de facto relationship, family violence, adoption, and other matters relating to children. The study was concerned with activities under Commonwealth legislation, primarily the Family Law Act 1975, together with more recent Child Support legislation. The Commonwealth legislation covers divorce; living arrangements, parental responsibility and financial support for children following the separation of their parents (whether the parents were married, in a de facto relationship, or never lived together); and property division between the former parties to a marriage. For constitutional reasons, it does not cover property division between former de factos. Hence, cases concerning exclusively de facto property division were not included in the study, although cases involving both children and property from de facto relationships were included.

- 9 The Family Law Act enables a person to obtain a restraining order preventing their former spouse from engaging in violent or harassing behaviour towards them. More commonly, however, apprehended domestic violence is dealt with under State legislation, by means of domestic violence orders made by State Magistrates or Local Courts. State domestic violence proceedings (applications and court attendances) were also excluded from the study. However, as discussed further in chapter 2, the study did seek information as to whether either party to a case under the Family Law Act had obtained a State domestic violence order against the other, and this information was included in the profiles of family law cases.

4 In the case of a child representative, the 'client' has no capacity to fund her or his representation, and has no control over the disputing process. Moreover, there would be considerable ethical and practical difficulties involved in attempting to contact and interview child clients concerning their satisfaction with their lawyer's services.

- 10 In New South Wales, Victoria and Queensland, some proceedings under the Family Law Act may be brought in either the Family Court or in a State Magistrates or Local Court. The study included all Family Law Act proceedings, whichever court was used. Indeed, one of the aims of the profiling exercise was to determine the level of usage of Local/Magistrates Courts compared to the Family Court.

Data collection methodology

- 11 The major methodology adopted for the profiling phase of the study was file analysis. A standard survey form was developed covering client demographics, matters involved in the case, dispute resolution processes and times, and funding and representation details (see Appendix 1). The form was used to gather information from Legal Aid Commission files, private solicitors' files, and Community Legal Centre files closed between 1 July 1997 and 30 June 1998. Details of the process of file analysis and the results of that analysis are given in chapters 2, 3 and 4.
- 12 At the same time as the JRC was undertaking its data collection, the Australian Law Reform Commission (ALRC) was engaged in a process of surveying recently finalised Family Court cases as part of its reference on the adversarial system. In order to avoid duplication and unnecessary strain on the court's resources, the ALRC agreed to collaborate with the JRC in gathering data from the Sydney, Parramatta, Newcastle, Melbourne, Brisbane and Adelaide Registries of the Family Court. The ALRC's consultants – Tania Matrugglio and Gillian McAllister – undertook the process of file analysis in the Family Court using a survey form developed by them in consultation with the Court. The resulting data was provided in electronic form to the JRC. Details of Family Court data collection and the findings from that data are set out in chapter 5.
- 13 The final chapter of the report brings together the profile material from the four data sources, and highlights similarities and differences between them.

Family law processes

- 14 When a relationship breaks down, parties may seek to organise their future affairs, including getting a divorce if the parties were married, the division of property and arrangements for any children, in a number of ways. If parties wish to get divorced, they must apply to the Family Court and supply necessary information to enable the Court to determine that the divorce is legally permitted. The procedure is relatively straightforward, and many former couples obtain a divorce without legal assistance, although some bring all of their family law issues, including divorce, to a lawyer. In relation to property and children, parties may again simply agree between themselves without any third party involvement, or may attend counselling or mediation, or may seek legal advice or assistance. Because of the way the study was designed, it gathered information only about cases in which at least one party sought legal representation to help to resolve a dispute with their former partner.
- 15 There are a number of processes by which lawyers and the parties themselves may then attempt to resolve family law disputes, with or without the commencement of court proceedings. It is possible that the parties themselves, or their lawyers, may be able to reach a negotiated agreement without court intervention. Community-based mediation, Family Court mediation or voluntary Family Court counselling may assist in this process. If an agreement is reached on all the matters in dispute, it is common for that agreement to be embodied in formal "terms of settlement", which can be given legal force by asking the Court to make orders in those terms. The procedure by which this is achieved is an Application for Consent Orders, otherwise known as a Form 12A application. Consent Orders are usually made by the court "on the papers", without any need for an appearance by the parties.
- 16 Alternatively, one or other of the parties may make an application to the court for final orders regarding children and/or property, otherwise known as a Form 7 application. This is effectively a

request for the court to decide the issues between the parties. Once the application is made, however, there will be a number of steps in the court process which are designed to assist the parties to reach a consensual settlement. Initially, the parties will attend one or more directions hearings, in which progress is reported and the next steps specified. At this stage, particularly if the dispute concerns children, the parties may be ordered to attend counselling. If the dispute concerns property, a conciliation conference will be scheduled, which is a formal attempt to help the parties to arrive at an agreement. If there are matters needing urgent resolution by the court, such as a clear ruling on where the children should live pending the final outcome, there may be an application for interim orders, which will be decided fairly rapidly and on the basis of limited evidence and argument. These interim orders remain in place until final orders are made by the court or the parties reach a final settlement.

- 17 At the same time as these court processes are occurring, lawyers may be involved in negotiations outside the court to arrive at a settlement. If the parties reach agreement at any stage in the process (up to and including during the course of a hearing), they may again ask the court to make consent orders to give legal effect to the terms of settlement.
- 18 If the parties are unable to reach agreement, the final court steps will be a pre-hearing conference, and then a final hearing by a judge. The judge's decision may further be appealed to the Full Court of the Family Court, although appeals are fairly rare.
- 19 The above describes procedural steps in the Family Court following a Form 7 application. If a Form 7 application is lodged in a Magistrates Court or Local Court, the procedure will be slightly different, and often more abbreviated, consisting of directions or mentions, possibly interim orders, and then, if necessary, a final hearing. Again, if the parties agree at any stage, they can apply to the court to formalise their agreement in consent orders.

- 20 If a party fails to observe an order made by the court, the other party may bring enforcement (s.112AD) or contempt proceedings. These proceedings involve a separate application, and are designed to punish non-compliance and secure compliance with the order. Again, such applications may be ultimately resolved by agreement between the parties, or may be decided by the court.

- 21 Special arrangements apply in relation to child support for children born on or after 1 October 1989, or whose parents separated after that date. In these cases, administrative procedures through the Child Support Agency have generally replaced court proceedings to secure child support payments. However the court may still be invoked in certain circumstances, for example to order paternity testing for the purposes of determining liability to pay child support, to decide applications to vary the assessment made by the Child Support Agency, or to order, vary or collect arrears of maintenance for children born before 1 October 1989 or whose parents separated before that date.

- 22 Any given family law case might contain any combination of issues (divorce, parenting arrangements, child support, property, enforcement), and any combination of dispute resolution procedures through the Family or Magistrates/Local Court and/or outside the court. The profiling study was designed to determine the typical patterns in family law cases, and to see whether these tended to vary between funding arrangements and/or service providers, or according to any other potential factors. The detailed information about cases also enabled some insights into the case features associated with particular outcomes (for example the duration of the case, or whether it was likely to settle or proceed to final hearing). Care should be taken, however, in interpreting these insights. Tests of statistical significance indicate correlations between particular features, but not necessarily causal relationships.

The research context

23 This report is unique in presenting a comprehensive, file-based analysis of family law cases handled by different service providers. Other empirical studies of family law cases have tended to focus on lawyer-client interactions or lawyer behaviour more generally, using small, non-random samples⁵ or confining themselves to particular kinds of cases.⁶ Such research has also tended to rely upon observations and interviews rather than analysis of files.⁷ The closest comparison to the present study is research undertaken by the British Legal Aid Board Research Unit, which used Legal Aid Board administrative data and case files to profile family law legal aid cases, looking at matters in dispute, cost, duration and method of resolution.⁸ Again, however, this research was confined to one particular form of service provision: legal aid cases handled by private solicitors. No other study has matched the scope of the present research. Hence, as well as functioning as the first stage of a larger project, the results of our profiling exercise make their own contribution to the literature, and to our understanding of family law litigation.

5 Eg. Richard Ingleby, *Solicitors and Divorce* (Clarendon Press, 1992); Austin Sarat and William Felstiner, *Divorce Lawyers and Their Clients* (OUP, 1995).

6 Eg. John Griffiths, 'What Do Dutch Lawyers Actually Do In Divorce Cases?' (1986) 20 *Law and Society Review* 135 (divorces involving minor children); Gwynn Davis, Stephen Cretney and Jean Collins, *Simple Quarrels: Negotiating Money and Property Disputes on Divorce* (Clarendon Press, 1994).

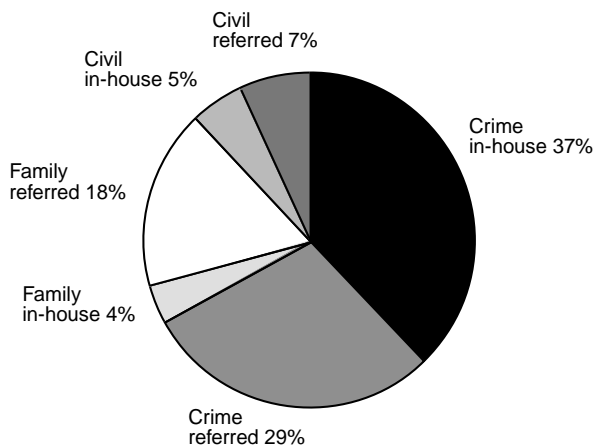
7 See also Lynn Mather, Richard Maiman and Craig McEwen, "'The Passenger Decides on the Destination and I Decide on the Route': Are Divorce Lawyers "Expensive Cab Drivers?'" (1995) 9 *International Journal of Law and the Family* 286. The major exception is Ingleby, above, who did examine solicitors' files, while Davis et. al. looked at the court files relating to their selected cases.

8 Sarah Maclean, *Report of the Case Profiling Study: legal Aid and the Family Justice System* (Legal Aid Board Research Unit, 1998).

The Legal Aid Commissions

24 To place the Legal Aid Commissions' family law practices in context, two things must be noted. First, criminal cases constitute a considerable majority of legal aid work overall, and also of Legal Aid Commissions' work. Secondly, the great majority of legal aid work in family law is referred out to private solicitors, with Legal Aid Commission solicitors handling only a minority of cases. Figure 1 shows the breakdown of criminal, family and civil legal aid cases finalised in the four States covered by the JRC's study in the 1996/97 financial year, and handled in-house or by a private solicitor.⁹ This following chapter, which discusses family law cases handled in-house, should be read in light of these statistics.

FIGURE 1. Legal Aid applications finalised 1996-97



9 Source: Legal Aid and Family Services, *Legal Aid in Australia 1996-97: Statistical Yearbook* (Attorney-General's Department, July 1998), p. 47, table 10.

- 25 Our original intention was to gather information about family law cases handled in-house by the Legal Aid Commissions in each of the four States covered by the study – ie. the Legal Aid Commission of NSW (NSWLAC), Victoria Legal Aid (VLA), Legal Aid Queensland (LAQ), and the Legal Services Commission of South Australia (SALSC). After seeking information about in-house files closed in the 1997–98 financial year, however, it emerged that LAQ has a very limited in-house family law practice, other than in the area of child representation and group-based child support forums. It was therefore decided to exclude LAQ from the Legal Aid Commissions sample. The specific child support services run by the other three Commissions were also excluded, as they provide only advice and administrative-type assistance rather than formal legal representation. In-house family law practices may also handle State domestic violence and children’s care and protection matters, and these were likewise excluded as the research was concerned only with matters under Commonwealth family law legislation.
- 26 The discussion in this chapter begins with the sampling process used to gather data from the three Legal Aid Commissions included, and then reports the results of the file analysis in terms of the four categories of data covered by the survey form: client demographics, matters involved in the cases, dispute resolution, and funding and representation.

Sampling process

- 27 Each of the three Commissions participating in the research was asked to provide data on the numbers of in-house family law files (excluding child representation, child support assistance, State domestic violence cases and children’s care and protection matters, as explained above) closed over the previous 12 months. NSW and SA provided figures for the 12 months from June 1997–May 1998 – 1264 and 463 files closed respectively – while Victoria gave a figure

of 203 files closed for the period July 1997–June 1998. On this basis, it was decided to take a one-quarter sample from each Commission, to give a total of nearly 500 files overall.

- 28 It followed that the majority of files in the sample (approx 300) would come from NSW, reflecting the more extensive in-house family law practice conducted in that State than in the other two States. The files closed in NSW were also spread more evenly across the various suburban and regional offices of the Commission. In NSW, therefore, files were sampled from four LAC offices – Sydney, Penrith, Parramatta and Manly – to give a spread of geographical areas and Family Court and Local Court usage. In the other two States the files sampled were all taken from the head office (Adelaide and Melbourne) of the relevant Commission.
- 29 The target number of files from NSW was closely approximated by the number of files closed in the four selected offices in the period for which we had figures. In South Australia the number of files closed in the Adelaide office in the 1997–98 financial year exceeded the target number from that office, so our coders selected files up to the target number, commencing with those most recently closed. In Victoria, the number of files closed in the Melbourne office was close to the target number from that office.
- 30 The total numbers and distribution of files coded are set out in Table 2.1 on the next page.

TABLE 2.1 Legal Aid Commission file sample

Office	Number of files	Percent
Sydney	98	20.8
Penrith	34	7.2
Parramatta	78	16.5
Manly	101	21.4
Total NSW	311	65.9
SA — Adelaide	112	23.7
Vic — Melbourne	49	10.4
Total	472	100

31 An initial point raised in analysing case files was the question of what constitutes a file. The answer appeared to vary from office to office. Some offices opened a file for each legal aid application, and the file would then be "closed" if the application was rejected. Others only opened a file once a grant of aid was made. This inconsistency was relatively easily resolved for sampling purposes by only counting files in which a grant was made. The above figures reflect this definition. More problematic was the fact that in some cases, a single file would incorporate all of the client's dealings with the relevant office, while in other cases, a new file would be opened for each new matter in which the client obtained a grant of aid. To illustrate, if a residence/contact dispute involved an initial resolution, which subsequently broke down leading either to enforcement proceedings or a fresh application for final orders, and if a party to the dispute was represented by the same in-house legal aid office for both stages, some offices would have all the case material in a single file, while others would have separate files for each proceeding. Thus, in comparing files from the two offices, we would actually be comparing units of a different nature.

- 32 The impact of this difference was not, however, as significant as one might expect. First, where a person's case involved a number of issues over a period of time, there was no guarantee that they would always be represented by the same legal aid office in-house. Parts of their case might be handled by different offices or (more likely) by a private solicitor funded by legal aid. Cases might also be split by the fact that legal aid is available for some matters but not for others, or by a client having their grant terminated and going elsewhere for assistance (eg. to a Community Legal Centre). Thus, there would be a tendency for files to represent only parts of highly-disputed, long-running cases, even in the offices which kept files on a whole-case rather than individual matter basis. According to our survey, IAC clients had had previous legal representation in 10% of cases, while 46% of IAC cases were either wholly or partially unresolved at the time the file was closed. The latter did not necessarily mean that the client continued to pursue their case by other means (they may have withdrawn or abandoned the matter), but it does tend to reinforce the possibly partial nature of many in-house files across all offices.
- 33 Further, whether the file dealt with the whole case or only part of a case would not affect many of the survey questions. It would make no difference, for example, to the questions regarding client demographics, some of the features of the case (eg. the number of children or kinds of property involved, or whether the case involved domestic violence), and general funding and representation details. The only areas affected would be those concerning the number and types of matters involved in the case,¹⁰ and dispute resolution, particularly the time taken to resolve the case, the number of court attendances scheduled, and the number of dispute resolution methods used. As discussed below, there were, in fact, significant differences between the offices in relation to these questions, but

¹⁰ If the same matters were being relitigated (eg. an argument of changed circumstances in relation to residence or contact, or application for variation or to discharge arrears of maintenance) they would be coded in the same way as an original application (ie. the survey form did not distinguish between first or subsequent applications relating to a particular matter). However enforcement proceedings would appear as 'new' matters.

these differences did not consistently reflect different file-keeping practices, and were more readily attributable to other factors. Overall, it appears that different file keeping practices had only limited measurable effects as between the offices studied.

- 34 Another issue having a potential impact on the sample was the diversity of practices in relation to file closure. Some offices kept files open for longer than others after resolution, for the purposes of collecting outstanding financial contributions from clients, and/or simply because file closure was regarded as a low-priority administrative procedure. Since we selected our sample of files by reference to file closure date, a potential complication of different file closure practices was that files closed at the same time might have been opened at quite different times, and hence been subject to different funding guidelines or policies when they were opened. In order to test this we cross-tabulated legal aid office with year of first consultation, and did indeed find a significant difference between offices as to when files in the sample had been opened.¹¹ The difference was very largely accounted for by the Melbourne office of VLA, which had a much higher than average proportion of files in the sample opened in 1993–96, and a much lower than average proportion of files in the sample opened in 1997 and 1998 (none in the latter year). Penrith, conversely, had a lower than average proportion of files in the sample opened in 1993–96 and a higher than average proportion opened in 1997, while Adelaide had a higher than average proportion opened in 1998. In reading the following discussion, then, it needs to be borne in mind that there are some generational differences between the files from the various offices.

Client demographics

- 35 The demographic characteristics of clients recorded included sex, age, race/ethnicity, occupation, source and level of income, accommodation

11 $\chi^2=87.878$, $df=10$, $p<0.001$.

and disability. This information was usually able to be gathered from the client's legal aid application, however some kinds of information were more reliable than others. For example, the legal aid application usually recorded whether a person was paying rent, but did not distinguish between public housing and private rental accommodation. Consequently, coders were compelled to judge this question on the basis of whether or not the amount of rent paid appeared to be a commercial rate. Clearly, this would vary between the three cities involved. In addition, the legal aid form did not directly record whether the client had a disability, so this information had to be gleaned from other information on the file (eg. if the client was an invalid pensioner, or if the client provided the solicitor with information about a disability).

Sex

- 36 In all Commissions the majority of clients were female, with two thirds of clients overall being female and one third male.¹² This reflects the lower socio-economic position of women – particularly single women with dependent children – in the Australian community, and hence their relatively greater tendency to have incomes below the level of the legal aid means test. There were, however, significant differences between legal aid offices as to the gender mix of clients,¹³ with a larger majority of female clients in Penrith and Manly (79%), and a higher proportion of male clients in Adelaide (47%) and Melbourne (45%). These differences may reflect local income distributions, and hence the relative legal aid eligibility of women and men, or they may reflect the particular types of matters handled by different offices, to the extent that gender was related to matter types (see below).

12 Recall that this figure relates only to family law clients. Women made up only 30.5% of approved legal aid applicants in the total legal aid population in the three states under discussion in the 1996-97 financial year: Legal Aid and Family Services, *Legal Aid in Australia 1996-97: Statistical Yearbook* (Attorney-General's Department, July 1998), p. 73, Table 18.

13 $\chi^2=23.472$, $df=5$, $p<0.001$

Age

37 There was no significant difference between the Commissions as to the average age of clients, with the overall median age at first consultation being 33 years. The age groups of clients were as follows.

TABLE 2.2 Legal Aid Commission client age groups

Age group	Number	Percent
0–20	13	3.0
21–30	151	32.2
31–40	216	46.0
41–50	74	15.8
51–65	11	2.4
over 65	3	0.6
Total	468	100

38 There was, however, a significant relationship between age and sex, with male clients (median age 35.5 years) being significantly older than female clients (median age 32 years).¹⁴ This reflects typical age differences between marriage or de facto partners in Australia.¹⁵

Location

39 Most clients of the Sydney office were resident in the Sydney metropolitan area, though they were scattered fairly widely across that area. The office also had a few clients resident outside the Sydney area or interstate. In 11 UNCRAM (recovery of maintenance abroad) cases, the clients lived overseas. Almost all clients of the

14 $F=16.232$, $df=1$, $p<0.001$.

15 See eg. Family Law Council, Annual Report 1997–98 (1998), p. 37.

Penrith office were from outer western Sydney, stretching as far as Katoomba (approx. 40km to the west). Clients of the Parramatta office lived either in Parramatta or surrounding suburbs; clients of the Manly office were mainly from the Northern Beaches (stretching 20km to the north). The Adelaide office had a much higher proportion of interstate clients than did Sydney. In several cases this was due to the fact that Adelaide was the closest Court registry and legal aid office for some interstate centres, for example for clients from Alice Springs (in the Northern Territory) or Mildura (in Victoria). Its local clients were mainly from metropolitan Adelaide, again fairly scattered within that area. Virtually all clients of the Melbourne office were resident in the Melbourne metropolitan area.

Ethnicity

40 Almost two-thirds of clients overall were born in Australia, with just over one-third born overseas.¹⁶ The majority of overseas-born clients were from non-English speaking countries: 25.9% of all clients, compared to 10% of clients born overseas in an English-speaking country. Again there was a significant difference between offices in this respect,¹⁷ with considerably higher than average proportions of Australian-born clients and considerably lower than average proportions of non-English speaking background clients in Penrith and Adelaide, while the majority of Melbourne clients were born in a non-English speaking country (53%). Sydney and Parramatta also had relatively high proportions of non-English speaking background clients, with a relatively low proportion of Parramatta and a relatively

16 1996 Census figures showed 74% of the Australian population born in Australia, with 9% born in overseas in an English-speaking country, and 13% born in a non-English speaking country. However, over half of those born overseas were located in the Sydney and Melbourne metropolitan areas, and 70-75% of people born overseas in Victoria and NSW were born in a non-English speaking country. This may help to account for the difference between the total Census figures and our sample. ABS, Census of Population and Housing: Summary of Findings (Australia), Selected Characteristics (Australia) (1999).

17 $\chi^2=70.052$, $df=10$, $p<0.001$.

high proportion of Manly clients born overseas in English-speaking countries.

- 41 There was also a significant difference between the offices as to when overseas-born clients had arrived in Australia,¹⁸ with Melbourne having the most recent arrivals on average, followed by Parramatta, while Sydney was the office where overseas-born clients had, on average, been in Australia for the longest period of time. Correspondingly, there was a significant difference between offices in clients' interpreting needs,¹⁹ with Penrith and Adelaide having low use of interpreters, and Melbourne having the highest, with an interpreter provided for 39% of clients. Overall, 12.5% of clients had an interpreter.
- 42 Very few clients (3.4%) were of Aboriginal or Torres Strait Islander descent, although the proportion of Indigenous clients was higher than their representation in the total Australian population,²⁰ and certainly higher than their representation in the population of the four States involved in the study.²¹ Adelaide was the office with the highest proportion of Indigenous clients, however the small numbers involved made it impossible to discern any statistical difference between offices on this point. Half of the Indigenous clients were male and half female.

Occupation

- 43 Clients' 'usual' occupations were recorded from the legal aid application, and were then recoded into ASCO categories using the

18 $F=2.925$, $df=5$, $p<0.005$.

19 $\chi^2=47.354$, $df=5$, $p<0.001$.

20 2% in the 1996 Census: ABS.

21 This overrepresentation, combined with the fact that less than 1% of applicants and respondents appearing in the Family Court data set were represented by an Aboriginal Legal Service, suggests that Legal Aid Commissions may play a greater role for Indigenous clients than Aboriginal Legal Services in family law. As noted in chapter 4, Women's Legal Services were also prominent in representing Indigenous women in family law proceedings, although Community Legal Centres were less likely to represent Indigenous men.

ABS coding package. Two additional categories were added to these: home duties, and unknown/no occupation. In the result, the largest single category (25%) was the latter, pointing to a combination of incomplete data recording and inability to match recorded information with ASCO categories. The second highest category was the 'intermediate clerical, sales and service workers' occupational group, with 18% of clients overall, though with higher representation in Penrith and Manly, and lower representation in Adelaide and Melbourne. The third highest category was home duties (16%), with particularly high proportions in Penrith and Parramatta, and a relatively low proportion in Adelaide. The highest representation of professional occupations was in Manly (14%), while the lowest was in Adelaide (1%). Labourers and related workers were most highly represented in Melbourne (14%) and Adelaide (12%), and least represented in Manly (3%). These occupational distributions would appear to be related to the gender distributions of clients in the various offices.

Income

- 44 In all offices, social security benefits were clients' major source of income, with 82% of clients overall mainly dependent on some form of benefits. In relation to other sources of income, a relatively high proportion of Manly clients (18%) were reliant on their own incomes, and a relatively high proportion of Sydney clients were mainly dependent on the financial support of a spouse, partner or other relative (5%), or had no income (5%).
- 45 The median gross annual income of those clients dependent on their own incomes and for whom income information was available (n=41) was \$21,216 (minimum \$7,540, maximum \$34,175). Once more, very small numbers make meaningful comparisons between offices difficult. The overall spread of incomes of clients dependent on their own incomes is set out in Table 2.3. There was no difference

between the median incomes of male and female clients, presumably as a result of the stringent means test applying to all legal aid applicants.

TABLE 2.3 Incomes of Legal Aid Commission clients dependent on their own incomes

Income range	Number	Percent
\$ 5,001–\$10,000	3	7.3
\$10,001–\$20,000	14	34.2
\$20,001–\$30,000	21	51.2
\$30,001–\$40,000	3	7.3
Total	41	100

Housing status

46 Approximately half of all clients were living in private rental accommodation when their file was opened. The next highest accommodation categories were public housing (15.5%) and a parent's or relative's home (14%). Despite the uncertainties outlined earlier in distinguishing between public and private rentals, these figures closely reflect those for legal aid clients of private solicitors (see Chapter 3) and so appear reliable. There was a significant difference between offices in relation to the accommodation status of clients.²² Manly had the lowest proportion of clients identified as living in public housing (6%) (as might be expected given the paucity of public housing on the North Shore). Parramatta had the lowest proportion of clients identified as living in private rental accommodation (40%), and the highest proportion living with parents or relatives (27%).

22 $\chi^2=35.524$, $df=15$, $p<0.005$.

Disability

47 As noted earlier, answering the survey question regarding disability also presented some difficulties. The question asked whether the client had any “verified physical, intellectual or psychiatric disabilities”. This meant that coders would only record a disability where there was direct evidence, rather than attempting to draw inferences from circumstantial material. Consequently, the figures derived on disability would tend to be under- rather than over-estimates. Overall, 14.6% of clients were recorded as having some form of physical, intellectual or psychiatric disability. There were significant differences between offices on this question,²³ Sydney having the highest proportion of clients with an identified disability (24.5%), and Adelaide and Penrith having the lowest proportions (8% and 3% respectively).

Summary

48 In summary, the “typical” in-house legal aid family law client was female, aged 32 years, Australian-born, reliant on social security, and living in some form of rental accommodation, most likely private. Beyond this picture, certain significant differences emerged between legal aid offices in relation to –

- the proportions of male and female clients
- the proportions and language backgrounds of overseas-born clients, how long overseas-born clients had been in Australia, and the use of interpreters
- clients’ housing status
- the proportion of clients with an identified disability.

In relation to interpreters and disabilities in particular, different client profiles might require different levels of resource commitment in order to provide adequate legal services.

23 $\chi^2=17.364$, $df=5$, $p<0.005$.

Case characteristics

Relationships involved

49 Overall, 60% of cases involved the breakdown of a marriage²⁴ and 24% involved the breakdown of a de facto relationship, with a further 2% of cases involving both a defacto relationship and a marriage (where the parties had lived together for some period of time before marrying). The median length of marriages was six years²⁵ (minimum less than one year, maximum 31 years), while the median length of de facto relationships was three years (minimum less than one year, maximum 17 years). 14% of cases involved some other relationship—mostly casual sexual relationships in which the parties had had a child together but never cohabited, plus a small number of cases with a grandparent or other relative seeking residence or contact with a child. The great majority of cases involved one party other than the client, with only 2.3% of cases involving more than one other party. There were no significant differences between offices on any of these points.

Matters involved

50 The survey questionnaire provided a list of 18 separate matters that might be involved in a family law case, plus an 'other' category. The matters specified were: divorce; annulment; residence; contact; care, welfare, development; other specific issues; parenting plan; property division; sole use and occupation; spouse/de facto maintenance; child maintenance; child support; parentage testing; injunctions/restraining orders; breach of an order; contempt; location/recovery orders; and cross-vested matters. The occurrence of major matter

24 One case concerned the client's two former marriages.

25 This is shorter than the 1997 ABS figure for median duration of marriage, which was 7.7 years. Family Law Council, Annual Report 1997-98 (1998), p. 38.

types overall (present in more than 5% of cases) is set out in Table 2.4. It is clear that parenting matters and child maintenance/child support predominate.

TABLE 2.4 Matters involved in Legal Aid Commission cases

Type of matter	Number	% of cases
Contact	306	64.8
Residence	238	50.4
Care, welfare, development	166	35.2
Child maintenance ²⁶	74	15.7
Specific issues	68	14.4
Property	49	10.4
Divorce	36	7.6
Parentage testing	34	7.2
Child support	26	5.5

Note: total % > 100, since more than one matter possible per case.

- 51 There were some significant gender differences in relation to types of matters, with male clients being less likely and female clients more likely to be involved in residence, specific issues and property matters. Note that this does not necessarily mean that female clients were the applicants in those cases. Male and female clients were proportionately represented in other types of matters, including contact, care/welfare/development and child maintenance cases.

26 Generally applications for variation of maintenance or discharge of arrears.

52 There were also significant differences between the offices as to the types of matters involved in cases²⁷—

- Sydney had a low concentration of residence, contact and care/welfare/development cases
- Penrith had a high concentration of residence and contact cases, but no divorce or child support cases
- children's matters at Parramatta included high proportions of care/welfare/development issues and other specific issues, and were most likely to be combined with ongoing contact problems leading to applications for location/recovery orders. Parramatta also had a relatively high proportion of property cases, but no child support matters
- Adelaide had more of a focus on child support and parentage testing, with low proportions of specific issues, location/recovery applications, property and divorce
- there was a greater emphasis on "difficult" divorces in Melbourne (all but two involved a non-English speaking client and in some cases the client's spouse was also unlocatable), with relatively low proportions of residence and specific issues matters, and no child maintenance, child support or parentage testing cases.

53 The number of matters involved in individual cases ranged from one (in 35% of cases) to eight (one case). There was a significant difference between offices as to the numbers of matters involved in cases.²⁸ Sydney and Adelaide had the lowest mean numbers of matters per case (1.81 and 1.87 respectively). The most complex cases in terms of number of matters occurred in Penrith, Manly and Parramatta (means of 2.62, 2.80 and 3.09 matters per case respectively). 41% of

27 Contact: $\chi^2=38.523$, $df=5$, $p<0.001$; residence: $\chi^2=37.075$, $df=5$, $p<0.001$; care/welfare/development: $\chi^2=89.791$, $df=5$, $p<0.001$; child maintenance: $\chi^2=11.741$, $df=5$, $p<0.05$; specific issues: $\chi^2=30.976$, $df=5$, $p<0.001$; property: $\chi^2=14.318$, $df=5$, $p<0.05$; divorce: $\chi^2=41.174$, $df=5$, $p<0.001$; parentage testing: $\chi^2=13.458$, $df=5$, $p<0.05$; child support: $\chi^2=37.859$, $df=5$, $p<0.001$.

28 Numbers of matters: $\chi^2=97.799$, $df=15$, $p<0.001$; mean numbers of matters: $F=18.078$, $df=5$, $p<0.001$.

Parramatta cases involved four or more matters. As noted above, Parramatta and Manly cases tended to include a range of child-related matters rather than just one or two per case.

- 54 The figures on numbers of matters per case to some extent confound expectations that might arise from differences in file keeping practices noted earlier. For example, Sydney was one of the offices that adopted a whole-case approach to files, yet had the lowest mean number of matters per case, while Penrith and Manly had more of a tendency to open a new file for each application, yet had a higher mean number of matters per case (file).
- 55 Overall, 8.5% of cases did not involve children, although all Penrith and virtually all (99.1%) Adelaide cases involved children. Consistent with its divorce emphasis, Melbourne had the highest proportion of cases not involving children (34.7%). In cases that did involve children, the majority (57%) concerned only one child, while 30% involved two children, and 13% involved three or more children.
- 56 Only 10.4% of cases concerned property division. The forms of property most frequently involved were the matrimonial home and household possessions.

Domestic violence and child abuse

- 57 Other issues that might indicate the complexity of a case or impact on the resolution process include allegations of domestic violence and child abuse. The survey questionnaire asked whether there were any allegations of domestic violence between the parties, and if so, whether there was a history of violence in the relationship, whether either party had obtained a State domestic violence order (ADVO, intervention order, etc.), if an order was obtained whether it had been breached, and whether any criminal charges had been brought in relation to the violence. "Domestic violence" was defined on the survey form to include physical, emotional or sexual violence or threats, or economic abuse. Allegations were counted whether or not

they were formally raised in proceedings, and the subsequent questions regarding history of violence, State domestic violence orders and criminal charges were designed as indicators of the veracity of any allegations. The survey form also asked whether there were any allegations of child abuse in the case (defined to include sexual abuse, physical abuse or neglect), and if so, whether any allegations were substantiated by Community Services. Answering these questions required coders to read carefully through the files, to find any file notes, affidavit material, or material in applications that would indicate violence or child abuse. Each question could be answered either "yes", "no", or "unknown". Coders were instructed to use "no" when it would be expected that violence or abuse allegations would have been raised had they existed (eg. where a case had reached the stage of a contested hearing), and "unknown" when the file was too brief or there was insufficient information available to make a clear decision. In practice, however, the distinction between "no" and "unknown" proved difficult to maintain, and the two categories are dealt with together in the following analysis.

- 58 A high proportion of cases involved allegations of domestic violence between the parties – 42.4% overall, comprising 25.6% of cases in which the client was alleged to have been subjected to violence, 11.7% of cases in which the client was alleged to have perpetrated violence, and 4.9% of cases in which the client was alleged to have been both a target and a perpetrator of violence. In the great majority of cases (96%), women were the targets of violence and men the perpetrators.
- 59 There were significant differences between the offices on the level of violence allegations,²⁹ with Parramatta (53.8%) and Sydney (50.0%) having relatively high proportions of cases involving alleged violence. Adelaide had the highest proportion of "no/unknown" cases (70.5%). It must be borne in mind that these figures are as much a reflection of recording practices and assessments of the relevance of violence to

²⁹ $\chi^2=16.780$, $df=5$, $p<0.01$.

the matters in issue as they are of the actual levels of violence between parties. For example, given that Adelaide had a relatively high proportion of child support and parentage testing cases (as opposed to care, welfare and development, specific issues, and location/recovery cases), a lesser level of inquiry into violence between the parties might be expected.

- 60 In cases that did involve allegations of domestic violence, 75.6% included evidence of a history of violence between the parties (defined as more than an isolated incident or incidents of violence), 66.7% included a State domestic violence order, and 23.5% included criminal charges in relation to violence. The total proportion of alleged violence cases including either a recorded history of violence or a State domestic violence order was 88%.
- 61 There were significant differences between offices in relation to recorded details about violence.³⁰ Manly had the highest proportion of cases in which a history of violence was recorded (89.6%), a high proportion of cases in which a State domestic violence order was obtained (79.2%), the highest proportion of known breaches of an order (48.9%), and a high proportion of known criminal charges (35.4%). Similarly, Parramatta had the highest proportion of cases in which a State domestic violence order was obtained (83.3%), and the highest proportion of known criminal charges (42.9%). Conversely, Melbourne had the lowest proportion of cases involving a recorded history of violence (47.1%), and a low proportion of known criminal charges (5.9%), while Adelaide had the lowest proportion of cases in which there was evidence of a State domestic violence order (33.3%), in which an order was known to have been breached (4%), and in which there were known criminal charges (3.1%). It should be noted that the figures may reflect not just the perceived relevance of this information to a particular case, but also local police practices in relation to taking out domestic violence orders and acting upon breaches.

30 History of violence: $\chi^2=14.431$, $df=5$, $p<0.05$; state domestic violence orders: $\chi^2=28.229$, $df=5$, $p<0.001$; domestic violence order breached: $\chi^2=18.672$, $df=5$, $p<0.005$; criminal charges in relation to violence: $\chi^2=24.584$, $df=5$, $p<0.001$.

- 62 22.0% of cases overall involved allegations of child abuse.³¹ Again, the highest proportion of allegations was found in Manly (28.7%) and the lowest proportion in Adelaide (14.3%), but differences between the offices were not statistically significant. Almost half (49%) of the child abuse allegations were officially substantiated by Community Services.³²
- 63 The relationship between violence and child abuse allegations and the incidence of enforcement proceedings (applications for injunctions, breach of an order, contempt, or location/recovery orders) was tested, although in most instances the number of cases involved was too small to enable the drawing of any statistically valid conclusions. However, significant relationships did emerge between location/recovery orders and allegations of both domestic violence³³ and child abuse.³⁴ That is, cases involving allegations of domestic violence and child abuse were disproportionately more likely to include an application by one or other party for a location/recovery order. This suggests that an abusive party to a family law case has effects on the consumption of public resources as well as on the lives of their former partner and/or child(ren).

31 A Monash University study found that child abuse in Family Court cases was generally severe, with physical or sexual abuse, or combinations of both, found in 70% of child abuse cases – Thea Brown, Margarita Frederico, Lesley Hewitt and Rosemary Sheehan, 'Child Abuse and the Family Court', Trends and Issues in Crime and Criminal Justice no. 91, June 1998 (Australian Institute of Criminology), 3. The full report of the study is contained in Thea Brown et. al., Violence in Families: Report number one: The Management of Child Abuse Allegations in Custody and Access Disputes Before the Family Court of Australia (Family Violence and Family Court Research Program, Monash University, 1998).

32 The Monash study, above, found that substantiation rates varied between States with, for example, 22.5% of allegations being substantiated in Melbourne, but twice that proportion substantiated in South Australia: p.4. The researchers also found that only about 9% of child abuse allegations made in the Family Court were false: p.3.

33 $\chi^2=7.599$, $df=1$, $p<0.01$.

34 $\chi^2=11.782$, $df=1$, $p<0.005$.

Summary

64 In summary, case characteristics differed quite significantly between offices. The “typical” case was likely to involve the breakdown of a marriage of approximately six years duration, and the parties were likely to be disputing over contact with and/or residence of between one and two children. However, the number and type(s) of matters involved in the case, and the presence or absence of domestic violence and/or child abuse allegations depended considerably upon the office handling the case.³⁵ Nevertheless, quite a high proportion of cases overall – more than 40% – included domestic violence allegations, and in nearly 90% of these cases the allegations were corroborated by a history of violence in the relationship and/or a State domestic violence order.

Dispute resolution

65 The survey asked a variety of questions regarding dispute resolution processes, how disputes were finally resolved, and the time taken to resolution and file closure. The following section discusses each of these issues in turn.

Resolution processes

66 Family law cases may be dealt with by the Family Court, or (particularly in NSW and Victoria) by a State Local or Magistrates Court, or may be resolved between the parties and/or their lawyers without any court involvement. In the Legal Aid Commissions sample, 22.5% of cases had no court involvement (other than, in a few cases, the filing

35 A similar finding regarding regional variation in matter types and domestic violence applications was made in the British profiling study: Sarah MacLean, Report of the Case Profiling Study: Legal Aid and the Family Justice System (Legal Aid Board Research Unit, 1998), p.22. Variations were also found in the private solicitors and CLCs data for this study – see following chapters.

of a Form 7 or Form 12A), 35.2% were dealt with by a Family Court registry or registries, 33.7% were dealt with by a State Local or Magistrates Court, and 8.7% were dealt with by both a Local Court and the Family Court (in most cases, these began in the Local Court and were transferred to the Family Court).³⁶ The Family Court was most likely to be used in Adelaide and Parramatta, while the Local Court was most likely to be used in Penrith, Manly and Sydney.³⁷ Different State Court usage appeared to reflect both Statewide patterns³⁸ and local preferences.

- 67 The survey aimed to record the court stages that were reached and other forms of resolution that were attempted in each case. The questionnaire included seventeen different options for stages/resolution types, plus 'other' and 'unknown' categories. It was designed to record the presence of a particular stage or kind of resolution attempt rather than the number of times something occurred (eg. the number of counselling sessions or directions hearings). Thus the information gathered relates to the range of stages reached and resolution types attempted. The most frequently reached stages and attempted forms of dispute resolution are shown in Table 2.5. Note that the term "consent orders" refers to orders agreed by the parties and handed up to the court following an application for interim or final orders,³⁹ whereas "interim orders" and "final orders" refers to orders made by the court following a contested hearing on such an application. The majority of "other" resolution types involved the client or other party withdrawing their application or otherwise not proceeding with the case (52 cases). Most of the remaining "other" attempts involved various kinds of applications not specifically catered for among the options on the form.

36 Note that there was no Family Court involvement in the majority of cases (56.2%).

37 Use of Family Court: $\chi^2=62.570$, $df=5$, $p<0.001$; use of State Court: $\chi^2=169.445$, $df=5$, $p<0.001$; no courts involved: $\chi^2=32.585$, $df=6$, $p<0.001$. Lack of court involvement was most likely in Melbourne and Adelaide, and least likely in Penrith (no cases) and Parramatta.

38 Eg. the South Australian Magistrates Court does not generally deal with Family Law Act cases, and the number of family law matters going to the Victorian Magistrates Court is declining—Victorian Magistrates Court, Family Law Act Hearing Statistics 1996/97, Tables FLA 2.2–2.4.

39 By contrast, only 28 cases involved a Form 12A application for consent orders.

TABLE 2.5 Stages reached and forms of resolution attempted in Legal Aid Commission cases

Stage/resolution type	Number of cases	% of cases
Application for final orders	331	70.1
Directions hearing/s	213	45.1
Negotiations between solicitors	189	40.0
Solicitor negotiations with an unrepresented party	146	30.9
Family Court counselling	115	24.4
Other	90	19.1
Consent orders — Family Court	86	18.2
Final orders — Family Court	67	14.2
Interim orders — Family Court	63	13.3
Consent orders — State Court	48	10.2
Interim orders — State Court	47	10.0

Note: total % > 100, since more than one stage/resolution type possible per case.

68 Note that while 70% of cases involved an application for final orders, all other court processes occurred in less than 50% of cases. Negotiations between solicitors and/or solicitor negotiations with an unrepresented party were attempted in a total of 59% of cases (12% of cases involved both forms of negotiation). Given the figures for applications for final orders and solicitor negotiations, it appears that most cases involved a combination of both court-based and out-of-court resolution processes, with the application for final orders perhaps providing a clear articulation of the dispute between the parties, and hence a basis from which out of court negotiations could proceed.

69 The major form of "primary dispute resolution" used was Family Court Counselling. The presence of counselling was positively related to the existence of allegations of domestic violence and child

abuse.⁴⁰ This relationship may in turn arise from the fact that both Family Court counselling and violence/child abuse allegations were more likely to occur in parenting cases.⁴¹ In this context, the Chief Justice's Direction as to the Management of Cases Involving Family Violence should be noted. It states (*inter alia*), that –

The well-being and safety of people using the Court's services will not be compromised by attempts to arrive at negotiated resolution of their disputes.

For those who are in fear of family violence –

- provision will be made for alternative conciliation procedures (eg. interviewing people separately at different times, conciliation by telephone, etc)
- mediation will normally be regarded as inappropriate
- in some cases conciliation may be inappropriate.⁴²

The Family Court's Guidelines for Court Counsellors in Family Violence Cases further state –

[Where counselling has been ordered by the court] If there is an allegation of family violence on file:

the Counsellor... must discuss with the client the options of having a single appointment.

..Where the client approaches the Counselling Service on a voluntary basis the choice to attend counselling should be an informed choice.

40 Domestic violence allegations: $\chi^2=9.153$, $df=1$, $p<0.005$; child abuse allegations: $\chi^2=15.754$, $df=1$, $p<0.001$.

41 Of cases involving children, 43.5% included allegations of domestic violence, 23.6% included allegations of child abuse, and 26.6% included Family Court Counselling. The corresponding figures for cases not involving children were: 27.5%, 5.0%, and 0.

42 Chief Justice's Direction as to the Management of Cases Involving Family Violence, 15 January 1993.

..Where a restraining order prevents the parties from coming into contact with each other they should not have a joint conciliation conference, even where they consent.⁴³

- 70 The survey form did not distinguish between voluntary and court-ordered counselling, nor between joint and individual counselling sessions, so the extent to which these guidelines were followed in the sampled cases is difficult to gauge. The Family Court's Annual Report 1997-98 indicates, however, that the Court counselling service opened 25,297 cases in the course of the year, and held separate interviews due to fear of violence in 8632 cases (34%). This figure is lower than the proportion of cases in our sample involving allegations of violence (42%), but close to the overall proportion of cases in which a history of violence was recorded (32%). On this basis, it appears that the Family Court counselling service is responding appropriately to the issue of violence in cases coming to it.
- 71 The numbers of cases in the sample involving Family Court mediation, private mediation or a legal aid conference were too small to enable statistical conclusions to be drawn in relation to violence. However, there were positive trends in the relationships between violence allegations and private mediation and legal aid conferences. That is, cases involving allegations of domestic violence, a history of violence in the relationship or allegations of child abuse were slightly more likely than cases without those features to go to private mediation or a legal aid conference.⁴⁴ With Family Court mediation, there was a negative trend in relation to domestic violence allegations, but trends were still positive for history of violence and allegations of child

43 Family Court of Australia, Court Counselling Service, Court Counselling Policy Manual, Policy Number 6(b): Guidelines for Court Counsellors in Family Violence Cases (May 1995), paras. 2.1-2.3, 3.1.

44 10.9% of cases with allegations of domestic violence involved private mediation, compared to 7.9% of cases without such allegations; 12.3% of cases with a history of domestic violence involved private mediation, compared to no cases with no history; 12.9% of cases with allegations of child abuse involved private mediation compared to 8.3% of cases without such allegations. The corresponding figures for legal aid conferences were 3.1% v 2.1%, 3.4% v 0, 4% v 2.1%.

abuse.⁴⁵ There was certainly not a clear negative relationship, as one might expect if cases involving violence were rigorously screened out of mediation in accordance with the Family Court guidelines.⁴⁶

- 72 There were significant differences between legal aid offices in relation to most attempted resolution types. Outside the court, Penrith and Manly cases were most likely to involve private mediation, but this was not used at all in the Adelaide or Melbourne cases.⁴⁷ Negotiations between solicitors,⁴⁸ and between the legal aid solicitor and the other party,⁴⁹ were most likely to occur in Parramatta and Manly, and least likely to occur in Adelaide and Melbourne. Given the differences noted earlier in the types of matters handled by different offices, it appears that private mediation and solicitor negotiations are associated with parenting matters (residence, contact, parental responsibility, specific issues), which were more likely to be found in Penrith, Manly and Parramatta cases than in Adelaide and Melbourne cases. Local office practices may also account for some of the differences in negotiation activity.
- 73 Penrith had a relatively high proportions of matters reaching the stage of final orders in a State Court,⁵⁰ while Parramatta had relatively high proportions of matters reaching both interim⁵¹ and final orders⁵² in the Family Court. Adelaide also had a relatively high proportion of

45 Allegations of domestic violence: 0.5% v 1.7%; history of violence: 0.7% v 0; allegations of child abuse: 2.0% v 1.2%.

46 A study of the Family Court and three community-based mediation services in 1995 concluded that those agencies were "well-informed about and highly sensitive to violence related issues". While none categorically excluded cases involving violence from mediation, all had screening processes and policies concerning when and how mediation was appropriate: Laurie Moloney et al., *Managing Differences: Federally Funded Family Mediation in Sydney: Outcomes, Costs and Client Satisfaction* (AGPS, Canberra, 1996), p.193. There has been no equivalent study of legal aid conferencing.

47 $\chi^2=43.962$, $df=5$, $p<0.001$.

48 $\chi^2=37.078$, $df=5$, $p<0.001$.

49 $\chi^2=103.132$, $df=5$, $p<0.001$.

50 $\chi^2=74.841$, $df=5$, $p<0.001$.

51 $\chi^2=12.439$, $df=5$, $p<0.05$.

52 $\chi^2=18.748$, $df=5$, $p<0.005$.

matters receiving interim orders in the Family Court, but few cases reaching final orders, with consent orders⁵³ a far more likely outcome. Manly had a relatively high proportion of matters reaching consent orders in a State Court.⁵⁴ There were low proportions of applications for final orders⁵⁵ and directions hearings⁵⁶ in Melbourne, reflecting the relatively high proportion of divorce cases run from that office. The distribution of Family and State Court orders generally reflect different court usage in the different offices.

- 74 The mean number of stages/resolution types attempted per case also varied significantly between offices.⁵⁷ The overall mean was 3.53 stages/resolution types attempted per case, but the highest means were found in Parramatta and Manly (4.81 and 4.33 respectively), and the lowest means were found in Melbourne and Adelaide (1.96 and 2.77 respectively). The mean number of stages/resolution types per case was strongly related to the number of matters per case for each office.⁵⁸ Further, cases involving allegations of domestic violence had a significantly higher mean number of attempted resolution types per case (4.08) than those without such allegations,⁵⁹ reinforcing the observation that violence cases consume greater resources than others. Cases involving allegations of child abuse, however, had a significantly lower mean number of attempted resolution types per case (3.25) than those without.⁶⁰
- 75 In addition to the various stages of the court process reached, coders recorded the total number of scheduled court attendances in each case, counting return dates, directions hearings, pre-hearing conferences, conciliation conferences, adjourned dates, etc. The average number

53 $\chi^2=31.424$, $df=5$, $p<0.001$.

54 $\chi^2=33.276$, $df=5$, $p<0.001$.

55 $\chi^2=82.240$, $df=5$, $p<0.001$.

56 $\chi^2=45.454$, $df=5$, $p<0.001$.

57 Kruskal-Wallis $\chi^2=98.475$, $df=5$, $p<0.001$.

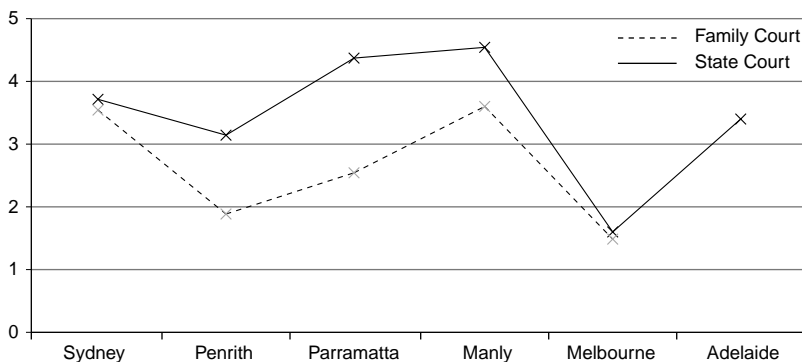
58 $R=0.461$, $p<0.01$.

59 Mann-Whitney $U=20581.500$, $p<0.001$.

60 $F=25.017$, $df=1$, $p<0.001$.

of scheduled court attendances in the Family Court was 3.6 and in a State Court was 3.1. However there were significant differences between offices in relation to mean numbers of court dates scheduled,⁶¹ as shown in the Figure 2.⁶² These results do not clearly reflect the number of matters dealt with by the different offices, or the particular courts involved (for example, both Sydney and Manly cases went to the Sydney Registry of the Family Court, while Penrith and Parramatta cases went to the Parramatta Registry, but the mean numbers of Family Court dates scheduled differed between these offices).

FIGURE 2. Mean numbers of court dates scheduled



76 A backward stepwise regression was performed to investigate the factors impacting on the number of appearances in each court, from which some consistent patterns emerged –

- First, the presence of a child representative in a case had the largest impact on the number of Family Court appearances, and also had a significant impact on the number of State Court appearances.⁶³

61 Family Court: Kruskal-Wallis $\chi^2=23.274$, $df=5$, $p<0.001$; State Courts: Kruskal-Wallis $\chi^2=20.480$, $df=5$, $p<0.005$.

62 There is no State Court figure for Adelaide, since only one Adelaide case involved use of the Magistrates Court.

63 Family Court: $t=6.256$, $p<0.001$; State Court: $t=2.713$, $p<0.01$.

- Secondly, and not surprisingly, the use of the Family Court in a case had the greatest negative impact on the number of State Court appearances, and the use of the State Court also had a negative impact on the number of Family Court appearances.⁶⁴
- Thirdly, the representation status of the other party affected the number of court appearances, though the precise nature of this effect differed between the Family Court and State Courts.⁶⁵
- Fourthly, the presence of domestic violence allegations increased the number of Family Court (but not State Court) appearances.⁶⁶
- Finally, the fact that a case was handled by a particular legal aid office meant that there would be fewer court dates: in both the Family and State Courts in the case of Melbourne,⁶⁷ and in a State Court in the case of Penrith and Parramatta.⁶⁸ This last finding relates to local office and court practices, rather than any single feature of the cases handled by those offices.

While these patterns are of interest, it should also be noted that the ultimate regression models achieved were not particularly powerful (explaining only 34.8% of the variance in the case of the Family Court,⁶⁹ and 22.1% in the case of the State Court⁷⁰). This suggests that the analysis is hampered both by relatively small numbers, and fairly “noisy” data, subject to a great variety of influences.

64 Family Court: $t=-2.546$, $p<0.05$; State Court: $t=-4.274$, $p<0.001$.

65 Family Court: if the other party was wholly unrepresented there were fewer court dates: $t=-2.701$, $p<0.01$; however, if the other party was unrepresented at any stage, there were more court dates: $t=2.719$, $p<0.01$. It is difficult to know what to make of this finding. State Court: if the other party was represented by a private solicitor on a self-funded basis, there were more court dates: $t=1.963$, $p=0.051$.

66 $t=3.204$, $p<0.005$.

67 Family Court: $t=-4.358$, $p<0.001$; State Court: $t=-3.045$, $p<0.005$.

68 Penrith: $t=-3.607$, $p<0.001$; Parramatta: $t=-1.674$, $p=0.096$.

69 $R^2=0.348$, $F=16.206$, $df=6$, $p<0.001$.

70 $R^2=0.221$, $F=7.783$, $df=6$, $p<0.001$.

Stage and method of resolution

77 As noted in the previous section, 70% of cases in the sample (331) involved the filing of an application for final orders. These cases are of interest since there are several possibilities as to the point at which and the method by which they may be resolved, ranging from fairly rapid out of court settlement to lengthy court proceedings. The stages at which the applications in the sample were resolved are set out in Table 2.6. It can be seen that the largest group of cases—almost one third—proceeded to final hearing, in either the Family Court (n=56) or a State Court (n=48). It should be noted, however, that not every case proceeded through every stage listed before reaching a hearing, particularly in the State Courts. For example, only 10 cases went to hearing following a pre-hearing conference, while in 42 cases the step before final hearing was a directions hearing, and in 36 cases the hearing occurred directly following the filing of the application for final orders. It should also be noted, as discussed further below, that a number of the final hearings (26%) were undefended.

TABLE 2.6 Stages at which Legal Aid Commission applications for final orders were resolved

Stage	Number	Percent
Before directions hearing	44	13.3
At/after directions hearing	44	13.3
At/after interim orders	31	9.4
At/after conciliation conference	6	1.8
At/after pre-hearing conference	15	4.5
At final hearing	104	31.4
Unresolved	87	26.3
Total	331	100

- 78 It was difficult to obtain precise information from files about length of hearings, particularly if a case ran for less than a day. A few Family Court hearings ran for more than one day, with the longest running for five days. The longest hearing in a State Court was two days (in two cases). However, the great majority of hearings in each court ran for a day or less.
- 79 There were significant differences between offices in relation to hearings on applications for final orders,⁷¹ with Parramatta having a relatively high proportion of cases proceeding to hearing in the Family Court, and Penrith having a relatively high proportion of cases proceeding to hearing in a State Court. By contrast, Melbourne had relatively low proportions of cases proceeding to hearing in either court, and Manly had a relatively low proportion of cases proceeding to hearing in the Family Court.
- 80 In addition to these differences, there were a number of significant relationships between client and case characteristics and the occurrence of a final hearing in cases involving an application for final orders, particularly in State Courts. Cases proceeding to final hearing in the Family Court involved a higher mean number of matters per case (2.7) than did those not proceeding to hearing (2.3).⁷² A logistic regression analysis of the factors significantly related to a State Court hearing⁷³ indicated that the most salient predictor of a case going to hearing in a State Court was the presence of a relationship other than marriage or a de facto relationship.⁷⁴

71 Family Court: $\chi^2=30.327$, $df=5$, $p<0.001$; State Courts: $\chi^2=82.820$, $df=5$, $p<0.001$.

72 $F=5.070$, $df=1$, $p<0.05$.

73 Female client: $\chi^2=6.548$, $df=1$, $p<0.05$; younger client (median age of clients was 32 in cases proceeding to hearing, and 34 in cases not proceeding to hearing): $F=5.682$, $df=1$, $p<0.05$; relationship other than marriage/de facto: $\chi^2=9.474$, $df=2$, $p<0.01$; residence an issue in the case: $\chi^2=10.046$, $df=1$, $p<0.005$; presence of a State domestic violence order: $\chi^2=8.246$, $df=1$, $p<0.005$; higher number of matters per case (mean number of matters in cases proceeding to hearing was 2.9, compared to a mean of 2.3 matters in cases not proceeding to hearing): $F=11.270$, $df=1$, $p<0.005$.

74 Marriage or de facto relationship: $B=-1.1455$, $p<0.005$. As noted earlier, the 'other' relationships involved were usually casual sexual relationships which had resulted in a child, although the parties had never cohabited.

- 81 Only 11 cases (2.3%) involved the making of an order for costs following a final hearing. Orders were made in favour of the client in 10 of those cases, clearly demonstrating the operation of the legal aid merits test.
- 82 As noted above, cases that went to a final hearing may have been contested or undefended. The actual means by which matters in the cases studied, other than dissolution applications, were finally resolved, are set out in Table 2.7. Note that the table refers to matters rather than cases. The total number of matters in all of the cases, excluding dissolution applications, was 1063.

TABLE 2.7 Means of resolution in Legal Aid Commission cases

Nature of resolution	Number of matters	Percent
Out of court	51	4.8
Application for consent orders (Form 12A)	10	0.9
Interim orders	26	2.4
Consent orders	305	28.7
Undefended final orders	75	7.1
Final orders following contested hearing	194	18.3
Other and unknown	70	6.6
Unresolved	332	31.2
Total	1063	100

- 83 As can be seen, by far the most frequently occurring final resolutions were consent orders, embodying an agreement between the parties after an application for final orders had been made. "Out of court" resolution methods included private resolution, Family Court counselling, mediation, and negotiations between solicitors. "Other" methods included the simple filing of an application or making of directions.

84 There was some variation in resolution types in relation to particular matters. For example, the most frequent resolution for parenting matters was consent orders, there was a more even mix of consent orders and final orders in child maintenance and parentage testing matters, while final orders predominated in child support matters (ie. cases seeking variation of a Child Support Agency assessment). Consent orders and final orders were also the most frequent resolution types for property matters, but there was a greater spread of other resolution types, including out of court methods and Form 12A applications. There was also something of a spread in relation to s.112AD applications, with out of court and "other" methods accounting for almost as many matters as those in which consent orders or final orders were made. Interim orders were the most frequent resolution type for location/recovery matters. 'Other' matters were mostly dealt with by directions. The small numbers involved made it impossible to discern statistically significant differences between offices in relation to the way in which particular types of matters were resolved. However, the trend was for parenting and location/recovery matters to be resolved by a relatively high proportion of final orders in Penrith, but by a relatively high proportion of out of court methods in Adelaide and Melbourne.

85 Tables 2.6 and 2.7 show a substantial group of "unresolved" matters. The overall proportion of unresolved cases was 36.2%, however this figure varied significantly between offices,⁷⁵ with Penrith and Parramatta having much lower proportions of unresolved cases (11.8% and 20.5% respectively), while Adelaide and Melbourne had much higher proportions (45.5% and 51.0% respectively). There were various reasons why a case might have been unresolved or its ultimate outcome unknown, ranging from the client losing contact with the legal aid office, to the client's legal aid grant being terminated. As seen in the section on Funding and Representation (below), Penrith and Parramatta had lower proportions of cases in which the client lost contact or had their legal aid grant terminated.

75 $\chi^2=26.495$, $df=5$, $p<0.001$.

By contrast, Adelaide had high proportions of both, while Melbourne had high proportions of cases in which the client lost contact or the other party was unlocatable, preventing the case from being pursued.

86 Unresolved cases were strongly associated with lack of court involvement,⁷⁶ suggesting either that some form of court involvement was conducive to resolution, or that some characteristic/s of the unresolved cases prevented a court application being made. The latter would be the case if, for example, clients lost contact at an early stage of the case. However this hypothesis was belied by the fact that there were no significant differences between the median times taken to close resolved and unresolved cases. Unresolved cases also had a lower mean number of matters per case (1.9) than did resolved cases (2.6), suggesting that cases involving a greater number of matters were easier to resolve (perhaps having greater scope for compromise or trade-offs), and/or that clients with more matters at stake were more likely to persist with their cases and less likely to lose contact. The offices noted above with the lowest proportion of unresolved cases also had relatively high mean numbers of matters per case (Penrith 2.6, Parramatta 3.1), while the offices with the highest proportions of unresolved cases had lower mean numbers of matters per case (Melbourne 2.0, Adelaide 1.9).

87 Apart from those cases that were completely unresolved, not all matters were resolved in every case counted as "resolved". In other words, while a "resolved" case might have included three matters, it was possible that only two of those matters were actually resolved, with the other being abandoned, or dealt with outside the scope of the client's legal aid grant. Approximately 10% of "resolved" cases were in fact partially resolved in this way. There was no significant difference between offices as to the percentage of matters unresolved in "resolved" cases. The major types of matters that tended to remain unresolved in such cases were property and contact issues. The

76 $\chi^2=132.009$, $df=1$, $p<0.001$.

former may be explained by property not being covered by the legal aid grant, while the latter may have been left to the parties to deal with once residence had been established.

Resolution and closure times

88 In measuring the time taken to resolve cases, four dates were recorded: the date of first consultation with the client, date of the first application for legal aid, date of final resolution (if a resolution was reached), and date the file was closed. In virtually all in-house legal aid cases the date of first consultation was the same as the date of the first application for legal aid. As noted earlier, there were significant differences between offices in relation to dates of first consultation, with Melbourne cases being considerably 'older' than those from the other offices. One point of interest was the fact that almost 40% of cases had a first consultation date after 1 July 1997, ie. after the advent of the new Commonwealth guidelines relating to eligibility for legal aid. Again, there was a significant difference between offices in this respect,⁷⁷ largely accounted for by the small proportion of Melbourne cases opened post-1 July 1997. However, both Penrith and Adelaide had relatively high proportions of cases commenced after that date (64.7% and 55.4% respectively).

89 Resolution times varied according to a number of factors. Table 2.8 sets out the times in months from first consultation to resolution for cases resolved at various stages of the litigation process. The table shows both the median resolution time for each stage of resolution (ie. the time within which 50% of cases completed at that stage were resolved), and the time within which 90% of cases completed at that stage were resolved.

77 $\chi^2=47.188$, $df=5$, $p<0.001$.

TABLE 2.8 Legal Aid offices — resolution times by stage of resolution

Stage	No. cases resolved	Median resolution time	90% resolution time
No application for final orders	58	4.0 months	10.3 months
Application, before directions hearing	44	2.0 months	9.5 months
At/after directions hearing	44	4.5 months	15.0 months
At/after interim orders — Family Court	14	3.0 months	14.0 months
At/after interim orders — State Court	17	3.0 months	6.8 months
At/after conciliation conference	6	3.0 months	14.7 months
At/after pre-hearing conference	15	17.0 months	32.8 months
At/after final hearing — Family Court	55	6.0 months	13.4 months
At/after final hearing — State Court	49	3.0 months	11.0 months
Total	302	4.0 months	14.0 months

90 Apart from the very lengthy time for cases resolved at or after a pre-hearing conference but before final hearing (which appears anomalous), it can be seen that median resolution times for the different stages did not vary greatly. The median time for resolution by final hearing in a State Court was the same as the median time for resolution by interim orders in either the Family or a State Court. The median time for resolution by final hearing in the Family Court was twice as long, but was still only six months. The median resolution time for cases in which no application for final orders was made was longer than for most stages following an application, although the 90th percentile figures showed the reverse pattern.

91 Resolution times were not related to any potentially relevant client characteristics (sex, overseas-born, use of interpreters, occupation, or disability), nor to the mean number of matters per case, nor to the presence of allegations of domestic violence or child abuse. Cases

involving residence had a shorter median resolution time (3 months) than cases without (4.5 months),⁷⁸ while cases involving child support had a longer median resolution time (6 months) than cases without (3 months).⁷⁹

- 92 As might be expected from Table 2.8, there was a highly significant relationship between median resolution time and use of the Family Court or State Court.⁸⁰ Cases dealt with by a Family Court registry or registries had a median resolution time of 5 months, cases dealt with by a State Local or Magistrates Court had a median resolution time of 3 months, and cases with no court involvement had a median resolution time of 2 months (there was insufficient data to determine whether the difference in times between cases with and without court involvement was significant). In addition, there was a significant relationship between median resolution time and number of resolution types attempted per case.⁸¹ Use of Family Court counselling and obtaining Family Court interim orders in particular appeared to prolong median resolution time,⁸² no doubt because these were 'extra' steps which were considered necessary in the relevant cases.
- 93 There were also significant differences between legal aid offices in median resolution times, as shown in Table 2.9.⁸³

78 Mann-Whitney U=8899.500, p<0.005.

79 Mann-Whitney U=1096.000, p<0.05.

80 Family Court/not Family Court: Mann-Whitney U=7359.000, p<0.001; State Court/not State Court: Mann-Whitney U=9221.500, p<0.005.

81 Spearman's R=0.323, p<0.01.

82 Family Court counselling: median time without = 3 months, with = 5 months, Mann-Whitney U=6143.000, p<0.005; Interim orders: median time without = 3.5 months, with Family Court = 6 months, Mann-Whitney U=3013.500, p<0.001.

83 Kruskal-Wallis $\chi^2=20.879$, df=5, p<0.005.

TABLE 2.9 Legal Aid office case resolution times

Office	No. cases resolved	Median resolution time	90% resolution time
Sydney	63	3.0 months	15.8 months
Penrith	30	1.0 months	13.7 months
Parramatta	62	4.0 months	14.0 months
Manly	61	4.0 months	11.8 months
Adelaide	61	6.0 months	18.8 months
Melbourne	25	4.0 months	8.2 months
Total	302	4.0 months	14.0 months

94 Some of the differences between offices may be explained by reference to the types of matters handled. For example, as noted in the previous section, Adelaide dealt with a high proportion of child support matters, which tended to take longer, while Penrith dealt with no child support matters but a high proportion of residence matters, which tended to be of shorter duration. The use of a particular court registry rather than of the Family Court or a State Court *per se* appears to be reflected in the 90th percentile resolution times, with Family Court cases taking longer to resolve in Adelaide than in Parramatta, and State Court cases taking longer to resolve in Sydney than in Manly. Melbourne had the narrowest distribution of resolution times, with the time taken to resolve 90% of cases well below the mean.

95 A backwards stepwise regression was performed to determine the relative impact on resolution time of the various potentially influential factors.⁸⁴ The regression model retained six factors.

⁸⁴ Case involved residence, case involved child support, no courts involved, case involved a State Court, case involved the Family Court, case included Family Court counselling, number of stages/resolution types attempted, other party legally aided, other party self-funding, other party self-representing, presence of a child representative, case handled by Sydney, Penrith, Parramatta, Adelaide, Melbourne legal aid offices.

- Resolution time increased the more court stages were reached and forms of resolution were attempted.⁸⁵
- The presence of a child representative tended to increase resolution time.⁸⁶ The presence of a child representative may indicate that a case is particularly contested or complex, and/or it may simply add to the time taken to resolve the case by introducing an additional party into negotiations, and possibly extra steps such as the commissioning of a Family Report. Recall also that the presence of a child representative increased the number of court appearances in a case.⁸⁷
- The presence of residence as an issue in the case decreased resolution time.⁸⁸
- In addition, if a case was handled by the Adelaide or Melbourne legal aid offices resolution time was increased, whereas if a case was handled by the Penrith office, resolution time was decreased.⁸⁹ The Melbourne result is curious. It appears to be related to the particular distribution of resolution times for a small number of cases, and hence may not be reliable. The Adelaide and Penrith results are consistent with Table 2.9.

The overall model employing these six factors explained 30.3% of the variance in resolution times,⁹⁰ a result that again suggests "noisy" data rather than a particularly powerful or predictive model.

85 t=6.647, p<0.001.

86 t=3.540, p<0.001.

87 In the Legal Aid Board's profiling study, one of the few features found to have a significant impact on the cost of a case was a result involving supervised contact: Sarah Maclean, Report of the Case Profiling Study: Legal Aid and the Family Justice System (Legal Aid Board Research Unit, 1998), p. 41. There is an interesting similarity (although obviously not a direct parallel) between this finding and the conclusion here concerning the impact of a child representative on case duration.

88 t=-4.875, p<0.001.

89 Adelaide: t=3.783, p<0.001; Melbourne: t=2.476, p<0.01; Penrith: t=-2.746, p<0.05.

90 R²=0.303, F=21.199, df=6, p<0.001.

96 As noted earlier, file closure is essentially an administrative procedure, hence is of less interest than case resolution. Of all the offices, Adelaide had the shortest median time between case resolution and file closure (1 month), while Melbourne had the longest (19 months).⁹¹ It was the long median closure time rather than any difference in resolution time that accounted for the different generation effect, noted earlier, for Melbourne files.

Summary

97 To summarise, a small majority of cases in the sample commenced before 1 July 1997, and cases were almost equally likely to be dealt with by the Family Court, a State Court, or to have no court involvement. The typical case involved an application for final orders, solicitor negotiations with the opposing solicitor or unrepresented party, and possibly also a directions hearing or hearings. Cases involving allegations of domestic violence were more likely than others to involve Family Court counselling and interim order applications, and to have a higher number of court appearances.

98 Almost one third of cases involving an application for final orders proceeded to a final hearing, although the average duration of hearings was one day or less. Cases proceeding to hearing had a higher number of matters per case than others. Matters were most commonly resolved by consent orders or by final orders following a contested hearing. Over one third of cases remained unresolved, and these tended to lack court involvement. The time taken to resolve the case increased with the number of resolution types attempted and with the presence of a child representative, but decreased if residence was one of the issues in dispute.

91 Closure dates were unavailable for many files.

- 99 There were also many significant differences between offices in relation to—
- use of the Family Court, a Local Court, or no court involvement
 - the mean number of court dates scheduled
 - the stages reached and kinds of resolution attempted, and the number of attempted resolution types
 - the proportions of cases (and particular types of matters) proceeding to hearing, and resolved by consent orders or judicial orders
 - the proportion of unresolved cases
 - case commencement dates
 - resolution times.

Funding and representation

Client's funding

- 100 The great majority of clients (75%) were required only to pay the minimum compulsory payment for their legal aid representation (then \$20 in South Australia, \$30 in Victoria and \$40 in NSW).⁹² However, there were significant differences between offices,⁹³ with a relatively high proportion of Melbourne clients assessed to pay an additional client contribution (18.4%), compared to no clients funded on this basis in Penrith; and a relatively high proportion of Sydney and Penrith clients obtaining a waiver of the compulsory payment (32.2% and 23.5% respectively), compared to very few clients obtaining a waiver in Parramatta (1.4%) and Adelaide (5.4%).
101. In 30% of cases the client experienced some difficulty with legal aid funding—their initial application for legal aid was rejected (4%), an application for an extension of aid was refused (3%), the terms of

92 In 50 (14%) of these cases the debt was ultimately written off.

93 $\chi^2=58.455$, $df=10$, $p<0.001$.

their grant limited the way their case could be handled (5%),⁹⁴ and/or – in almost one quarter (23%) of cases – their legal aid grant was terminated. More than one of these events could occur in the course of any given case. There were significant differences between offices in relation to termination of legal aid grants,⁹⁵ with Melbourne having a relatively low proportion of terminations (12%) and Manly a relatively high proportion (34%). The major reasons for termination were fairly evenly divided between a determination that the case no longer fell within the legal aid guidelines (it no longer satisfied the merits test or no longer concerned a priority matter, or the client no longer satisfied the means test), or the client lost contact.

Client's representation

102 10% of clients had had previous legal representation in the case before coming to the relevant in-house legal aid practice. The majority of previous representatives were private solicitors, evenly divided between self-funded and legally-aided. In 39% of cases the in-house legal aid practice ceased to act for the client. The major reasons for ceasing to act were that the client's legal aid grant was terminated or exhausted (11%), or that the client lost contact (16%). Clients who lost contact were significantly more likely to be Australian-born than overseas born (in either an English-speaking or non-English speaking country).⁹⁶ There were no other client characteristics associated with those who lost contact. The client moved to another legal service provider in a further 8% of cases. In the latter situation it would be expected that the case would continue to be pursued with the new legal representative, however in the other scenarios (terminated legal aid funds or client lost contact), the client

94 For example, aid was granted for negotiations only but not to commence court proceedings, or for interim orders only but not for final orders, or aid was granted to deal only with children's matters but not with the property aspects of the case.

95 $\chi^2=12.937$, $df=5$, $p<0.05$.

96 $\chi^2=7.428$, $df=2$, $p<0.05$.

would either have had to continue unrepresented or decide not to pursue the case.

Child representation

103 It was seen earlier that the kind of cases in which a child representative was involved had a higher number of court dates and longer case resolution times than other cases. 41 cases in the sample included a child representative – less than 10% of the total.

Other party's representation

104 Where the other party was represented by a private solicitor, their funding status was often unknown (28.6% of cases). In 19 cases (4.0%) the other party was known to have legal aid, while in 81 cases (17.2%) the other party was self-funded. Cases in which the other party was self-funded were significantly more likely to remain unresolved,⁹⁷ perhaps reflecting the ability of a party with superior resources and bargaining power to 'hold out' against one who is legally-aided.

105 In 40% of cases the other party was self-representing for some or all of the case. There was a significant difference between offices in this respect,⁹⁸ with Adelaide and Melbourne clients having relatively low proportions of unrepresented opponents (18.8% and 18.4% respectively), while Parramatta and Manly clients had high proportions of unrepresented opponents (59.0% and 64.4% respectively). Self-representing opponents were significantly over-represented in care/welfare/development,⁹⁹ specific issues,¹⁰⁰ and child maintenance

97 $\chi^2=9.028$, $df=2$, $p<0.05$.

98 $\chi^2=68.438$, $df=5$, $p<0.001$.

99 $\chi^2=7.085$, $df=1$, $p<0.01$.

100 $\chi^2=4.322$, $df=1$, $p<0.05$.

cases.¹⁰¹ Where the other party was self-representing for part of the case (14% of cases in total), the most usual pattern was for them to be unrepresented initially, and then to obtain legal representation as the case progressed. Cases in which the other party was wholly self-representing had a significantly shorter median resolution time (3 months) than did cases in which the other party had some form of representation throughout (4 months).¹⁰² This may reflect a power imbalance between represented and unrepresented parties, or it may reflect the other party's willingness to resolve their case rapidly and without perceiving a need for legal representation.

106 Finally, in 20% of cases the other party's representation was unknown – usually because that party could not be located (which might lead to the case being either conducted *ex parte* or abandoned). This was most likely to occur in Melbourne (47% of cases) and least likely to occur in Parramatta and Manly (5% and 6% of cases respectively).¹⁰³

Summary

107 In summary, the in-house legal aid client was typically assessed to pay only the minimum compulsory contribution, the other party was represented either by themselves or by a private law firm, and there was no child representative involved in the case. The legal aid office ceased to act for the client in a large minority of cases, either due to the client losing contact or the client's legal aid grant being terminated.

101 $\chi^2=7.176$, $df=1$, $p<0.01$.

102 Mann-Whitney $U=6926.500$, $p<0.005$.

103 Differences between offices were significant: $\chi^2=51.914$, $df=5$, $p<0.001$.

Differences between offices related to –

- level of client contributions (compulsory payment waived, compulsory payment only, or additional contribution)
- proportions of cases in which the client's legal aid grant was terminated
- the other party's representation status.

Conclusion

108 The foregoing discussion presents a detailed picture of in-house legal aid work on files closed in the 1997–98 financial year. Due to the fact that the Melbourne files were commenced much earlier on average than the files from the other offices, and therefore represent a different 'generation' of cases, the picture of Melbourne cases probably does not provide a basis for drawing conclusions about current caseload. Conversely, the snapshot taken of the other offices may provide more useful insights into current caseload.

109 Nevertheless, the many significant differences found between offices – in relation to case characteristics and resolution processes in particular – make it difficult to generalise about in-house legal aid work in family law. Particular matters raised in cases, the preferred court and other local office dispute resolution practices, policies and practices in relation to legal aid grants, and the representation status of the other party all have an effect on the course of a case. Hence, there is a need to pay attention to local difference in any comparison of in-house work and legal aid work undertaken by private solicitors.

Private Solicitors

- 110 As noted at the beginning of the previous chapter, private solicitors handled over 80% of family law legal aid work in 1996–97 in the four states covered by this study. Thus, information about legal aid cases dealt with by private solicitors gives a better indication of the general features of legal aid work than does corresponding information about cases dealt with by Legal Aid Commissions. Nevertheless, comparisons between private solicitors and Legal Aid Commissions are instructive in terms of different modes of legal aid service delivery. Private solicitors also, of course, handle cases for self-funded clients. The discussion in this chapter therefore raises frequent comparisons between legal aid cases and self-funded cases dealt with by the same legal service providers.
- 111 The method of gathering information about family law cases from private solicitors' files was necessarily different from the method of gathering information from Legal Aid Commission files. While the latter involved coding a large number of files from each of a small number of offices, the much greater number of solicitors' firms presented a different prospect. So too did the issue of client confidentiality, since LACS' statutory research function enabled them to authorise researchers to examine their files in a way not open to private solicitors. It was not practical in the time available to request solicitors to seek clients' permission for researchers to have access to their files. Instead, it was decided to request solicitors to fill out the survey forms themselves in relation to files closed in the last financial year. In order to minimise the burden on solicitors, each firm was asked to fill out survey forms for a maximum of four files. This in turn meant sampling a large number of firms, in order to obtain a meaningful number of cases for analysis. While, as explained

in the previous chapter, the study involved only three LACs, the sample of private solicitors covered all four States originally planned to be included in the study.

Sampling process

- 112 A list of "known family law firms" was constructed for each State, comprising firms with accredited family law specialists or equivalent,¹⁰⁴ and firms which undertook a substantial amount of legal aid work in family law, as advised by the LAC in each State (there was some overlap between these two categories). Approximately half of the firms on each State list were included in the sample, giving a total of 338 firms.
- 113 The sample of firms was stratified along a number of axes. First, we were interested in any differences between city, suburban and country firms, so the sample in each State was constructed so as to reflect the relative proportions of "known family law firms" in each geographical area in that State.¹⁰⁵ These proportions varied considerably. For example, more than half of the firms in Queensland were outside the Brisbane metropolitan area, whereas more than half of the firms in South Australia were located in the city of Adelaide. The highest proportion of Victorian firms was in suburban Melbourne.
- 114 We were also interested in any differences between areas of different socio-economic status, measured by reference to median weekly income. Using ABS data on median weekly income by statistical local area from the 1996 Census for the four States included in the

104 There is no family law specialist accreditation scheme in South Australia, so for that State we relied on the Law Society's list of firms willing to accept family law referrals, plus some additional assistance in identifying family law firms from the Legal Services Commission.

105 The areas were defined by postcode in each state. In NSW, 'city' was defined as postcodes 2000-2001, and 'suburban' defined as postcodes 2002-2232; in Victoria, 'city' was defined as postcodes 3000-3001, and 'suburban' defined as postcodes 3002-3209; in Queensland, 'city' was defined as postcodes 4000-4003, and 'suburban' defined as postcodes 4004-4199; in South Australia, 'city' was defined as postcodes 5000-5001, and 'suburban' defined as postcodes 5002-5150. 'Country' areas were all those lying outside these postcode ranges.

study, we defined three income bands – high, medium and low¹⁰⁶ – and then applied this grouping to suburban and country areas in each of the States. Since the exercise was based on the assumption that law firms are likely to serve people in their local area, and this assumption does not hold for city firms, we did not consider it meaningful to attribute a socio-economic status to city areas. Within the suburban and country categories, firms were sampled according to the relative proportions of high, medium and low income areas in each category in the relevant State. In most cases the majority of firms were sampled from medium income areas, although in suburban Sydney there were equal numbers sampled from high and medium income areas.

- 115 The sample also sought to reflect an appropriate mix of firms with family law accredited specialists (where relevant) and firms undertaking legal aid work (in some cases a firm might fall into both categories). The specialist to legal aid ratio varied by State and geographical area, so when firms were selected for the sample, they were selected so as to reflect the relevant mix in their area.
- 116 The sample further sought to reflect an appropriate mix of firms of differing sizes (measured by number of partners), according to the spread of firm sizes in each State, based on information obtained from each State's law society (other than Queensland, for which this information was not available). The four basic categories of firms size used were: firms with one partner, firms with two to four partners, firms with five to 10 partners, and firms with more than 10 partners.

106 Average median weekly income for the four States (derived from the 1996 Census) was \$286 per week, s.d. = \$76. High income areas were defined as those with median weekly income greater than one standard deviation above the mean (over \$361 per week), medium income areas were those falling within one standard deviation above or below the mean (\$210-\$361 per week), and low income areas were those with median weekly income less than one standard deviation below the mean (less than \$210 per week). Overall, 11% of the population in the four States studied lived in high income areas, 75% in medium income areas and 14% in low income areas. Note that "median weekly income" for an area yields a lower figure than "average" (ie. mean) weekly income.

- 117 A final variable of interest was relationship separation rates in different areas. This was again calculated from 1996 Census data for the four States included in the study, by dividing the number of divorced and separated persons in each statistical local area by the total population of that area. The overall mean separation rate for the four States was 7.48%. It did not prove possible to subdivide the sample of firms according to this variable, however the selection process resulted in approximately 72% of the sample falling within one standard deviation of the mean, being 5.22% to 9.73%.
- 118 The actual sampling procedure involved dividing the list of "known family law" firms first by State, then by geographical area, then by income band for suburban and country areas. The required number of firms was then selected from each sub-group in order of appearance,¹⁰⁷ bearing in mind the desired specialist: legal aid ratio for the relevant area. Where the number of "known family law" firms in a sub-group was exhausted before the target number of firms from that sub-group was reached, additional (not known family law) firms were selected from the relevant sub-group. The resulting sample was then checked against the distribution of family law firm sizes in the three States for which we had this information, and local separation rates. If the distribution of the sample did not broadly reflect the family law firm distribution on these measures, replacements were made where it was possible to do so without violating the previous constraints.
- 119 Survey forms were then mailed out to the selected firms, together with a covering letter explaining the purpose of the survey, and a one-page questionnaire seeking background information about the firm's family law practice. Where firms returned the blank survey forms or indicated they were unable to participate in the survey, a replacement firm was sampled from the original list, as far as possible from the same State, geographical area, income band, practice type and number of partners as the non-participating firm.

107 The lists were generally in alphabetical order, and the selection method made the assumption that alphabetical order was in effect a random order for other characteristics of law firms.

120 The letter gave specific instructions as to how to select files for the survey, in order to ensure a random rather than "hand-picked" overall sample of files. Firms that did no legal aid work or all legal aid work were asked to fill out a survey form for the last four files closed in the 1997-98 financial year. Firms that dealt with a mixture of legal aid and private clients were asked to fill out a form for each of the last two legal aid files and the last two self-funded files closed in the financial year. Some firms contacted us to say that their filing and record keeping systems did not enable them to identify the relevant files, in which case they were asked to select four files at random that were closed in the last financial year.

Survey responses

121 Unlike the position with the Legal Aid Commissions, where virtually all files sampled were able to be analysed, the sample of private law firms was reliant on solicitors (or their secretaries) finding the time to fill out and return the survey forms. In the event, the survey received a very low response rate. The number of responses was particularly low from firms in Queensland and South Australia. All firms that had not responded by the date specified in the letter were contacted by telephone to remind them about the survey and to encourage them to participate, with Queensland and South Australian firms being contacted twice before the final data collection deadline. Some firms had discarded or misplaced the survey forms, but undertook to participate if a new set of forms were sent. Eight firms declined to participate on the basis that they did no or hardly any family law work; 14 said they were not interested; 19 said they were too busy or that completing the survey forms would be too much work; a further 46 promised to complete the forms but did not ultimately do so. In the majority of cases, however, the solicitor did not return our call. In the event, 55 firms (16% of the sample) responded to the survey,

yielding a total of 208 usable cases.¹⁰⁸ Thirty of the firms were from NSW, 20 from Victoria, four from Queensland and one from South Australia.

- 122 The low response rate raises the possibility of response bias – ie. that the group of firms responding might have differed in some significant respects from the population of firms sampled. In order to test this issue we compared the profile of the two groups in relation to our key sampling variables – State, geographical area, income band of suburban and country firms, family law specialist accreditation, legal aid practice and firm size. The results were as outlined in Table 3.1.
- 123 There turned out to be no statistically significant differences between the responding group and the non-responding group of firms. In other words, our small group of responding firms is fairly reflective of the sample of firms to whom the survey was sent. This lends a degree of reliability to the data obtained that would not exist if the responding group had been skewed in any way. The variable that came closest to significance was State,¹⁰⁹ with Victorian firms slightly over-represented and, as noted above, only a small number of Queensland and South Australian firms responding. In this respect, the small numbers involved make it difficult to draw conclusions regarding the latter two States.
124. How random was the sample of files achieved? Given that firms were asked to select the last four files closed in the last financial year, one would expect to find a predominance of file closure dates towards the end of that year. That was in fact the case, with about half of the 1997–98 files in the sample being closed in June 1998, and about 70% being closed in April–June. The spread of earlier dates may reflect (a) firms following instructions to include the two most recently closed legally-aided and self-funded files, when they completed few

108 About a dozen returned forms were unusable either because important information was missing or unclear and follow-up phone calls were not returned, or because the forms indicated that the files to which they related were not yet closed.

109 $\chi^2=7.756$, $df=3$, $p=0.051$.

TABLE 3.1 Responding and non-responding firms

Variable	Response	%	No response	%	Total	%
State						
NSW	30	54.5	156	56.9	186	56.5
Victoria	20	36.4	60	21.9	80	24.3
Queensland	4	7.3	37	13.5	41	12.5
South Australia	1	1.8	21	7.7	22	6.7
Geographical area						
city	7	12.7	65	23.7	72	21.9
suburban	23	41.8	86	31.4	109	33.1
country	25	45.5	123	44.9	148	45.0
Median income status						
high	7	12.7	45	16.4	52	15.8
medium	35	63.6	141	51.5	176	53.5
low	6	10.9	23	8.4	29	8.8
no income division (city)	7	12.7	65	23.7	72	21.9
Practice type						
family law specialist only	21	38.2	94	34.3	115	35.0
family law specialist & legal aid	14	25.5	60	21.9	74	22.5
legal aid only	19	34.5	98	35.8	117	35.6
neither/unknown	1	1.8	22	8.0	23	7.0
Firm size						
1 partner	19	34.5	88	32.1	107	32.5
2–4 partners	28	50.9	99	36.1	127	38.6
5–10 partners	7	12.7	30	10.9	37	11.2
11+ partners	1	1.8	8	2.9	9	2.7
unknown	0	0.0	49	17.9	49	14.9
Total	55	100	274	100	329	100

of one type, (b) firms choosing randomly from among files closed in the financial year due to inability to identify the precise files requested, or (c) firms "hand-picking" files they thought we would be interested in.¹¹⁰ Overall, we are satisfied that at least the great majority of cases in the sample were randomly selected.

125 A more notable phenomenon of the survey responses was that a considerable proportion of survey forms returned (23%) related to family law files that were closed outside the 1997–98 financial year. Some of these had been closed in June 1997, but most had been closed in July, August or September 1998. We suspect that in these cases, forms were filled out in relation to the last four files closed at the time the survey came to be addressed (possibly because they had not yet been archived, and were thus more readily available). We were reluctant to exclude these cases from what was already a small sample. Accordingly, we tested to see if there was any difference between the files closed inside and outside the specified period in relation to every variable on the survey form. The result was that there were significant differences between the two groups on only three of 55 variables.¹¹¹ The very small differences involved meant that we could include the "outside" group of files in the sample with confidence that we were not mixing together two different populations of files.

126 Data quality was also an issue in relation to survey forms filled out by solicitors. Self-completion rather than completion by trained coders necessarily involved some sacrifice of consistency and attention to detail. In order to try to minimise these problems, all completed survey forms were carefully checked over when they were received.

110 A further option is that firms closed few family law files altogether in the financial year, but this was true of only a handful of firms that responded.

111 The three variables showing a significant difference were: unresolved cases ($\chi^2=4.414$, $df=1$, $p<0.05$), Form 12A application ($\chi^2=5.105$, $df=1$, $p<0.05$), and 'other' attempted resolution ($\chi^2=4.850$, $df=1$, $p<0.05$). None of these results was highly significant, and the difference in 'other' attempted resolutions (none in the "outside" group) is not particularly meaningful. In relation to the other two areas of difference, unresolved results and attempted use of consent orders were both lower in the "outside" group than in the "inside" group, although the numbers in the "outside" group in each case were very small.

Where there was a clear error or misinterpretation of the question, the answer was corrected. Where there was data missing or inconsistent answers to different questions, the solicitor was contacted and asked for the additional information or clarification. These procedures resulted in fairly reliable responses to most questions. However, the two questions for which the checking procedures would not necessarily pick up inaccuracies were those concerning the number of court attendances scheduled, and the forms of resolution attempted in the case. The effects of this will be noted in the later discussion.

- 127 In reporting the results of the survey of private solicitors, we were concerned to evaluate the effects of our original independent variables (State, geographical area, socio-economic status, and type of practice). Thus, while we tested the Legal Aid Commissions data for differences between offices, we tested the solicitors data for differences according to the listed variables, and also for differences according to case funding type. The overall breakdown of cases in each of these groups was as outlined on the next page.
- 128 In relation to the 'State' variable, we tested only for differences between NSW and Victorian cases since the numbers of cases from Queensland and South Australia were too small to enable meaningful comparisons. For the same reason, we excluded cases handled by firms that neither did legal aid work nor had a family law specialist from tests for 'Practice type', and we excluded mixed funding cases from tests for 'Funding type'.
- 129 It should also be noted that our variables of concern were not all independent of each other. Geographical area was associated with income status, in that suburban firms were relatively less likely and country firms relatively more likely to be in low income areas and, as explained above, city firms fell entirely within the 'no attributed income' category.¹¹² There was also a strong relationship between State and type of family law practice, with a higher proportion of

112 The numbers in some groups were too small to enable statistical significance to be determined.

TABLE 3.2 Solicitors' cases by sampling variables

Variable	Number of cases	Percent
State		
NSW	116	55.8
Victoria	72	34.6
Queensland	16	7.7
South Australia	4	1.9
Geographical area		
city	27	15.4
suburban	89	42.8
country	92	41.8
Median income status		
high	26	12.5
medium	138	66.3
low	17	8.2
no income division (city)	27	13.0
Practice type		
family law specialist only	81	38.9
family law specialist & legal aid	53	25.5
legal aid only	69	33.2
neither	5	2.4
Funding type		
self-funded	121	58.2
legally-aided	74	35.6
mixed	13	6.3
Total	208	100

Victorian firms than of NSW firms with family law specialists responding to the survey.¹¹³

- 130 The relationship between case funding type and other independent variables could only be tested at the case rather than at the law firm level. In the event, case funding type was not significantly related to any of the other factors. In particular, "family law specialist" firms undertook a sufficient amount of legal aid work, and "non-specialist legal aid firms" undertook a sufficient amount of privately-funded work for there to be no significant relationship between type of firm and type of case funding.¹¹⁴

The responding law firms

- 131 As is true of law firms in general, the law firms responding to our survey were concentrated at the small end of firm size, measured by number of partners. The distribution of firm sizes among respondents was shown in Table 3.1. That Table also showed that overall, around two thirds of the firms had at least one family law accredited specialist (two firms had three specialists), while the remaining one third did not contain an accredited specialist.¹¹⁵

113 $\chi^2=5.716$, $df=2$, $p=0.057$.

114 This may have resulted from some firms' misunderstanding of the purposes of the survey, based on the project title: 'Legal Aid Services in Family Law'. Although the covering letter explained that we were interested in both self-funded and legally-aided cases, several firms to whom surveys were sent contacted us to say they would not be participating as they did not undertake any legal aid work. The same occurred in follow-up phone calls to non-responding firms. Where this confusion was thus identified it could be corrected, but it is possible that some firms that did not respond and did not return our follow-up phone call also acted under the same misapprehension. It should be borne in mind, however, that there was no response bias in relation to firm types, so any misunderstanding did not result in a low representation of identified non-legal aid firms. However, from within that group of firms, we may not have received a wholly reflective representation of their actual case load, with some overrepresentation of legal aid files. Yet this effect would probably have occurred in any case due to our file sampling instructions (asking for the last two legal aid files and the last two self-funded files closed, rather than simply the last four files closed), and in fact gave us sufficient legal aid cases to enable meaningful comparisons to be drawn between legally-aided and self-funded cases.

115 As noted earlier, there is no accreditation scheme in South Australia, but since only one South Australian firm responded to the survey, the relative proportions of firms with and without specialists are not affected.

132 Firms were asked a series of questions in a 'practice questionnaire', designed to provide general information about their family law practice. The questions related to the 1997–98 financial year and included total number of family law files closed, how many of these were legal aid, pro bono and/or child representation files, the percentage of fee income earned in family law and the percentage of family law income funded by legal aid. About one quarter of firms were not able to provide this information from their records, and some that did answer the questions stressed that the answers were estimates only. Hence, the information gathered, set out in Table 3.3, is indicative at best.

TABLE 3.3 Family law practice details of responding law firms, 1997–98

Question	Mean	Maximum	Minimum	No. respondents
Total family law files closed	139	674	9	41
No. of legal aid files	36	305	0	40
No. of files handled pro bono	2	15	0	45
No. of child representation files	4	50	0	44
% fee income earned in family law	34.6	100	1.6	43
% family law income from legal aid	22.2	100	0.0	46
Average amount billed per closed private family law file	\$2567	\$9000	\$563	36

133 The table shows that on average, 26% of family law files were funded by legal aid, and 22% of family law income was earned from legal aid. It also shows that the responding firms varied widely, from those working exclusively in family law to those undertaking minimal family law work,¹¹⁶ and from those doing exclusively legal aid work in family law to those doing no legal aid work. There was also a wide

116 With a corresponding variation in the number of family law files closed in the year, although Victorian firms closed a higher mean number of files (266) than did firms in NSW (70): Mann-Whitney U=54.000, p<0.001.

range in the figures for average amount billed per private family law file. There were no significant differences between types of firms in the average amount billed, however there was a significant negative correlation between percentage of family law income earned from legal aid and average amount billed per private family law file (ie. the less legal aid work undertaken by the firm, the higher its average bill, and vice versa).¹¹⁷

- 134 There was very little formal pro bono work undertaken in family law, however additional (unsolicited) comments made by solicitors on the forms focused on what some perceived to be the fine distinction between legal aid and pro bono work. One firm that does only legal aid work in family law commented that 50–75% of the work done on each file is pro bono. Another considered all of its files – mostly legal aid, but some self-funded – to be done partially pro bono. A third wrote that they regard legal aid files to be virtually pro bono since they lose on them anyway due to the “pathetic” grants of aid, and that the firm now refuses legal aid work, with their family lawyers volunteering at the local Community Legal Centre instead. Two other firms noted in the course of follow-up phone calls that they now refuse legal aid work (one preferring to do some work pro bono), while another said they found the transaction costs of dealing with the local Legal Aid Commission too high, and now confines legal aid work to child representation cases, which they see as more or less pro bono. These issues will be explored further in the second part of the study.

Client demographics

- 135 As noted in the previous chapter, the demographic questions on the survey form included sex, age, race/ethnicity and associated issues, occupation, source and level of income, accommodation status, and dis/ability.

117 Spearman's $R = -0.400$, $p < 0.05$.

Sex

136 Overall, 56.7% of clients in the sample were female and 43.3% were male. There was no significant sex difference between any of the variable categories.

Age

137 The age groups of clients are shown in Table 3.4.

TABLE 3.4 Private solicitors' client age groups

Age group	Number	Percent
0–20	8	4.0
21–30	44	21.8
31–40	76	37.6
41–50	47	23.3
51–65	25	12.4
over 65	2	1.0
Total	202	100

The overall median age of clients was 37 years. There were significant differences in client ages, however, between males and females, between NSW and Victoria, and between legally-aided and self-funded clients. Male clients (median age 40 years) were significantly older than female clients (median age 35 years),¹¹⁸ NSW clients (median age 39 years) were significantly older than Victorian clients (median age 36 years),¹¹⁹ and self-funded clients (median age 41.5

118 Mann-Whitney U=3706.000, p<0.005.

119 Mann-Whitney U=3118.000, p<0.05.

years) were significantly older than legally-aided clients (median age 31.5 years).¹²⁰ The relationship between age and sex was consistent with the finding for LAC clients – that between age and funding status might also be expected. That between age and State appears to have been an artefact.

Location

138 The distance travelled by clients to reach their preferred (or the closest available) legal service provider is a matter of some demographic interest, particularly in relation to city and country firms. The picture varied from State to State. Most clients of the four Sydney CBD firms lived in outer and far outer suburban Sydney, while clients of the three Melbourne CBD firms were more spread across inner and outer suburban areas of Melbourne. Clients of Brisbane and Melbourne suburban firms came from the closely surrounding area, with the notable exception of one inner suburban Melbourne firm whose clients ranged from the outer western to the outer eastern suburbs of Melbourne, and an outer western suburb of Sydney! NSW suburban clients tended to travel further. Few came from the same suburb as the law firm, most lived within 10km, but some lived up to 30km away. Clients of NSW and Victorian country firms lived generally in the surrounding area, though could be up to 100km distant. About half of Queensland country clients lived between 80km and 250km from their law firm. There was a notable pattern in country areas of clients finding lawyers further afield than their own town or the closest large town. This may be a reflection of the observation made in other contexts that women in the country are often forced to travel long distances to find a lawyer for family law matters, since the closest solicitor is likely to have an existing lawyer-client relationship with the husband. In Queensland, it has also been suggested that such an effect may be created by the impact

120 Mann-Whitney U=1903.000, p<0.001.

of IAQ's preferred supplier scheme, and/or law firm choices to abandon legal aid work.¹²¹

Ethnicity

- 139 80% of clients were Australian-born, with 20% born overseas.¹²² Overseas-born clients, and particularly clients from non-English speaking countries, were more likely to be found in suburban areas and less likely to be found in country areas.¹²³ 5% of clients required an interpreter. The numbers were too small to discern statistical differences between geographical areas relating to interpreter usage, however it is notable that no country firms used an interpreter for a non-English speaking client. Overseas-born clients came mostly from Western and Southern Europe, the UK, various parts of Asia, and Eastern Europe. The year when these clients had arrived in Australia was unknown in over one-third of the cases. While there was no significant difference between self-funded and legally-aided cases in relation to the proportion of overseas-born and non-English speaking background clients or interpreter usage, it did appear, where the date of the client's arrival was known, that legally-aided clients had arrived in Australia significantly more recently than self-funded clients.¹²⁴
- 140 Only one client in the sample (of a NSW country firm) was of Indigenous background.

121 Stephen Parker, John Dewar and Jeff Giddings, *The Impact of Changes in Legal Aid on Criminal and Family Law Practice in Queensland* (Queensland Law Society, July 1998), 79.

122 This is a higher proportion of Australian-born clients than the 1996 Census figure for the total Australian population (74%): ABS, 1996 Census of Population and Housing: Summary of Findings (Australia) (1999). By contrast, as noted in the previous chapter, IACs had a higher than average proportion of overseas-born clients.

123 $\chi^2=15.284$, $df=4$, $p<0.005$.

124 $F=4.643$, $df=2$, $p<0.05$ ($n=23$).

Occupation

141 Clients' occupations showed some patterns in relation to the test variables, although small numbers in each occupational group prevented the determination of statistical significance. Managers and administrators were over-represented as clients of city firms; professional clients were over-represented in high income areas and in self-funded cases. Advanced clerical and related workers were over-represented as clients of suburban firms, while clients engaged in home duties were over-represented in legal aid cases. At the same time, the occupation of clients in almost half of the legally-aided cases (44.6%) was unknown, possibly indicating unemployment, although in 19% of self-funded cases the client's occupation was also unknown.

Income

142 Not surprisingly, clients' main source of income varied significantly between self-funded and legally-aided cases,¹²⁵ with a high proportion of self-funded clients (76%) and a low proportion of legally-aided clients (10%) relying on their own income, and a high proportion of legally-aided clients (85%) and a low proportion of self-funded clients (17%) relying on social security benefits. Nevertheless, it is perhaps noteworthy that 17% of self-funded clients were reliant on social security. The majority of these clients appear to have been excluded from legal aid because their dispute included property division.¹²⁶

143 The gross annual income of clients having an income other than social security, and for whom income information was available, also varied noticeably between self-funded and legally-aided clients. Self-funded clients had a median annual income of \$34,659 (minimum

125 $\chi^2=90.052$, $df=2$, $p<0.001$.

126 $\chi^2=39.048$, $df=2$, $p<0.001$.

\$3640, maximum \$119,600, n=54), while legal aid clients had a median annual income of only \$20,199 (minimum \$10,400, maximum \$31,252, n=8). The median for legal aid clients was slightly lower than the median annual income of Legal Aid Commission clients having an income other than social security, although the number of observations was very small. There was also a much greater variance in incomes among self-funded than among legally-aided clients. The spread of incomes of legally-aided and self-funded clients is shown in Table 3.5.

TABLE 3.5 Incomes of private solicitors' clients having an income other than social security

Income range	Self-funded		Legally aided	
	(n)	(%)	(n)	(%)
\$0–\$20,000	7	13.0	4	50.0
\$20,001–\$30,000	16	29.6	3	37.5
\$30,001–\$40,000	14	35.9	1	12.5
\$40,001–\$50,000	8	14.8	0	0.0
\$50,001+	9	16.7	0	0.0
Total	54	100	8	100

144 There was also a significant sex difference in incomes,¹²⁷ with male clients having a median income of \$36,000 per annum, and female clients having a median income almost \$10,000 lower – \$26,136 per annum. The maximum female income was \$45,196. Thus where both parties are self-funded, women are likely to find themselves spending a greater proportion of their income than their former partner on their family law case.

127 All clients: Mann-Whitney U=316.500, p<0.01; self-funding clients only: Mann-Whitney U=202.500, p<0.01.

Housing status

145 The highest proportion of clients lived in private rental accommodation (39.4%), followed by their own home with a mortgage (28.8%), and their own home owned outright (15.4%). There was a predictably significant difference between self-funded and legally-aided clients in relation to housing type,¹²⁸ with a relatively high proportion of self-funded clients living in their own homes, with a mortgage or owned outright, and a relatively low proportion living in private rental accommodation or with parents or relatives (and none in public housing). The reverse was true for legally-aided clients, with over half living in private rental accommodation, 17% living in public housing, and 14% living with a parent or relative.

Disability

146 Overall, 9% of clients were recorded as having a verified physical, intellectual or psychiatric disability (lower than the proportion of IAC clients with an identified disability). Interestingly, firms in low socio-economic areas identified a relatively high proportion of clients with disabilities (23.5%), especially compared to city firms, which recorded no clients with a disability, although these differences just failed to reach statistical significance.¹²⁹ Neither was there a significant difference between legally-aided and self-funded clients in relation to identified disabilities.

Summary

147 In summary private solicitors' family law clients were fairly evenly split between male and female (with a slight majority of female clients),

128 $\chi^2=60.819$, $df=4$, $p<0.001$.

129 $\chi^2=7.455$, $df=3$, $p=0.059$.

their median age was 37, the great majority were born in Australia, and the largest group lived in private rental accommodation.

- 148 There were consistent differences between legally-aided and self-funded clients in relation to age of clients, year of arrival of overseas-born clients, and clients' occupations, source of income, median and range of incomes, and housing types.
149. There were also differences based on geographical area and socio-economic location of the law firm, in relation to use of interpreters, clients' ages and occupations, and identification of clients with a disability. However 'firm type' – whether the firm had been initially identified as having a family law specialist but not doing a substantial amount of legal aid work, having a specialist and also doing legal aid work, or doing a substantial amount of legal aid work but with no accredited family law specialist – proved not to be related to any demographic characteristic of clients.

Case characteristics

Relationships involved

- 150 The majority of cases (70%) concerned the breakdown of a marriage, with the median duration of marriage being 12 years (minimum less than one year, maximum 35 years). However, there was a significant difference between relationships involved in self-funded and legally-aided cases,¹³⁰ with self-funded cases involving a higher proportion of marriages (88%), and legally-aided cases involving a higher proportion of de facto relationships (42%) and other relationships (11%). Consistent with the age difference between self-funded and legally-aided clients, marriages in self-funded cases were significantly longer (median 14 years) than those in legally-aided cases (median 7 years).¹³¹ The median duration of de facto relationships was 4 years

130 $\chi^2=38.942$, $df=2$, $p<0.001$.

131 Mann-Whitney $U=662.000$, $p<0.001$. As noted earlier, median duration of marriage in Australia in 1997 was 7.7 years.

(minimum 1 year, maximum 13 years). Moreover, the length of de facto relationships varied significantly by geographical area,¹³² with those dealt with by city and suburban firms having a shorter median duration (3 years) than those dealt with by country firms (6 years).

- 151 The majority of cases (93%) involved one party other than the client. The remaining cases mostly involved two other parties, with one case involving three other parties.

Matters involved

- 152 The proportions of the different types of matters involved in self-funded and legally-aided cases, as well as the overall proportions of matters in the sample, are shown in Table 3.6. Matters occurring in fewer than 4.5% of cases are excluded.

TABLE 3.6 Matters involved in private solicitors' cases

Type of matter	Number	% all cases	% SF cases	% LA cases
Contact	136	65.4	51.2	85.1
Residence	118	56.7	45.5	73.0
Property	109	52.4	77.7	9.5
Care, welfare, development	59	28.4	28.1	28.4
Child support	29	13.9	19.8	4.1
Specific issues	24	11.5	8.3	14.9
Divorce	21	10.1	14.9	0.0
Injunctions/restraining orders	18	8.7	7.4	12.2
Spouse/defacto maintenance	13	6.3	9.1	2.7
Breach of an order	10	4.8	0.8	10.8

Note: Total %s > 100, since more than one matter possible per case.

132 Kruskal-Wallis $\chi^2=10.325$, $df=2$, $p<0.01$.

153 It can be seen that the most frequently occurring matters overall were contact, residence and property – each of which was involved in more than half of the cases. However, residence arose in fewer than 50% of self-funded cases,¹³³ and contact issues were also significantly more likely to be found in legally-aided cases.¹³⁴ Property arose in less than 10% of legal aid cases,¹³⁵ none of the legal aid cases involved dissolution,¹³⁶ but s.112AD applications were more likely to be involved in legally-aided than in self-funded cases.¹³⁷ The only constant between self-funded and legally-aided cases run by private solicitors was in applications concerning the care, welfare and development of children.

154 There were also significant differences in the types of matters involved in cases from different states and different geographical areas. Dissolution applications were more likely to be found in cases from city firms and least likely to be found in cases from country firms.¹³⁸ Residence was more likely to be involved in cases from suburban firms than in cases from city and country firms.¹³⁹ Care/welfare/development issues were more likely to be found in cases from suburban firms¹⁴⁰ and in Victorian cases.¹⁴¹ Child support was more likely to be involved in cases from family law specialist firms,¹⁴² while injunctions were involved in a relatively high proportion of Victorian cases.¹⁴³

133 $\chi^2=14.105$, $df=1$, $p<0.001$.

134 $\chi^2=22.926$, $df=1$, $p<0.001$.

135 $\chi^2=85.607$, $df=1$, $p<0.001$.

136 $\chi^2=12.128$, $df=1$, $p<0.001$.

137 $\chi^2=10.398$, $df=1$, $p<0.005$.

138 $\chi^2=9.656$, $df=2$, $p<0.01$.

139 $\chi^2=10.696$, $df=2$, $p<0.01$.

140 $\chi^2=6.853$, $df=2$, $p<0.05$.

141 $\chi^2=15.781$, $df=1$, $p<0.001$.

142 $\chi^2=8.277$, $df=2$, $p<0.05$.

143 $\chi^2=5.516$, $df=1$, $p<0.05$.

- 155 The mean number of matters per case was 2.7, although this varied significantly between geographical and income areas,¹⁴⁴ with cases run by suburban firms and firms in high socio-economic areas having a higher mean number of matters per case (3.1 and 3.6 respectively), and cases run by country firms having a lower mean number of matters per case (2.3). Victorian cases also had a significantly higher mean number of matters per case (3.5) than NSW cases (2.4).¹⁴⁵
- 156 Almost one quarter of cases (24.5%) did not concern children, although all of these cases were in the self-funded group (no legal aid cases did not involve children). In cases that did concern children, 43% involved one child, while a further 40% involved two children. Again, there was a significant difference between self-funded and legally-aided cases.¹⁴⁶ Over half of the legally-aided cases (53%) concerned only one child, while the equivalent figure for self-funded cases was 28%, with higher proportions of self-funded cases involving two (47%) or three (20%) children.
- 157 As noted above, just over half of the cases included property issues. The main types of property involved were the matrimonial home (47% of cases), household possessions (36% of cases), family car/s (33% of cases), and superannuation (26% of cases). There were some significant differences in forms of property involved between different kinds of cases. A relatively high proportion of cases from firms in high income areas, compared to those from firms in medium income areas, involved household possessions.¹⁴⁷ 'Other' forms of property (such as savings, shares, livestock, and boats) were more likely to be involved in cases from city firms and firms in high income areas, and less likely to be involved in cases from country firms and firms in medium income areas.¹⁴⁸

144 Geographical area: $F=4.895$, $df=2$, $p<0.01$; income band: $F=2.927$, $df=3$, $p<0.05$.

145 $F=18.948$, $df=1$, $p<0.001$.

146 $F=6.859$, $df=1$, $p<0.05$ (means).

147 $\chi^2=16.799$, $df=3$, $p<0.005$.

148 Geographical area: $\chi^2=11.407$, $df=2$, $p<0.005$; SES: $\chi^2=14.879$, $df=3$, $p<0.005$.

Domestic violence and child abuse

- 158 Overall, allegations of domestic violence were recorded in 39% of cases.¹⁴⁹ The solicitors who filled out the forms did not often use the 'unknown' category in this context: in the great majority of cases the domestic violence questions were answered either 'yes' or 'no'. In almost all cases involving violence allegations (91%) the target of the alleged violence was female and the perpetrator male.
- 159 Allegations of domestic violence were more likely to be recorded when the client was female,¹⁵⁰ a finding that reinforces the point made in the previous chapter that perceived relevance to the case is one of the factors influencing whether domestic violence allegations are likely to be recorded on the file. Possibly associated with this was the fact that fewer than one quarter (23.7%) of self-funded cases (which tended to focus on property) recorded the presence of domestic violence allegations, compared to over half (58.3%) of the legally-aided cases (which were more likely to concern children) – a highly significant difference.¹⁵¹ Perhaps not surprisingly, cases involving domestic violence allegations were disproportionately likely to include an application for some form of Family Court restraining order.¹⁵²
- 160 Of the cases that did record allegations of violence, 71% recorded a history of violence in the relationship, 61% recorded the presence of at least one State domestic violence order, and of the latter, 38% recorded at least one breach of the order. There were no differences between types of firms or cases on these points. 15% of violence cases involved the laying of criminal charges in relation to the violence, with criminal charges brought in a significantly higher proportion of cases in NSW (30%) than in Victoria (7%).¹⁵³ A similar pattern,

149 Comprising 25.5% of cases in which the client was allegedly subjected to domestic violence, 11.1% of cases in which the client allegedly perpetrated domestic violence, and 2.4% of cases in which the client allegedly both perpetrated and was subjected to violence.

150 $\chi^2=6.046$, $df=1$, $p<0.05$.

151 $\chi^2=23.012$, $df=1$, $p<0.001$.

152 $\chi^2=5.900$, $df=1$, $p<0.05$.

153 $\chi^2=4.865$, $df=1$, $p<0.05$.

resulting from interstate differences in police practices, was evident in the IAC data.

161 A total of 21% of cases involved allegations of child abuse, though again, there was a significant difference between the lower proportion of child abuse allegations in self-funded cases (14%) and the higher proportion in legally-aided cases (28%).¹⁵⁴ There was also a lower proportion of child abuse allegations in cases involving overseas-born clients.¹⁵⁵ Child abuse allegations were officially substantiated by Community Services in 24% of cases (with a further 22% of cases where the outcome of the allegations was unknown).¹⁵⁶ There were no significant differences between case types in this respect.

Summary

162 To summarise the characteristics of family law cases handled by private solicitors: the majority concerned the breakdown of a marriage, involved one party other than the client, and involved issues of residence, contact, and/or property. The major form of property involved was the matrimonial home (in almost half of property cases). There were a number of significant differences between self-funded and legally-aided cases, and some significant differences in relation to other test variables—

- Self-funded and legally-aided cases differed in relation to the relative proportions of marriages and de facto or other relationships, length of marriages, and numbers of children involved; types of matters raised; and the relative proportions of recorded domestic violence and child abuse allegations. Legally-aided cases were more likely to include this last level of complexity.

154 $\chi^2=6.009$, $df=1$, $p<0.05$.

155 $\chi^2=4.051$, $df=1$, $p<0.05$.

156 This figure is close to the substantiation rate found in cases in the Melbourne Registry by the Monash study of child abuse cases in the Family Court: Thea Brown, Margarita Frederico, Lesley Hewitt and Rosemary Sheehan, 'Child Abuse and the Family Court', Trends and Issues in Crime and Criminal Justice no.91, June 1998 (Australian Institute of Criminology), 4.

- NSW and Victorian cases differed in relation to relationship types, number of matters per case, types of matters raised, and criminal charges in domestic violence cases.
- Firms in different geographical areas dealt with cases involving different types of matters, forms of property, and numbers of matters per case.
- Firms in high income areas dealt with cases involving a higher mean number of matters per case and a greater range of property than firms in other areas.

Dispute resolution

163 More than half of the cases in the private solicitors' sample were commenced in 1997, with a further 21% commencing in 1996 and 15% commencing in 1998. There were no significant differences between firm or case types in relation to the "age" of the cases.

164 Of the legal aid cases, there was almost an even split between cases commenced before and after 1 July 1997 (when new Commonwealth legal aid guidelines were introduced), though more cases from firms in low socio-economic areas (88%) and fewer cases from city firms (20%) commenced after 1 July 1997.¹⁵⁷

Resolution processes

165. The Family Court was involved in 82% of private solicitors' cases, though more commonly in cases from suburban firms than in cases from country firms.¹⁵⁸ 21% of cases involved use of a State Court. Only 5% of cases did not have any court involvement, although no court dates were set in a further 14% of cases (reflecting the proportion of

157 The numbers involved in some categories were too small to enable a determination of statistical significance.

158 $\chi^2=10.417$, $df=2$, $p<0.01$.

cases resolved by means of application for consent orders, which did not involve court attendance). Self-funded cases were significantly more likely to involve no court dates (26.4%) than were legally-aided cases (9.5%).¹⁵⁹ This disparity may be explained by the fact that grants of legal aid in the States for which we had data are usually made for court processes rather than negotiations,¹⁶⁰ hence it would be expected that a high proportion of legal aid cases would have court dates scheduled. Conversely, self-funded cases were more likely to include property issues, which in turn were more likely to be resolved by means of an application for consent orders.

- 166 Data on the stages reached and forms of dispute resolution attempted in each case was potentially unreliable, since we were relying on solicitors to record every stage and kind of attempt involved. The information provided by solicitors was, however, highly comparable with the data from Legal Aid Commissions, while the differences between the two sets of data were reasonably to be expected. It appears, then, that this information is reliable and provides an accurate picture of activities in private solicitors' cases. The stages reached and forms of resolution attempted most frequently (in 10% of cases or more) are shown in Table 3.7. Note again that "application for consent orders" refers to a Form 12A application, "consent orders" refers to orders agreed by the parties and sanctioned by the court following an application for final orders, while "interim orders" and "final orders" refer to orders made by the court after a contested hearing. The table indicates an even more pronounced pattern of "litigotiation" (mix of court-based and out of court processes) in private solicitors' than in LAC cases.¹⁶¹

159 $\chi^2=8.281$, $df=1$, $p<0.005$.

160 While Legal Aid Queensland requires all grant recipients to attend a conference to attempt resolution of their dispute, the small number of Queensland legal aid cases in the sample meant that this practice had little impact on our data.

161 The term "litigotiation" was coined by the American socio-legal scholar Marc Galanter. See eg. Marc Galanter, 'Words of Deals: Using Negotiation to Teach About Legal Process' (1984) 34 *Journal of Legal Education* 40; Marc Galanter, 'Vision and Revision: A Comment on Yngvesson' [1985] *Wisconsin Law Review* 653. The British Legal Aid Board study also found a marked pattern of litigotiation in legal aid cases handled by English solicitors: Sarah Maclean, Report of the Case Profiling Study: Legal Aid and the Family Justice System (Legal Aid Board Research Unit, 1998), p.47.

TABLE 3.7 Stages reached and forms of resolution attempted in private solicitors' cases

Stage/resolution type	Number of cases	% of cases
Negotiations between solicitors	145	69.7
Application for final orders	141	67.8
Directions hearing/s	101	48.6
Family Court counselling	84	40.4
Consent orders — Family Court	70	33.7
Private resolution	63	30.3
Final orders — Family Court	46	22.1
Application for consent orders	41	19.7
Interim Orders — Family Court	41	19.7
Conciliation conference	39	18.8
Pre-Hearing conference	38	18.3

Note: total % > 100, since more than one stage/resolution type possible per case.

167 Primary dispute resolution methods other than Family Court counselling were collectively attempted in 13.5% of cases. As with the LAC cases, there were some potentially concerning relationships between PDR and allegations of domestic violence and child abuse. Cases involving such allegations were significantly over-represented among those going to Family Court counselling.¹⁶² Although the numbers were too small to determine statistical significance, positive trends were also evident in relation to violence allegations and private mediation,¹⁶³ child abuse allegations and Family Court mediation,¹⁶⁴ and violence allegations, history of violence and child

162 Allegations of domestic violence: $\chi^2=9.018$, $df=1$, $p<0.005$; allegations of child abuse: $\chi^2=11.303$, $df=1$, $p<0.005$.

163 7.4% of cases involving domestic violence allegations went to private mediation, compared to 3.3% of cases without such allegations.

164 4.7% of cases involving child abuse allegations went to Family Court mediation, compared to 1.8% of cases without such allegations.

abuse allegations and legal aid conferences.¹⁶⁵ On the other hand, there appeared to be negative relationships between child abuse allegations and private mediation, and domestic violence allegations and Family Court mediation.

- 168 One NSW solicitor wrote in a covering letter about her personal commitment to mediation, but she observed that “unfortunately, most of the matters seem to be totally unsuitable for that particular dispute resolution mechanism and even if they ever get there they very rarely ever settle”. From her own experience she noted two distinct categories of family law clients seeking mediation: “The first category is the one where the parties specifically only want advice and then want mediation.” (This may be a result of mediation services referring clients for legal advice before they commit to any agreement.) “The second category is the dreadful ones where the solicitors know the parties can’t afford the costs of legal representation and hearings and hand it on to the mediator in the hope the mediator can settle it!” These comments suggest that there may well be a category of family law cases involving PDR that are not identified in our study – those in which a solicitor does not formally take on a party as a client, but refers them (with or without some initial advice) directly to a mediation service. The possible existence of this untapped category of cases is reinforced by the fact that Legal Aid Commissions and some Community Legal Centres also spoke about referring advice-seekers and parties wanting help to reach an agreement to family mediation. Given the “litigotiation” pattern evident in cases handled by both IACs and private solicitors, it may be that the real distinction in family law disputing lies not in litigation versus PDR, but in obtaining legal representation (and arriving at a settlement via

165 9.9% of cases involving domestic violence allegations, 7.0% of cases with a history of violence, and 9.3% of cases involving child abuse allegations went to a legal aid conference, compared to 4.1%, 0.0% and 5.5% of cases without those features, respectively. The use of LAO conferences in cases involving violence is confirmed by John Dewar and Stephen Parker, with Barbara Tynan and Donna Cooper, *Parenting, Planning and Partnership: The Impact of the New Part VII of the Family Law Act 1975* (Family Law Research Unit, Griffith University, Working Paper No.3, March 1999), 61–62.

solicitor negotiations) versus directly accessing community-based or private dispute resolution services (and arriving at a settlement with the assistance of a neutral third party).

- 169 There were some significant differences between firm and funding types in relation to particular forms of attempted dispute resolution. Attempts at private resolution, solicitor negotiations and applications for consent orders were found in a higher proportion of self-funded than of legally-aided cases.¹⁶⁶ Legal aid conferences were, not surprisingly, more likely to be held in legally-aided than in self-funded cases,¹⁶⁷ and Family Court counselling and applications for final orders were also more likely to be attempted in legally-aided cases.¹⁶⁸ Conciliation conferences were more likely to be held in cases from firms in high income areas,¹⁶⁹ and in self-funded cases,¹⁷⁰ reflecting the greater representation of property disputes in such cases. Pre-hearing conferences were also more likely to be held, and final orders made in the Family Court, in cases from firms in high income areas.¹⁷¹ In addition, NSW cases were more likely to include a pre-hearing conference than Victorian cases,¹⁷² while Victorian cases were more likely to include Family Court interim orders¹⁷³ and consent orders.¹⁷⁴ The Victorian pattern may be a response to the lengthy delays experienced in reaching a final hearing in the Melbourne Registry of the Family Court.¹⁷⁵

166 Private resolution: $\chi^2=9.117$, $df=1$, $p<0.005$; solicitor negotiations: $\chi^2=4.755$, $df=1$, $p<0.05$; application for consent orders: $\chi^2=9.608$, $df=1$, $p<0.005$.

167 $\chi^2=5.988$, $df=1$, $p<0.05$.

168 Family Court counselling: $\chi^2=18.356$, $df=1$, $p<0.001$; application for final orders: $\chi^2=4.829$, $df=2$, $p<0.05$.

169 $\chi^2=13.177$, $df=3$, $p<0.005$.

170 $\chi^2=8.492$, $df=1$, $p<0.05$.

171 Pre-hearing conferences: $\chi^2=8.525$, $df=3$, $p<0.05$; final orders: $\chi^2=10.728$, $df=3$, $p<0.05$.

172 $\chi^2=3.831$, $df=1$, $p=0.05$.

173 $\chi^2=6.503$, $df=1$, $p<0.05$.

174 $\chi^2=11.936$, $df=1$, $p<0.005$.

175 Family Court of Australia, *Annual Report 1997-98* (1998), p.32 (average time to hearing for standard track children's matters: 92.0 weeks – second only to Adelaide: 93.3 weeks; average time to hearing for standard track financial matters: 99.7 weeks – second only to Newcastle: 103.7 weeks).

- 170 The mean number of stages and forms of dispute resolution recorded per case was 4.3 (minimum 1, maximum 11) – a figure higher than that for LAC cases. This reinforces the view that there was not a substantial problem of under-counting in the private solicitors data. There was no significant difference between firm types or case funding types in relation to mean number of stages and forms of dispute resolution attempted per case, although cases from firms in high income areas did record a somewhat higher mean number (5.3). The presence of domestic violence and child abuse allegations also significantly increased the mean number of stages and resolution types attempted per case (resulting in means of 4.9 and 5.2 stages/forms of dispute resolution, compared to the overall mean of 4.3).¹⁷⁶ As with the LAC cases, this suggests that cases in which a party has allegedly been violent or abusive take greater efforts to resolve than other cases.
- 171 As with the methods of resolution attempted, the reliability of the data from solicitors on numbers of court attendances scheduled was questionable. It was encouraging to find, then, that in cases handled by private solicitors that involved the Family Court, the mean number of court attendances scheduled was the same as for cases handled by LACs – 3.6 attendances on average (minimum one, maximum 17). The only notable variation on this figure was that cases from firms in high income areas had a much higher mean number of court attendances scheduled (5.2), compared to cases from firms in low and medium income areas (4.0) and cases from firms with no income attribution (ie. city firms) (2.3).¹⁷⁷ It is possible that clients of firms in high income areas were pushing their cases further through the Family Court process, resulting in a higher mean number of court attendances, while city firms had a greater proportion of divorce applications in their mix of cases, resulting in a lower mean number of court attendances.

176 Domestic violence allegations: $F=7.179$, $df=1$, $p<0.01$; child abuse allegations: $F=8.727$, $df=1$, $p<0.01$.

177 The difference just failed to reach significance: $F=3.059$, $df=2$, $p=0.052$.

172 In cases that involved a State Court, the mean number of court attendances scheduled was 2.3 (minimum 1, maximum 10) – a lower number than for LAC cases. Finally, in cases involving Family Court counselling, clients were scheduled for a similar mean number of counselling sessions per case (mean 1.6, minimum 1, maximum 6) as occurred in LAC cases.

Stage and method of resolution

173 As noted in the previous section, 68% of the cases in the sample (141) involved the filing of an application for final orders. The stages at which these applications were resolved are set out in Table 3.8. As was the case with the LAC data, the largest group of cases (30%) proceeded to final hearing, and the majority of these hearings (88%) were contested rather than undefended. A much smaller proportion of private solicitors' cases, however, remained unresolved.

TABLE 3.8 Stages at which private solicitors' applications for final orders were resolved

Stage	Number	Percent
Before directions hearing	18	12.8
At/after directions hearing	28	19.9
At/after Interim orders	13	9.2
At/after conciliation conference	14	9.9
At/after pre-hearing conference	10	7.1
At final hearing	42	29.8
Unresolved	16	11.3
Total	141	100

174 The mean length of Family Court hearings recorded in private solicitor cases was approximately 1.5 days (longer than for LAC

cases), with the longest hearing being five days. The mean length of hearing in a State Court was less than one day, with no State Court hearing continuing for longer than one day. There were significant differences by State¹⁷⁸ in relation to mean length of Family Court hearing, with NSW cases having a higher mean length of hearings (2 days) than Victorian cases (1 day). This may be attributable to different Registry practices in relation to preparedness for hearing. We were informed that in Victorian Registries, judges prepared in advance on the basis that cases listed for hearing would proceed, whereas in at least one NSW Registry, judges would wait to find out on the day of the hearing whether the case would proceed, and then adjourn to prepare if necessary.

- 175 The factors associated with the occurrence of a final hearing in the Family Court were length of marriage and number of children involved in the case. Cases proceeding to final hearing involved marriages of shorter duration (median 7 years) and a lower number of children on average (1.5) than cases not proceeding to hearing (median duration of marriage 12 years, average 1.8 children).¹⁷⁹ It is difficult to know how to interpret this observation. In addition, although numbers were too small to determine statistical significance, it is notable that 42% of cases from firms in high income areas proceeded to final hearing, while no cases from firms in low income areas did so. On the other hand, legally-aided cases were somewhat more likely to go to final hearing than self-funded cases, although this trend just failed to reach statistical significance.¹⁸⁰ The very small number of cases proceeding to final hearing in a State Court (7 in total) made it impossible to discern particular factors associated with final hearings in those courts.

178 Mann-Whitney U=113.000, $p < 0.001$.

179 Duration of marriage: Mann-Whitney U=476.000, $p < 0.05$; mean number of children: $F = 4.060$, $df = 1$, $p < 0.05$.

180 $\chi^2 = 3.567$, $df = 1$, $p = 0.059$. In their study of property disputes, Davis et. al. found that privately-funded cases were more likely than legally-aided cases to settle before trial: Gwynn Davis, Stephen Cretney and Jean Collins, *Simple Quarrels: Negotiating Money and Property Disputes on Divorce* (Clarendon Press, 1994), p.137.

- 176 Orders for costs following a contested hearing were made in only 3% of cases, although solicitors indicated in a few consent order cases that the terms of agreement had included one party paying some or all of the other party's costs.
- 177 As well as the stages at which cases were resolved, the survey form enabled us to determine the means by which the matters raised in the cases studied were finally resolved. The results of this analysis, for matters other than dissolution applications, are set out in Table 3.9. Note that the table refers to matters rather than cases. The total number of matters in all of the private solicitors' cases, excluding dissolution applications, was 548. As can be seen, the most frequent final resolution type was consent orders, followed by out of court settlement (arrived at by private resolution, Family Court counselling, mediation or solicitor negotiations). Although, as discussed above, a final hearing was held in almost 30% of cases initiated by an application for final orders, those hearings ultimately resolved only 10.6% of matters.

TABLE 3.9 Means of resolution of private solicitors' cases

Nature of resolution	Number of matters	Percent
Out of court	81	14.8
Application for consent orders (Form 12A)	54	9.9
Interim orders	17	3.1
Consent orders	208	38.0
Un defended final orders	4	0.7
Final orders following contested hearing	58	10.6
Other/unknown	50	9.1
Unresolved	76	13.9
Total	548	100

- 178 There was some variation between the way particular matters were most frequently resolved. Consent orders were the most frequent

resolution type for parenting and child support issues, and also for property matters, although Form 12A applications were also prominent in property cases. Maintenance matters (both spouse and child) were resolved in a variety of ways (from solicitor negotiations to final orders), with no one method predominating. Due to the small numbers of cases involved in many matter types, it was not generally possible to discern any meaningful differences between the way particular matters were resolved according to firm or funding types. However, one significant State difference did emerge in relation to residence matters, which were more likely to be resolved by consent orders or interim orders in Victoria, and more likely to be resolved out of court or by final orders in NSW.¹⁸¹ This is similar to the earlier observation regarding interstate differences in resolution processes, which was attributed to different timelines for reaching a final hearing in different Registries of the Family Court.

- 179 PDR methods involving some form of third party intervention ultimately resolved only 15 matters within the 'out of court' group, with solicitor negotiations most prominent within that group. In this context it is regrettable that we did not receive a higher response rate from Queensland firms, given LAQ's policy of compulsory conferencing for legally-aided cases. Indeed, seven of the Queensland cases in our small sample of 16 involved a Legal Aid conference, and all of the matters resolved by Legal Aid conference occurred in that State. Two Queensland solicitors commented, however, that legal aid clients are placed under considerable pressure due to the conferencing policy, with the threat that their funding will not be extended if they fail to settle, and so accept resolutions to which they would not otherwise agree.¹⁸² This is a matter of particular concern if, as indicated by our data, there is little effort made to screen out of

181 $\chi^2=9.434$, $df=2$, $p<0.01$ (out of court/consent orders/final orders). No NSW residence matters were resolved by interim orders, compared to 5 in Victoria.

182 This point was also made by Queensland practitioners interviewed for a Griffith University Study. See John Dewar and Stephen Parker, with Barbara Tynan and Donna Cooper, Parenting, Planning and Partnership: The Impact of the New Part VII of the Family Law Act 1975 (Family Law Research Unit, Working Paper No. 3, March 1999), pp.59, 61.

conferencing those cases in which one party has subjected the other to violence, or has allegedly abused a child or children of the relationship.¹⁸³ The Women's Legal Service in Brisbane has also called into question the durability of consent orders arrived at through these Legal Aid conferences.¹⁸⁴

180 17% of matters remained unresolved overall – in 16 wholly unresolved cases and 44 partially resolved cases. The kinds of matters that tended to remain unresolved in “resolved” cases included contact, care/welfare/development and child support. The first two of these may have been treated as ancillary to the ‘main’ residence dispute, while child support matters may have been pursued via the Child Support Agency.

Resolution and closure times

181 As with the LAC cases, the dates recorded for private solicitors' cases were date of first consultation, date of legal aid application, date of resolution, and date of file closure.

182 The median time between first consultation and date of legal aid application in those cases in which a legal aid application was made was less than one month; in 90% of cases the application was made within two months. (In another four cases, the legal aid application had been made before the client reached the lawyer who responded to the survey.) In a small number of cases, however, there were delays of over 6 months before the legal aid application was made, the maximum being 32 months. Unfortunately, data was not collected on the time between the making of the legal aid application and its approval or rejection by the relevant LAC.

183 The ‘safeguard’ adopted by LAQ is to provide funding to the target of violence to have a lawyer present during the conference: *ibid*, 61–62.

184 Women's Legal Service, Brisbane, Submission to the Australian Law Reform Commission — Issues Paper 22: Review of the Adversarial System of Litigation: Rethinking Family Law (September 1998), pp.45, 49–50.

- 183 The median resolution time for private solicitors' legal aid cases (6 months) was significantly longer than the median resolution time for LAC cases (4 months).¹⁸⁵ As just indicated, the former may have experienced some initial delay in the process of applying for legal aid, in comparison with LAC cases in which the first consultation with the client and application for legal aid almost invariably occurred on the same day. Further, the transaction time involved for private solicitors to seek approval from the Legal Aid Commission to proceed to the next stage of a grant would also add to resolution time in private solicitors' legal aid cases. One might also speculate on the observed 'partial' nature of LAC files in this context (see para.18). Either the client had had a previous legal representative or the office or firm ceased to act for the client in 42% of LAC cases but in only 24% of private solicitor cases. If private solicitors are more likely than LACs to deal with the whole of a client's family law case, one would expect private solicitors' cases to be longer.
- 184 The times in months from first consultation to resolution for cases resolved at various stages of the litigation process are set out in Table 3.10. Both the median resolution time for each stage of resolution (ie. the time within which 50% of cases completed at each stage were resolved) and the time within which 90% of cases completed at each stage were resolved are shown.

185 Mann-Whitney U=6932.000, p<0.005.

TABLE 3.10 Private solicitors — resolution times by stage of resolution

Stage	No. cases resolved	Median resolution time	90% resolution time
No application for final orders	67	5.0 months	24.4 months
Application, before directions hearing	18	6.0 months	39.1 months
At/after directions hearing	28	11.0 months	22.1 months
At/after interim orders — Family Court	8	6.0 months	11.0 months
At/after interim orders — State Court	5	9.0 months	26.0 months
At/after conciliation conference	13	8.5 months	26.0 months
At/after pre-hearing conference	10	14.0 months	25.0 months
At/after final hearing — Family Court	35	16.0 months	33.8 months
At/after final hearing — State Court	7	8.0 months	15.0 months
Total	191	9.0 months	25.0 months

185 It is interesting to note that cases resolved following interim orders in the Family Court had shorter resolution times than cases resolved following interim orders in a State Court, although the opposite was true for cases resolved at a final hearing in the Family Court or a State Court. The length of time taken to resolve 90% of the cases in which an application for final orders was made but no further court process was engaged appears anomalous.

186 There was no relationship in private solicitor cases between median resolution time and any client characteristics, or the presence of allegations of domestic violence or child abuse. Cases involving property division had a significantly longer median resolution time (11 months) than cases without (6 months),¹⁸⁶ and the same was true for cases involving spouse maintenance (median 17 months with, 9 months without).¹⁸⁷ Dispute resolution factors that tended to prolong cases included use of the Family Court (median 11 months with, 5

186 Mann-Whitney U=3018.500, p<0.005.

187 Mann-Whitney U=682.500, p<0.05.

months without),¹⁸⁸ Family Court counselling (median 12 months with, 8 months without),¹⁸⁹ negotiations between solicitors (median 11 months with, 6 months without),¹⁹⁰ and number of attempted forms of resolution (the more forms attempted, the longer the time to resolution).¹⁹¹

187 There was also a significant difference between self-funded and legally-aided cases, with legally-aided cases having a median resolution time (6 months) almost half that of self-funded cases (11 months).¹⁹² This matches the difference between the resolution times for property cases and cases not involving property.

188 A backwards stepwise regression was performed using the factors identified above, plus factors from the model developed for IAC cases (presence of residence as an issue in the case, presence of a child representative, and respective funding status of the client and other party). Only two factors emerged as having a significant impact on resolution time: number of resolution types attempted¹⁹³ and presence of property as an issue in the case.¹⁹⁴ The model incorporating these two factors still only accounted for 25% of the variance in resolution times,¹⁹⁵ not a strongly predictive result in the face of very "noisy" data. Nevertheless, there are logical reasons why property cases may take longer – for example the need to negotiate with third parties such as valuers, lending institutions and other creditors, the time involved in selling a house, and possible delays caused by non-

188 Mann-Whitney U=1499.500, p<0.001.

189 Mann-Whitney U=3090.000, p<0.01.

190 Mann-Whitney U=2396.500, p<0.005.

191 Spearman's R=0.392, p<0.01.

192 Mann-Whitney U=2631.000, p<0.01.

193 t=5.819, p<0.001.

194 t=4.599, p<0.001.

195 R²=0.245, F=27.754, df=2, p<0.001.

disclosure of financial information – and this finding accords with overseas research.¹⁹⁶

189 Finally, median closure times differed by funding status. In legal aid cases the median time from first consultation to file closure was 9 months, while in self-funded cases it was 12 months.¹⁹⁷ Compared with median resolution times of 6 and 11 months respectively, these figures suggest that legal aid cases were generally kept open for a longer period of time after resolution (3 months compared to 1 month), presumably awaiting final payment.

Summary

190 To summarise, the typical case in the sample commenced in 1997 (with an even split among legal aid cases of cases commenced pre- and post-1 July 1997), had some Family Court involvement (with a mean of 3.6 scheduled court attendances) – most likely an application for final orders and directions hearing/s – and also involved negotiations between solicitors. A mean number of 4.3 types or stages of resolution were attempted, although this was higher if the case involved allegations of domestic violence or child abuse. The most likely final resolution was consent orders, and the median resolution time 9 months. Resolution time increased with the number of resolution types attempted in the case, and the presence of property as one of the matters in dispute.

191 The dispute resolution processes involved in cases handled by private solicitors did not display the level of differences between self-funded and legally-aided cases as was evident in relation to client and case characteristics. Differences did occur, however, in relation to whether

196 Sarah Maclean, *Report of the Case Profiling Study: Legal Aid and the Family Justice System* (Legal Aid Board Research Unit, 1998), pp. 23, 43, 67.

197 Mann-Whitney U=3655.00, p=0.054 (the difference just failed to reach significance).

the case went to court, kinds of dispute resolution attempted, median resolution time, and time between resolution and file closure.

- 192 The other test variables that translated into differences in dispute resolution processes were State and firm's income status. NSW and Victorian cases differed in Family Court stages included, length of Family Court hearings, and the way residence matters were resolved. Firms in high income areas were more likely than others to have cases proceed to advanced stages in the Family Court (conciliation conference, pre-hearing conference and contested hearings), and had a higher mean number of court attendances scheduled per case. These last figures might be taken as indicia of a 'Rolls Royce' legal service – offered, it seems, in the context of 'Rolls Royce' incomes.

Funding and representation

Client's funding

- 193 In the great majority of cases in the sample the client was funded in the same way throughout and for all aspects of the case. As noted earlier, the client was self-funded in the majority of these cases (62%). The majority of legally-aided clients (55%) were granted aid on the basis of paying only the compulsory contribution (this was lower than the proportion of LAC clients assessed to pay only the compulsory contribution (75%)). 25% of private solicitors' legal aid clients had the compulsory payment waived, while 20% were assessed to pay an additional contribution. Clients of firms in low income areas were, not surprisingly, more likely to be granted legal aid on the basis of compulsory payment only, and clients in high income areas were more likely to be assessed to pay an additional contribution.

194 Clients experienced some form of difficulty with legal aid in 20% of cases overall, and in 39% of legal aid cases:¹⁹⁸ either being determined to be ineligible for legal aid (8%), having an application for an extension of aid rejected (6%), having their legal aid grant terminated (3%), reaching their legal aid cap (4%) and/or being granted aid on terms that limited the way the case could be handled (9%).¹⁹⁹ There were significant differences between States in this respect, probably reflecting different Legal Aid Commission policies and practices. Victorian clients were significantly more likely than NSW clients to be determined to be ineligible for legal aid (15%),²⁰⁰ have an application for extension of aid rejected (11%),²⁰¹ and reach their legal aid cap (10%),²⁰² while conversely, NSW clients were significantly more likely successfully to meet and remain within the criteria for legal aid funding (86%).²⁰³

Client's representation

195 17% of clients had had some form of previous representation before reaching the firm that responded to the survey in respect of their case. The majority of previous representatives were also private lawyers, evenly divided between self- and legal-aid funded. Predictably, a significantly higher proportion of self-funded clients had come from previous self-funded representation, while a significantly higher proportion of legal aid clients had come from previous legal aid representation or a Community Legal Centre.²⁰⁴

198 Note that clients could experience difficulty with legal aid in self-funded cases, i.e. if they applied for legal aid but were rejected.

199 The last figure is difficult to interpret, since it appeared from the survey responses that some solicitors considered ALL legal aid grants to limit the way the case could be handled, and therefore ticked this box for each of their legal aid cases.

200 $\chi^2=8.467$, $df=1$, $p<0.005$. Note that this was close to the proportion of Victorian in-house clients determined to be ineligible (14%).

201 $\chi^2=5.861$, $df=1$, $p<0.05$.

202 $\chi^2=8.560$, $df=1$, $p<0.005$.

203 $\chi^2=6.642$, $df=1$, $p<0.05$.

204 $\chi^2=22.184$, $df=2$, $p<0.001$.

196 In addition, the firm that filled out the survey form ceased to act for 15.5% of clients. Reasons for this varied. The largest single reason was that the client moved to another private solicitor, funded by legal aid. After this, there were even numbers of cases in which the client moved to another solicitor on a self-funding basis, the client lost contact, or some 'other' reason (which included matters such as conflict of interest, the client discontinuing proceedings due to cessation of legal aid, or the death of the client). Again, there was a significant difference between legally-aided and self-funded cases, with the lawyer ceasing to act for the client in a higher proportion of legally-aided (18.6%) than of self-funded (8.3%) cases²⁰⁵ (although still a lower proportion than of in-house cases in which the LAC ceased to act for the client: 39%). In addition, Victorian solicitors ceased to act for a higher proportion of clients than did NSW solicitors,²⁰⁶ no doubt related to the higher proportion of legal aid terminations in Victoria.

Child representation

197 Only 13% of cases involved a child representative, and in more than half of these the child representative was a private solicitor funded by legal aid.

Other party's representation

198 In the majority of cases (87.5%) the other party was represented for at least some of the case by a private law firm—either self-funded (44.2%),²⁰⁷ legally-aided (17.3%), or funding status unknown (26%). The other party was partially or wholly self-representing in only a small proportion of cases (12.5%). Self-represented parties were not

205 $\chi^2=4.355$, $df=1$, $p<0.05$.

206 $\chi^2=9.141$, $df=1$, $p<0.005$.

207 In three cases the responding solicitor indicated that the other party was self-funded "as far as I know".

over-represented in relation to any particular matters, although in cases concerning property there was a trend towards the other party having legal representation.²⁰⁸ The nature of the other party's representation varied significantly by case funding type. Where the client was self-funded, the other party was more likely to be self-funded.²⁰⁹ Where the client was legally-aided, the other party was more likely to be funded by legal aid.²¹⁰ Legally-aided cases were also more likely to have the other party unrepresented.²¹¹ Cases in which both clients were legally-aided were more likely and cases in which both clients were self-funded were less likely to remain unresolved.²¹²

199 The impact of funding pairs on median resolution time was also significant.²¹³ Legally-aided/legally-aided pairs took the shortest time to resolve (median 5 months), while self-funded/self-funded pairs took the longest (median 12 months). Legally-aided/self-funded cases fell into the centre of the distribution (median 10 months), while for legally-aided/self-represented cases, median resolution time was 9 months. As noted in the previous section, however, the funding status of the client and the other party did not ultimately prove significant in the regression analysis of resolution times.

Summary

200 In summary, the majority of cases in the private solicitors' sample were self-funded. Where cases were legally-aided, the client was most likely to have been required to pay only the compulsory payment, and a fairly large minority (39%) experienced some difficulty with their legal aid funding. In the typical case the client remained with the

208 $\chi^2=3.566$, $df=1$, $p=0.059$.

209 $\chi^2=45.264$, $df=1$, $p<0.001$.

210 $\chi^2=35.041$, $df=1$, $p<0.001$.

211 $\chi^2=5.736$, $df=1$, $p<0.05$.

212 $\chi^2=7.930$, $df=1$, $p<0.01$.

213 Kruskal-Wallis $\chi^2=8.520$, $df=3$, $p<0.05$.

same solicitor throughout the case, there was no child representative, and the other party was represented by a private law firm. Self-funded clients were most likely to have self-funded opponents, while legally-aided clients were most likely to have legally-aided or self-representing opponents.

- 201 Differences between legally-aided and self-funded cases emerged in relation to likelihood of the lawyer ceasing to act for the client. In addition, cases in which both clients were legally-aided differed from cases in which both clients were self-funded in likelihood of remaining unresolved, and median resolution time.
- 202 The other notable area of difference in relation to funding and representation was between Victorian and NSW cases, with clients in the former more likely to experience problems with their legal aid funding and consequently, more likely to have their lawyer cease to act for them.

Conclusion

- 203 The major difference in private solicitors' cases was between those that were self-funded and those that were legally-aided. However, the major areas of difference were in relation to client demographics and case characteristics. These differences did not translate into consistent differences in dispute resolution. The main variations in dispute resolution concerned case duration, and the different forms of dispute resolution appropriate to children's matters as opposed to property matters. In relation to funding status, it is notable that parties' funding status tended to match: self-funded/self-funded, or legally-aided/legally-aided (or legally-aided/unrepresented).
- 204 In addition, significant differences emerged between the two States for which we had sufficient data, in relation to case characteristics, resolutions and legal aid experience. These may reflect different local legal and court cultures, and certainly reflect differing IAC

policies at the time cases were open. Unfortunately, we were unable to obtain sufficient data from Queensland or South Australia to enable meaningful conclusions to be drawn about those two States.

205 Finally, cases from firms in high income areas displayed some distinctive case and dispute resolution features. They concerned a greater range of property types, contained more matters per case, had more court attendances scheduled, and were more likely to reach the later stages of Family Court proceedings. This pattern suggests that these firms may not have been servicing the 'ordinarily prudent self-funding litigant'. Yet testing this observation against client incomes yielded equivocal results. Clients' median incomes did not vary significantly according to the number of matters per case, number of court attendances scheduled, or whether or not the case reached a final hearing. There were significant differences between clients' median incomes in relation to conciliation conferences,²¹⁴ pre-hearing conferences²¹⁵ and disposition by court decision (including dissolution).²¹⁶ However, the median incomes of clients reaching these stages were not high by any standards, ranging from \$38,000 to \$43,000 p/a, compared to \$28,000–\$29,000 for clients who did not reach these stages. This gives a picture of middle income clients choosing (or being advised) to spend scarce resources on family law litigation, rather than of wealthy clients pursuing litigation because they can afford to do so. This is a matter that we propose to study further in the next stage of the research on legal services in family law.

214 Mann-Whitney U=218.000, p<0.05.

215 Mann-Whitney U=179.500, p<0.05.

216 Mann-Whitney U=195.000, p<0.05.

Community Legal Centres

206 The sample of Community Legal Centre files was constructed less systematically than was the case with Legal Aid Commissions and private solicitors. Community Legal Centres were recruited for the survey in one of three ways. First, two members of the project Steering Committee were from CLCs (one in NSW and one in South Australia), and each of those CLCs agreed to participate in the survey. Secondly, the South Australian member of the Steering Committee discussed the project with the South Australian Council of Community Legal Services, which made an in-principle decision to participate. The JRC then formally approached individual South Australian CLCs, and of these, five agreed to be involved in the survey, although only four were able to do so within the timeframe available. General information about the fifth is included in the discussion of CLC family law work below.

207 In the other three States covered by the research, the National Association of Community Legal Centres undertook to identify CLCs that had done a substantial amount of family law work in the 1997–98 financial year, and to contact them to see if they would be willing to be involved in the research.²¹⁷ The identification process involved using National Information Scheme data, to identify CLCs that opened more than 100 cases in the area of family law between 1 January and 31 December 1997, and/or that had a specific child support solicitor. Some of the Centres contacted as a result of this process did not fall within the study parameters because they undertook little or no representation work in family law. This was particularly the case for CLCs in NSW and Queensland.

217 We wish to record our indebtedness to Tony Westmore and Loretta Kelly of the National Association of Community Legal Centres for their assistance in this respect.

- 208 Others were unable to participate in the survey due to staff turnover or the relevant staff being on leave. Solicitors from two of these CLCs were informally interviewed to gain an understanding of the nature of their family law work, and this information is also included in the following discussion.
- 209 Six of the CLCs identified by NACLCL who agreed to be contacted by the JRC regarding the research, ultimately agreed to participate in the survey: five from Victoria and one from NSW. The final list of participants was: Campbelltown Legal Centre and Women's Legal Resources Centre (NSW), Fitzroy Legal Service, Peninsula Community Legal Centre, Springvale Legal Service and Western Suburbs Legal Service (Vic), Marion Community Legal Service, Norwood Community Legal Service, Parks Legal Service and Women's Legal Service (SA), and two other legal services (one from Victoria and one from South Australia) which preferred to remain anonymous.
- 210 The sampling method clearly did not result in a representative sample of all CLCs across the four states included in the study. However, we are confident that the sample is fairly representative of those CLCs undertaking significant amounts of family law casework.
- 211 Within the sample, as discussed below, some CLCs were specialist services particularly related to family law (eg. women's legal services and child support services), while others were generalist services. The aggregated data presented in this chapter shows the combined outcomes from both types of services, and is therefore skewed in ways that would not occur if only generalist services were considered. Particular skews are noted where relevant, however the overall picture remains an accurate representation of the range of CLCs' work in family law.

CLCs' family law policies and practices

- 212 The kinds of family law casework undertaken by CLCs, and their other activities in relation to family law, depend upon each centre's

own guidelines and resources. Of the 12 CLCs that participated in the survey and the further three known to undertake family law casework but unable to participate, we were able to obtain written guidelines from nine, and additional information from most.

213 The twelve CLCs participating in the survey also filled out a background questionnaire, which asked questions about their staff numbers and family law work in the 1997–98 financial year. The statistical information derived from the questionnaires is set out in Table 4.1. In several cases the figures supplied by CLCs were expressed as estimates.

TABLE 4.1 CLCs' family law practices, 1997–98

Question	Mean	Minimum	Maximum	Responses
No. FTE lawyers	2.8	1.5	6.5	12
% advice work on FL	54.1	23.0	90.0	12
% staff time engaged in all casework	56.0	15.0	85.0	11
% casework time engaged in FL	53.8	20.0	90.0	12
No. FL casework files closed	172	26	298	9 ²¹⁸

214 It can be seen that the CLCs sampled had varying emphases on family law, in both the advice and casework departments. On average, family law made up around half the time devoted to each of these activities. It appears that in counting the number of family law casework files closed in the financial year, CLCs may have included State domestic violence matters as well as Commonwealth Family Law Act and Child Support matters.

218 One other CLC gave an estimate of 645 family law files closed in the financial year. Since this figure is so far outside the range of the other CLCs, and considerably skews the mean number of files closed, it is not included in the table.

215 None of the participating CLCs included an accredited family law specialist, although this question was only relevant for the seven CLCs from Victoria and NSW. Of the three additional CLCs for which we had information, one (in South Australia) employed a 0.8 solicitor to do mostly family law casework, while the other two (in NSW) undertook little casework. Both commented, however, that family law was a major area of advice work, with one noting that they faced a very large demand due to the recent legal aid cutbacks.

216 The family law casework guidelines applied by the CLCs for which we had information varied widely. The most common theme was that the client must be resident in the local area, and must not be eligible for legal aid or have the resources to afford private representation. Some explicitly applied a means and assets test. Other grounds for exclusion or inclusion were based on client characteristics, the type of matter involved, the nature of the case, or any combination of these. For example –

- WLRC (NSW) focused on Aboriginal women, women of non-English speaking background and women with disabilities as priority groups for assistance; other CLCs were concerned to assist people who were disadvantaged for example by cultural or language background, domestic violence, age, disability, or illiteracy, or who would be unable to appear for themselves, were facing a vexatious litigant, or were generally in a situation of inequality.
- One CLC focused on matters ineligible for legal aid (such as small value property and specific issues around contact); several did not take on property cases or divorces, or (in two cases) would only handle NESB divorces²¹⁹; three had a focus on children's matters. Four of the CLCs that participated in the survey included a Commonwealth-funded child support service.

219 These often involve a missing marriage certificate or the respondent's whereabouts being unknown, hence the need for procedural applications and affidavits in support. One solicitor noted that while the CLC had attempted to train community workers to assist people in this area, the Court not infrequently rejected applications due to faulty or insufficient affidavits, sending the case back to the CLC for further attention.

- Two CLCs only handled uncontested cases, while a further four limited assistance to negotiations and applications for consent orders; another four had a policy of encouraging self-help and/or emphasising non-legal solutions to family law problems.

Other considerations taken into account in determining whether to provide representation included such matters as the merits of the case, its potential status as a test case, the CLC's ability to offer a competent service and appropriate expertise, the resource implications of taking on the case, and the complexity of the case. Two respondents specifically noted that CLCs do not have the resources – including necessary administrative support – to take on complex litigation.

- 217 Several of the CLCs offered – formally or informally – some form of assistance with family law cases lying between advice/referral and actual representation. This might involve providing initial assistance with preparing documents in contested cases, helping unrepresented litigants by means of “repeated advice” at each successive stage of their case, or extended follow up work arising from advice or outreach sessions. One South Australian CLC had a formal category known as “sidelines assistance” which included the drafting of letters and documents and assistance with negotiations, primarily in child maintenance disputes, and which was subject to a means test. Another South Australian CLC referred to such work as “in-house minor legal assistance” – also subject to eligibility criteria, but designed to provide the client with assistance to represent herself. Some respondents noted that this form of assistance was an area of increasing demand. One complication from the point of view of the research was that some CLCs appeared to define this kind of work within the concept of “casework”, while others clearly did not. Rather than attempting to impose a common definition of “casework”, the solution adopted in deciding whether particular files fell within or outside the scope of the study was to accept the relevant CLC's own definition of the work – ie. whether they considered themselves to be “representing” the client or not.

218 Finally, all of the CLCs also engaged in a range of additional activities in relation to family law, including holding classes and workshops for potential litigants; community legal education; family law mediation; law reform submissions; research; and production or contribution to information kits (eg. for grandparents seeking contact with grandchildren) and family law publications.

219 The general picture that emerges, then, is of CLCs providing many forms of assistance to people with family law problems, and making particular decisions about what forms to focus on in a context of limited resources. There appeared to be more emphasis on family law casework in Victorian and South Australian CLCs than in NSW and Queensland CLCs, but in all instances, casework was one element of a multifaceted practice encompassing other family law activities as well as work in other areas of law. This picture provides a necessary context for the analysis of casework files that follows.

The sample of files

220 Due to difficulties in determining the number of family law casework files closed by Community Legal Centres in the 1997–98 financial year, and the information available from some sources that the numbers at any given CLC might be quite low, it was decided to ask for a sample of 20 files from each participating CLC. This was a similar procedure to that adopted for private law firms, where we also could not determine in advance the total number of files closed by the sampled firms in the financial year. Since there were fewer CLCs than law firms available to participate, however, we wanted to include a greater number of files from each CLC, so as to produce a reasonable total.

221 As was also the case with private law firms, CLCs themselves filled out the survey forms, in order to protect client confidentiality. This resulted in similar issues relating to data quality, and the same procedure was adopted of carefully checking each response and following up

missed questions and ambiguous or inconsistent responses. In this instance, however, some data (particularly certain demographic information) remained missing, since the relevant information was not routinely recorded on files or required as part of the National Information Scheme. There was also more of an impression that files tended to focus on a particular family law problem rather than the client's whole 'case', therefore matters such as domestic violence or child abuse allegations might be less likely to be recorded in the same file as the Commonwealth family law matter. These issues are discussed as they arise below.

- 222 As noted earlier, where it appeared from the survey form that the nature of the work undertaken on a file did not fall within the relevant CLC's definition of representation work (eg. advice only, or minor assistance), it was excluded from the analysis.
- 223 Each participating CLC was asked to fill out a form for the last 20 family law casework files closed in the 1997-98 financial year. After the exclusion of cases falling outside the relevant definition of "casework" and those that had in fact not yet been closed, this ultimately yielded a total of 179 files, plus a further 17 closed after the specified period. It was decided to include the latter in the analysis, after testing on several key variables revealed no major differences between the files closed before and after 30 June 1998.²²⁰ The final sample, then, contained 196 cases. The randomness of the cases is difficult to gauge. It is clear that some CLCs adhered closely to our instructions for file selection, while others might have been more inclined to pick cases they thought were 'typical', or that we would find interesting. About half of the cases closed in the financial year were closed in its last three months, while the other half were

220 The variables tested were: sex of the client, whether the client was born in Australia, the matters involved in the case, allegations of domestic violence, whether the other party was self-representing, and possible difficulties with legal aid funding. Other demographic variables were more difficult to test due to missing data. 'Outside' files contained relatively high proportions of male clients and child support matters. On examination, however, this proved merely to reflect the fact that all but two of the 'outside' files came from three particular CLCs, and one of these had an unusually high proportion both of male clients and child support matters.

scattered across the remaining nine months. At worst, we can say that the returned surveys provide a reasonable indication of the kinds of family law casework undertaken by CLCs in the last financial year.

- 224 In analysing the data derived from the surveys, the results were tested for differences between the various CLCs. It was often difficult to determine the statistical significance of any differences due to the small numbers of cases from each CLC, however some trends and patterns did emerge. In the following discussion, the two participating CLCs that did not wish to be named are referred to by State, ie. Vic CLC, SA CLC.

Client demographics

Sex

- 225 Around three quarters of CLC family law clients were female, and one quarter were male. As noted in relation to the Legal Aid Commissions, this pattern reflects the lower socio-economic position of women, particularly single women with dependent children, given that CLCs, as outlined above, apply (*inter alia*) a means test for assistance. The proportion of female clients fell to 69% when the two women's legal services were excluded, although there was still a relatively high proportion of female clients at Campbelltown, which did mainly child support work for carer parents. On the other hand, Springvale and SA CLC each had more than 50% male clients among the cases sampled.

Age

- 226 The median age of clients was 35.8 years. The age ranges of clients are set out in Table 4.2.

TABLE 4.2 CLC client age groups

Age group	Number	Percent
0–20	8	4.2
21–30	50	26.2
31–40	77	40.3
41–50	45	23.6
51–65	11	5.8
over 65	0	0.0
Total	191	100

227 As with the other two data sets, male clients (median age 38.2 years) were significantly older than female clients (median age 34.5 years).²²¹ The other significant differences here were that Campbelltown had a much younger group of clients (median age 27 years), while clients attending SA CLC and Vic CLC were older on average (median ages 40 and 41 years respectively).²²²

Ethnicity

228 Just over one third of clients (36%) were born overseas, with almost two-thirds born in Australia. The majority of overseas-born clients were from non-English speaking countries (27% overall),²²³ with the largest groups coming from various parts of the Asia-Pacific region, and Eastern and Southern Europe. Campbelltown had a relatively high proportion of clients born in Australia; Norwood, SA CLC and

221 Mann-Whitney U=2545.000, p<0.01.

222 Kruskal-Wallis $\chi^2=22.176$, df=11, p<0.05.

223 This is a larger proportion of overseas-born and NESB clients than in the population as a whole. The figure is particularly notable since it is largely derived from Victoria and South Australia. While a high proportion of overseas-born Victorian residents come from non-English-speaking countries, the same is not true for South Australia. ABS, 1996 Census of Population and Housing: Summary of Findings (Australia), Selected Characteristics (Australia) (1999).

Western Suburbs had relatively high proportions of clients born overseas in an English-speaking country; while WLRC and Fitzroy had relatively high proportions of clients from non-English speaking countries.

229 The year of arrival of overseas-born clients was unknown in over a third of cases, but where this was known, the median year of arrival was 1985. 10% of clients required the assistance of an interpreter, although three South Australian and two Victorian CLCs recorded no use of interpreters. Conversely, WLRC had a relatively high proportion of clients requiring interpreters (32%), consistent with its guidelines specifying non-English speaking background clients as one of its priorities for casework.

230 4% of clients were of Aboriginal or Torres Strait Islander background, while this question was answered 'unknown' in a further 12% of cases. The majority of Indigenous clients were clients of WLRC, again consistent with its casework guidelines. Campbelltown and Fitzroy were the other participating CLCs with Indigenous clients included in the survey.

Occupation

231 In the majority of cases (56%) the client's 'usual' occupation was unknown. After that, by far the largest group were those engaged in home duties (31%). This remained the case even when the women's legal services were taken out of account. Professionals and para-professionals made up the largest group of those with a known workforce occupation, but their numbers were very small (10 cases – 5% overall).

Income

232 Almost three quarters of clients (72.4%) were mainly dependent on social security benefits. The bulk of the remainder were mainly reliant on their own incomes. Centre by Centre, Campbelltown and Parks had no clients living on their own incomes. Conversely, SA CLC and Western Suburbs had relatively high proportions of clients reliant on their own incomes. The gross annual income of clients having their own income was unknown in two-thirds of those cases: Centres would usually only record that a person's income was 'low'. Where the information was available (from only five of the CLCs), the median annual gross income was \$20,176, with female clients having a lower median income (\$17,600) than male clients (\$23,660), although the difference was not statistically significant. The overall pattern of income, combined with CLCs' own casework guidelines, suggest that CLC clients are generally not in a category falling above the legal aid means test but unable to afford their own lawyer, but rather fail to qualify for legal aid for reasons other than means (type of matter, merit or substantiality).

Housing status

233 As with in-house and private solicitor legal aid clients, too, the largest group of CLC clients lived in private rental accommodation (33%), followed by those living in their own home with a mortgage and those living in public housing (both 18%). In terms of differences between Centres, Campbelltown and Fitzroy had no clients living in their own home with a mortgage, while relatively high proportions of clients of WLS (SA), SA CLC and Vic CLC lived in this form of accommodation. Campbelltown also had a high proportion of clients living in private rental accommodation, while WLRC and Parks had relatively low proportions living in private rental and relatively high proportions living in public housing. Campbelltown, Springvale, WLS and SA CLC had no clients living

in public housing. Springvale had a relatively high proportion of clients living in 'other' forms of accommodation.

Disability

234 CLCs were more likely than private solicitors to answer 'unknown' to the question whether the client had a verified physical, intellectual or psychiatric disability. The breakdown of responses to this question was 53% no, 37% unknown and 10% yes. WLRC and particularly Norwood had relatively high proportions of clients with identified disabilities (21% and 32% respectively), while Campbelltown, Springvale and SA CLC did not identify any clients with a disability.

Summary

235 In summary, the typical CLC family law client was very similar to the typical legal aid client: a woman, aged 34 years, born in Australia, dependent on social security benefits, and most likely to be living in private rental accommodation. Differences between the clients dealt with by different CLCs related to gender, age, need for interpreters, racial background, income sources, accommodation status and disability. These differences generally reflected a combination of characteristics of the local area, and the CLCs' casework guidelines.

Case characteristics

Relationships involved

236 The majority of cases (64%) concerned the breakdown of a marriage. 25% concerned the breakdown of a de facto relationship, and 7% concerned some other relationship, such as grandparent/child, or a casual sexual relationship that resulted in a child. Marriages were over-represented in cases from WLRC, de facto relationships were

over-represented in cases from Campbelltown and Fitzroy, and other relationships were over-represented in cases from Parks and Vic CLC. Although the length of marriages and de facto relationships was unknown in a number of cases, where the information was available the median length of marriages was 7 years,²²⁴ while the median length of de facto relationships was 2 years.

237 In the great majority of cases there was only one other party involved in the case apart from the client.

Matters involved

238 The main kinds of matters involved in CLC family law cases are shown in Table 4.3. The table lists matters that occurred in more than 5% of cases in the sample. It can be seen that the most frequently occurring matter was contact, followed by residence, although neither of these were raised in a majority of cases. No cases in the sample involved enforcement issues such as location/recovery orders and breaches of orders.

TABLE 4.3 Matters involved in CLC cases

Matter type	No.	Percent
Contact	78	39.8
Residence	56	28.6
Care, welfare, development	40	20.4
Child support	39	19.9
Property	37	18.9
Child maintenance	27	13.8
Dissolution	24	12.2
Specific issues	21	10.7

Note: total % > 100, since more than one matter possible per case.

224 This is close to the national average of 7.7 years. / see note 131 above.

239 Male and female clients were proportionately represented in most types of matters, other than divorces, in which male clients were less likely to be involved,²²⁵ and contact cases, in which male clients were significantly over-represented.²²⁶

240 All of the matters listed in Table 4.3 varied by CLC, although the numbers involved in each case were too small to enable a determination of statistical significance. Differences included—

- WLRC handled a relatively high proportion of divorce cases.
- Campbelltown and SA CLC focused on child maintenance/child support matters, but handled few other types of matters (divorce, residence, contact, care/welfare/development, specific issues and property).
- Marion CLS dealt with relatively high proportions of divorce, residence, care/welfare/development, specific issues and child maintenance cases, but no contact or property matters.
- WLS dealt with no divorce, child maintenance or child support cases, but handled relatively high proportions of specific issues and property matters.
- Vic CLC had a relatively high proportion of cases involving parenting issues other than contact; while Springvale had a relatively low proportion of such cases.
- Western Suburbs dealt with a relatively high proportion of residence cases, but no specific issues, child maintenance or child support matters.
- Fitzroy Legal Service handled relatively high proportions of residence, contact, and care/welfare/development matters, but no child maintenance cases.

Many of these differences are attributable to the CLC's particular casework guidelines. In some instances they may also be related to the CLC's client base, and to efforts to rationalise services (for

225 $\chi^2=4.445$, $df=1$, $p<0.05$.

226 $\chi^2=10.417$, $df=1$, $p<0.005$.

example if there is a specialist child support service in the vicinity, a generalist CLC may focus on other issues and refer clients with child support problems to the specialist service).

- 241 The majority of cases in the sample (59%) concerned only one matter, although a further 31% concerned two or three matters. The mean number of matters per case overall was 1.8, however there were significant differences between CLCs,²²⁷ with WLRC, Marion, Vic CLC and Fitzroy having means of 2 matters per case or higher (the highest was Vic CLC with a mean of 2.5 matters per case), and the rest having means less than 2 matters per case (the lowest was SA CLC with all cases in the sample concerning only one matter).
- 242 Over three-quarters of cases in the sample (77.5%) concerned children. The majority of those cases (60%) involved only one child, while a further 30% involved two children. There was again a significant difference between CLCs,²²⁸ with Parks having the highest proportion of children's cases (9/11) concerning only one child, and WLRC having a high proportion of children's cases (6/9) involving three or four children.
- 243 In the cases in the sample involving property, the kinds of property most frequently involved were the matrimonial home (10% of cases overall), household possessions (9% overall) and family car/s (8% overall).

Domestic violence and child abuse

- 244 Questions regarding allegations of domestic violence elicited a relatively high proportion of 'unknown' responses, making it difficult for a clear picture to emerge. Table 4.4 sets out the various responses to the domestic violence questions in the survey. In 97% of cases the target of the alleged violence was female.

227 Kruskal-Wallis $\chi^2=27.308$, $df=11$, $p<0.005$.

228 Kruskal-Wallis $\chi^2=20.959$, $df=11$, $p<0.05$.

TABLE 4.4 Domestic violence allegations in CLC cases

Question	Yes	No	Unknown
Allegations of domestic violence	62 (32%)	99 (51%)	35 (18%)
History of violence	43 (68%)	1 (2%)	19 (30%)
State domestic violence order	28 (44%)	24 (38%)	11 (18%)
breach of DV order	8 (25%)	10 (31%)	14 (44%)
Criminal charges	6 (10%)	33 (52%)	24 (38%)

245 There were considerable differences between CLCs in relation to domestic violence allegations, with, not surprisingly, the two women's legal services having a relatively high proportion of cases in which clients had allegedly been subjected to domestic violence, while Springvale – consistent with its relatively high proportion of male clients – had a relatively high proportion of clients alleged to have perpetrated domestic violence. These three CLCs were also more likely to answer 'unknown' rather than 'no' where the file did not contain direct evidence of violence. Fitzroy Legal Service had a relatively high proportion of violence cases involving an intervention order.

246 There were known child abuse allegations in 12% of cases, with WLRC and Fitzroy having higher proportions of cases involving such allegations than the other CLCs. Where child abuse allegations were made, they were substantiated by Community Services in 35% of cases.

Summary

247 In summary, the majority of CLC cases involved the breakdown of a marriage, and a dispute between the two parties to the marriage in relation to one or two matters relating to the children of the marriage. The most commonly occurring matters, in around one third of cases

each, were contact (raised by a high proportion of male clients) and child maintenance/child support. Domestic violence allegations were also noted in around one third of cases. However, none of the CLC cases in the sample involved enforcement proceedings.

- 248 As might be expected from their different casework guidelines, there were quite considerable variations between CLCs in relation to case characteristics. Differences between CLCs related to the types of relationships involved in their cases, types of matters dealt with, mean number of matters per case, number of children involved, identification of domestic violence and child abuse, and presence of State domestic violence orders.

Dispute resolution

Resolution processes

- 249 In the CLC sample, 52% of cases were dealt with by the Family Court, 10% were dealt with by a State court, and 41% had no court involvement. The level of cases with no court involvement was much higher than for LAC (23%) and private solicitor cases (5%), reflecting the tendency of CLCs to avoid contested matters and steer clients towards non-litigious solutions to their family law problems. Differences between CLCs in relation to court involvement included a high proportion (80%) of Campbelltown cases with no court involvement (ie. child support cases dealt with administratively by the Child Support Agency), a high proportion of Family Court involvement (75%) at Marion CLS, and a high proportion of State court involvement (26%) at Vic CLC.

- 250 Information from CLCs on attempted dispute resolution processes, the number of court attendances scheduled and number and length of hearings may be less than fully reliable. There was no way to check the accuracy of this data, and follow-up conversations with some of

the people who had filled in the survey forms left room for doubt. Thus, the following analysis must be treated with some caution.

251 The most frequently recorded attempted dispute resolution methods and Family Court stages reached are shown in Table 4.5. As in the previous chapters, the term "consent orders" refers to orders agreed by the parties following an application for interim or final orders. This is to be distinguished from an "application for consent orders", meaning a Form 12A application. The terms "interim orders" and "final orders" in the table refer to orders made by the court following a contested hearing. "Other" attempts included sundry applications, negotiations with or actions by outside bodies (eg. the Child Support Agency, a bank, and Centrelink), and clients withdrawing their applications.

TABLE 4.5 Stages reached and forms of resolution attempted in CLC cases

Stage/resolution type	Number of cases	% of cases
Application for final orders	70	35.7
Negotiations between solicitors	66	33.7
Solicitor negotiations with unrepresented party	55	28.1
Private resolution	43	21.9
Directions hearing/s	34	17.3
Application for consent orders (Form 12A)	26	13.3
Family Court counselling	25	12.8
Final orders — Family Court	25	12.8
Consent orders — Family Court	22	11.2
Other	19	9.7

Note: total % > 100, since more than one stage/resolution type possible per case.

252 As the table indicates, solicitor negotiations—with the solicitor for the other party and/or with an unrepresented party—occurred in a

majority of cases in the sample (61.8%). All other attempted resolution types and stages occurred in fewer than 50% of cases. An application for final orders was made in just over one third of cases. The next most frequently occurring attempted resolution type was private resolution between the parties. It is noteworthy that a directions hearing was recorded in fewer than half of the cases in which an application for final orders was made.

253 As with the cases handled by Legal Aid Commissions and private solicitors, the most commonly used form of "primary dispute resolution" was Family Court counselling. Once more, too, use of Family Court counselling was positively related to allegations of domestic violence and child abuse in a case.²²⁹

254 CLCs recorded notable differences in relation to a number of dispute resolution types. For example –

- cases handled by SA CLC and Fitzroy were more likely to involve the Family Court process – applications for final orders, directions hearings and consent orders – and cases handled by WLRC involved a relatively high proportion of final orders
- cases handled by Norwood and Vic CLC included a relatively high proportion of Form 12A applications
- cases handled by Campbelltown, Norwood and Peninsula involved a relatively high proportion of private resolutions, cases handled by Marion CLS and Vic CLC included a relatively high proportion of negotiations between solicitors, and cases handled by Parks and WLS (SA) included relatively high proportions of solicitor negotiations with an unrepresented party.

255 The mean recorded number of stages/resolution types attempted per case was 2.1. CLCs differed significantly on this point, with the

229 Domestic violence: $\chi^2=14.204$, $df=1$, $p<0.001$; child abuse: $\chi^2=13.579$, $df=1$, $p<0.001$.

highest mean being 3.4 (Fitzroy) and the lowest 1.2 (Campbelltown).²³⁰ The mean was considerably lower than the equivalent figures for LAC and private solicitor cases (3.5 and 4.3 stages/attempted resolution types per case respectively), which may indicate something different about the way CLCs handle their cases, or may simply indicate under-reporting of stages/resolution types on the survey forms. In common with LAC and private solicitor cases, however, there were higher mean numbers of dispute resolution types attempted in cases involving domestic violence and child abuse allegations.²³¹

256 The mean recorded number of Family Court dates scheduled per case was 2.2 (minimum 1, maximum 11), with no significant differences between CLCs. This is lower than the figure for both LACs and private solicitors (3.6), which may again indicate under-reporting, and/or CLCs' concern to maximise time with clients and avoid the consumption of limited resources in court attendances. The mean number of State court dates scheduled per case was slightly higher, at 2.6 (minimum 1, maximum 17), again with no significant differences between CLCs.

Stage and method of resolution

257 As noted in Table 4.5, 35.7% of the cases in the sample (70) involved the filing of an application for final orders. The stages at which these applications were resolved are shown in Table 4.6. It can be seen that a very high proportion of cases remained unresolved by the CLC. The cases that were resolved tended to finalise early in the Family Court process: at or before directions hearings.

230 Kruskal-Wallis $\chi^2=40.413$, $df=11$, $p<0.001$.

231 Domestic violence allegations: Mann-Whitney $U=2469.500$, $p<0.05$; child abuse allegations: $F=5.477$, $df=1$, $p<0.05$.

TABLE 4.6 Stages at which CLC applications for final orders were resolved

Stage	Number	Percent
Before directions hearing	10	14.3
At/after directions hearings	17	24.3
At/after Interim orders	1	1.4
At/after conciliation conference	0	0.0
At/after pre-hearing conference	1	1.4
At final hearing	10	14.3
Unresolved	31	44.3
Total	70	100

258 In cases that proceeded to final hearing in either the Family Court or a State Court, the mean length of hearing was less than one day. There were no client or case characteristics correlated with occurrence of a final hearing. Only two cases involved the making of an order for costs following a final hearing, and in both cases costs were awarded in favour of the CLC's client.

259 The means by which matters other than dissolution applications were finally resolved in the cases studied are set out in Table 4.7. Note that the table refers to matters rather than cases. The total number of matters in all of the cases, excluding dissolution applications, was 324.

TABLE 4.7 Means of resolution in CLC cases

Nature of resolution	Number of matters	Percent
Out of court	48	14.8
Application for consent orders (Form 12A)	39	12.0
Interim orders	7	2.2
Consent orders	43	13.3
Undefended final orders	2	0.6
Final orders following contested hearing	15	4.6
Other/unknown	10	3.1
Unresolved	160	49.4
Total	324	100

260 As the table shows, almost half of CLC matters remained unresolved. The reasons for matters remaining unresolved are discussed in the section below on funding and representation. The table also illustrates CLCs' generally non-litigious approach to family law matters. After unresolved matters, the next largest group of matters was resolved by out of court resolution methods, chiefly private resolution between the parties and solicitor negotiations. Private resolution was most common in child maintenance and child support matters. The bulk of the remaining matters were resolved by formal consent orders, either agreed by the parties following an application for final orders, or by means of a Form 12A application. Form 12A applications and other consent orders were the most common forms of resolution for parenting matters.

261 The overall proportion of unresolved cases was 44.9%, however this proportion varied significantly between CLCs.²³² Campbelltown, Marion and SA CLC had relatively high proportions of resolved cases, while Norwood, Springvale, Western Suburbs and Peninsula

232 $\chi^2=36.179$, $df=11$, $p<0.001$.

had relatively high proportions of unresolved cases. As with IAC cases, unresolved cases were associated with lack of court involvement, while resolved cases were associated with Family Court involvement.²³³ There was no significant difference in median closure times for resolved and unresolved cases, however, suggesting that unresolved cases might involve some amount of out-of-court activity before the file was closed. Neither was there any significant difference between the mean number of matters involved in resolved and unresolved cases.

262 In addition, not all matters were resolved in cases considered "resolved". 11% of "resolved" cases were only partially resolved, with one or more matters remaining unresolved at the end of the case. The mean percentage of matters resolved per "resolved" case varied significantly between CLCs,²³⁴ with Western Suburbs (72.2%) and Peninsula (55.0%) having the lowest means, compared to four CLCs with 100% of matters resolved in such cases. There were no particular patterns in relation to matters that tended to remain unresolved in resolved cases, although child support/child maintenance was the largest group of matters unresolved in those cases.

Resolution and closure times

263 For CLC cases that were resolved, the median time from first consultation to resolution was 6 months. Table 4.8 sets out the times in months from first consultation to resolution for cases resolved at various stages of the litigation process. The table shows both the median resolution time for each stage of resolution (ie. the time within which 50% of cases finalised at that stage were resolved), and the time within which 90% of cases completed at that stage were resolved. Cases resolved at or after interim orders, or at or after a pre-

233 $\chi^2=10.156$, $df=2$, $p<0.01$.

234 Kruskal-Wallis $\chi^2=26.442$, $df=11$, $p<0.01$.

hearing conference, are not included in the table, since only one case fell into each category. Similarly, the two cases resolved by final hearing in a State Court are excluded. There were no cases in the sample resolved at or after a conciliation conference (see Table 4.6, above).

TABLE 4.8 CLCs — resolution times by stage of resolution

Stage	No. cases resolved	Median resolution time	90% resolution time
No application for final orders	68	5.0 months	14.0 months
Application, before directions hearing	10	3.0 months	8.9 months
At/after directions hearing	17	7.0 months	33.8 months
At/after final hearing — Family Court	8	8.5 months	13.5 months
Total	103	6.0 months	14.2 months

264 It is interesting to note that cases in which no application for final orders was made took longer to resolve than cases in which an application for final orders was made and then followed by a settlement. Cases that went to final hearing in the Family Court had a longer median resolution time than cases in which no application for final orders was made, but a slightly shorter resolution time for 90% of cases. The table suggests that the pursuit of consensual solutions and avoidance of litigation do not necessarily result in more speedy resolutions of family law matters; indeed, the litigation process may sometimes yield quicker results.

265 The factors that impacted on resolution times in CLC cases were the relationship involved in the case, type of matter involved, court usage, type of resolution attempted, and total number of attempted resolution types. Cases involving the breakdown of a marriage had a significantly longer median resolution time (7 months) than those

involving a de facto or other relationship (4–4.5 months).²³⁵ One possible explanation for this is that marriage cases involved a range of issues to resolve between the parties, while non-marriage cases may have involved a narrower range of issues, or focused simply on child support. Consistent with this hypothesis was the fact that cases involving child maintenance and child support took significantly less time to resolve (median 3 months) than cases not containing these matters (median 6–6.5 months).²³⁶ This finding contradicts the observation among IAC cases that those involving child support took longer to resolve, but may be explained by the fact that in this context, child support matters were largely handled by specialist child support services, which may have had access to efficiencies not available to general casework practices. Moreover, CLC child support matters included assistance with applications to the Child Support Agency, whereas legally-aided child support matters tended to be more complex (eg. contesting an assessment in the Family Court).

- 266 Cases with Family Court involvement had a significantly longer median resolution time (7 months) than cases with State Court involvement (5 months), and cases with no court involvement (3.5 months).²³⁷ Cases in which private resolution between the parties was attempted had a significantly shorter median resolution time (4 months) than cases in which this was not attempted (6 months).²³⁸ Median resolution time also increased the more forms of dispute resolution were attempted.²³⁹ Allegations of domestic violence or child abuse, the number of matters in the case and the involvement of Family Court counselling did not significantly affect median resolution times.

235 Kruskal-Wallis $\chi^2=10.302$, $df=2$, $p<0.01$.

236 Child maintenance: Mann-Whitney $U=494.000$, $p<0.05$; child support: Mann-Whitney $U=726.000$, $p<0.005$.

237 Kruskal-Wallis $\chi^2=9.550$, $df=2$, $p<0.01$.

238 Mann-Whitney $U=663.000$, $p<0.05$.

239 Spearman's $R^2=0.203$, $p<0.05$.

267 There were also significant differences between CLCs in relation to resolution times, as shown in Table 4.9. The table sets out the times within which 50% and 75% of cases at each CLC were resolved. The 75th percentile is used here rather than the 90th percentile used in previous tables, due to the small numbers of resolved cases at a number of CLCs.

TABLE 4.9 CLC case resolution times

CLC	No. resolved cases	Median time to resolution	75% resolution time
WLRC (NSW)	10	10.5 months	15.8 months
Campbelltown LC	17	3.0 months	4.0 months
Parks LS	8	9.0 months	17.3 months
Marion CLS	17	7.0 months	13.0 months
WLS (SA)	7	5.0 months	9.0 months
Norwood CLS	6	10.0 months	14.0 months
SA CLC	7	4.0 months	7.0 months
Vic CLC	9	3.0 months	6.5 months
Springvale LS	6	4.5 months	6.3 months
Western Suburbs LS	3	7.0 months	+
Fitzroy LS	12	5.5 months	10.3 months
Peninsula CLC	5	6.0 months	11.0 months
Total	107	6.0 months	14.2 months

+ due to small number, only 50th percentile can be calculated.

268 In terms of the factors identified above that impacted on resolution times, and their association with particular CLCs, the relatively long median resolution time experienced by WLRC may be connected with the relatively high proportion of marriage breakdowns dealt

with there, and the relatively low proportion of private resolutions and relatively high degree of Family Court usage, including final orders, in WLRC cases. By contrast, the relatively short resolution times achieved by Campbelltown and SA CLC may be attributed to the fact that these were the CLCs that undertook the highest proportion of child maintenance and child support work. Campbelltown also had a relatively high usage of attempted private resolution, and relatively low number of types of resolution attempted per case. The relatively short resolution times for Vic CLC and Springvale Legal Service may be connected with the low level of Family Court usage by those CLCs – their resolved cases were more likely to involve a State Court or have no court involvement. The relatively short resolution time for WLS cases is more difficult to explain by reference to case or dispute resolution characteristics.

- 269 Regression analyses were performed to test the relative impact on resolution time of the various factors discussed above, and also to test the relevance to CLC cases of the regression models developed for IAC and private solicitor cases.²⁴⁰ Most of the case characteristics of significance in IAC and private solicitor cases (presence of a child representative, case involving residence or property) had no bearing on the resolution time of CLC cases. The only constant factor affecting resolution times in the three groups of cases was the number of resolution types attempted per case. As with the IACs, too, the particular office handling the case had a significant impact on resolution time. Finally, the number of Family Court appearances also proved to be relevant to resolution times in CLC cases. The regression model developed from the CLC data included number of attempted resolution types,²⁴¹ number of Family Court dates

240 Relationship involved in the case; case involved residence, case involved property, case involved child maintenance, case involved child support, type of court used, number of Family Court attendances, private resolution attempted, number of stages/resolution types attempted, presence of a child representative, other party's representation, other party self-funded, case handled by Peninsula, Springvale, Western Suburbs, Vic CLC, Norwood, WLS, Parks, Marion, WLRC, Fitzroy, SA CLC.

241 $t=2.098$, $p<0.05$.

scheduled,²⁴² and three CLCs (WLRC, Parks and Norwood) whose case handling had a positive effect on resolution time.²⁴³ The overall model explained almost 50% of the variance in the data.²⁴⁴

270 The time taken to close files after resolution ranged from 0 to 4.5 months, with 1–2 months being the norm. Given that almost half of CLC cases were unresolved or outcome unknown at the time the file was closed, the median closure time for unresolved cases is also of interest. In most cases, the median closure time for unresolved cases was somewhat shorter than for resolved cases, although this also varied from Centre to Centre. The median closure time for unresolved cases at Fitzroy and Peninsula was considerably shorter than the median closure time for resolved cases, suggesting that the unresolved cases dropped out very early in the process, perhaps by the client losing contact or finding other legal representation. The median closure time for unresolved cases at Campbelltown and Marion CLS, by contrast, was much longer than the median closure time for resolved cases, suggesting lengthy but ultimately unsuccessful attempts at resolution.

Summary

271 In summary a small majority of CLC cases were dealt with by the Family Court, although a large minority had no court involvement. The only dispute resolution method attempted in a majority of cases was solicitor negotiations; an application for final orders was made in only one third of cases. Cases involving domestic violence or child abuse allegations tended to involve a greater range of forms of dispute resolution than other cases. A large minority of cases and matters were unresolved or their outcome unknown by the CLC at the time the file was closed, and these cases tended not to have court

242 $t=2.026$, $p<0.05$.

243 WLRC: $t=4.545$, $p<0.001$; Parks: $t=2.698$, $p<0.05$; Norwood: $t=2.567$, $p<0.05$.

244 $R^2=0.489$, $F=8.413$, $df=5$, $p<0.001$.

involvement. Median closure time for unresolved cases was 5 months. Cases that did resolve tended to do so early in the Family Court process, and to be concluded by means of an out of court agreement, Form 12A application, or court orders made by consent. Median resolution time was 6 months, with little difference between cases dealt with via the court process or outside that process. Both a higher number of court dates and a higher number of forms of dispute resolution attempted increased case resolution times.

272 Differences between CLCs related to almost every aspect of dispute resolution –

- types and levels of court involvement
- forms of dispute resolution attempted and the number of different forms used in any given case
- proportions of resolved and unresolved cases, and mean percentage of matters resolved per case
- length of time taken to resolve and to close cases.

Funding and representation

Client's funding

273 74.5% of cases did not involve any funding for the client's case other than the assistance provided by the CLC. In 8% of cases the client was partially funded by legal aid, and in 11% of cases the survey response indicated that the client was or had been partially self-representing. The latter was particularly common in WLRC and Norwood Community Legal Service cases.

274 A legal aid application was made in 17% of cases, but in 11% the client was determined to be ineligible for legal aid. In addition, survey responses frequently indicated that the CLC had informally assessed the client to be ineligible for legal aid, and so had not advised or assisted them to make a legal aid application. In this

context, it is notable that a relatively high proportion (63%) of the sample of CLC cases was commenced after 1 July 1997. The client's legal aid grant had been terminated or their legal aid cap reached in just under 5% of cases. The majority of clients, however, had had no previous legal representation (84%).

Client's representation

275 The CLC ceased to act for the client in 44% of cases. In just over half of these cases the reason for ceasing to act was that the client lost contact. In a further 5% of cases the CLC was no longer able to assist the client within its guidelines – particularly where a matter became contested – so the client became self-representing. A similar number of cases involved the client moving to a private solicitor, whether self-funded or legally-aided. Statistical differences between CLCs could not be determined due to small numbers. Differences that emerged, however, included the following –

- Campbelltown and SA CLC (the child support services), and Marion CLS, had a low incidence of ceasing to act. These were the three CLCs identified in the previous section as having relatively low proportions of unresolved cases.
- Norwood, Western Suburbs, Springvale and Peninsula, which had high proportions of unresolved cases, had high proportions of clients losing contact. Western Suburbs also had a high proportion of clients moving to other legal representation.
- WLRC, WLS and Parks also had relatively high proportion of clients who lost contact.
- Fitzroy had a relatively high proportion of clients become self-representing, whether by choice or due to the Legal Service no longer being able to assist them.

Child representation

276 The great majority of cases (94%) did not involve a child representative.

Other party's funding and representation

277 The other party was wholly unrepresented in 31% of cases and partially unrepresented in a further 5%. In 32% of cases the other party was represented by a private law firm, with funding varying between self (11%), legal aid (5%) and unknown (16%). In the next largest group of cases (16%), the other party's funding/representation status was altogether unknown. There were significant differences between CLCs in relation to unrepresented opponents,²⁴⁵ with Parks and WLS having relatively high proportions of such cases, while Western Suburbs and Peninsula clients had low proportions of unrepresented opponents (though the latter also had a high proportion of 'unknown' responses). The fact that the other party was unrepresented had no significant impact on median resolution or closure times, or on whether or not the case was likely to be resolved. Neither did other representation pairs (CLC-legal aid, CLC-self-funded, CLC-CLC) have any impact on case disposition times.

Summary

278 In summary, in the typical CLC case the client had no previous or known subsequent legal representation, and there was no application for legal aid since the CLC assessed the client as ineligible. There was no child representative, and the other party was most likely to be either represented by a private solicitor, or self-representing. In a large minority of cases the CLC ceased to act for the client before their case was finalised, most usually because the client lost contact. CLCs differed in relation to the proportion of cases in which they

245 $\chi^2=30.540$, $df=10$, $p<0.005$ (SA CLC excluded from calculation due to small numbers).

ceased to act, and the reasons for ceasing to act, and in relation to the level of unrepresented other parties.

Conclusion

279 The data from the sample of CLC cases indicates that CLC representation work in the family law area tended to focus fairly narrowly on a small number of issues, particularly contact and child maintenance/child support, although the particular issues dealt with varied between CLCs. None of the cases in the sample, however, involved enforcement proceedings. Court involvement was often eschewed in favour of solicitor negotiations and encouragement of private resolution between the parties, and court contact might simply have consisted of a Form 12A application. More generally, there was an emphasis on consent solutions rather than contested litigation. In a substantial proportion of cases, moreover, the case was not resolved by the CLC, with the client moving on to other legal representation, becoming self-representing, or simply losing contact.

280 Beyond – and in some cases contrary to – these generalisations, the differing locations, functions and casework guidelines of the CLCs studied resulted in widely differing client and other party characteristics, case characteristics, and dispute resolution times and processes. It is not surprising that, for example, a women’s legal service with a focus on disadvantaged women clients, a specialist child support service, and a more generalist service would deal with very different family law cases.

281 Moreover, CLCs stand in the gaps left by other services, assisting clients who cannot afford private legal representation but who are also ineligible for legal aid. A few CLCs attempt to fill the gap by offering services comparable to those provided by LAC in-house practices or private solicitors in family law. As Table 4.1 demonstrates, however, casework in general, and family law casework in particular, are often an adjunct to a variety of other activities rather than a

central focus of the service. All of these factors make it difficult, and somewhat misleading, to draw general conclusions about CLCs' family law casework practices.

- 282 It should be noted, however, that this account of CLCs' family law work is to some extent historical. Recent reviews of Community Legal Centres in Victoria and South Australia have recommended various changes, including rationalisation of CLC resources across regions of the relevant states and standardisation of eligibility criteria and client services, including, in some cases, a greater emphasis on casework.²⁴⁶ Hence in the future, CLCs' family law practices may become more casework-oriented and more homogenous than the picture presented here. At that time, comparisons between CLCs and other providers of family law services may become more meaningful. But at present, the work of CLCs is *sui generis*.

246 Eg. Impact Consulting Group, Review of Community Legal Centre Funding Program (July 1998).

Family Court Cases

283 Data from Family Court files was collected by the Australian Law Reform Commission, which was independently conducting a study of Family Court cases as part of its reference on the adversarial system. The focus of the ALRC's research was on cases involving ancillary matters rather than divorce. As with the other three data sets discussed in this report, files for analysis were identified by reference to a closing date in the 1997-98 financial year.

The sample of cases

284 Due to difficulties in identifying finalised Family Court cases from the court's records, the ALRC arranged for the separate recording of all cases removed from the active pending cases list in the months of May and June 1998, which had been initiated by either a Form 7 or a Form 12A. This group of cases then formed the basis for the file analysis sample. While the ALRC was concerned to sample cases from each Registry of the court, the JRC selected six Registries of interest, in the four states covered by its profiling study—Brisbane, Newcastle, Parramatta, Sydney, Melbourne, and Adelaide.

285 The recording period yielded a total of 3495 cases finalised in these six Registries. 1795 of these cases were initiated by a Form 7 (Application for Final Orders), and 1700 by a Form 12A (Application for Consent Orders). It was decided to skew the sample towards Form 7 cases, both because these were of greater interest in terms of case processing, and in order to reflect more accurately the relative proportions of Form 7 and Form 12A applications filed. Family Court statistics for the 1996-97 financial year revealed that the ratio

of Forms 12A to Forms 7 filed in the year was approximately 1:3.²⁴⁷ The ultimate sample consisted of half of the finalised Form 7 files and one sixth of the finalised Form 12A files, randomly selected. The breakdown of files by Registry is shown in Table 5.1.

TABLE 5.1 Family Court file sample by registry and initiating document

Registry	Forms 7	Forms 12A	Total	Percent
Adelaide	128	47	175	16.8
Brisbane	218	38	256	24.6
Melbourne	144	42	186	17.9
Parramatta	131	32	163	15.6
Sydney	137	53	190	18.2
Newcastle	54	18	72	6.9
Total	812 (77.9%)	230 (22.1%)	1042	100

286 There were significant differences between the Registries as to the relative proportions of Form 7 and Form 12A cases in the sample,²⁴⁸ reflecting differences in the populations of cases finalised in those Registries during the relevant period. Sydney and Adelaide finalised relatively high proportions of Form 12A cases during the recording period (26% and 28% respectively), while Brisbane finalised a relatively low proportion of Form 12A cases (15%).

287 Information from Family Court files was extracted by ALRC coders, using a questionnaire that included many of the same questions as the survey form used by the JRC to gather information from solicitors' files. Data entry was also undertaken by the ALRC, which then made

247 The Family Court of Australia, Annual Report 1996-97, Tables 4.3A, 4.4.

248 $\chi^2=14.802$, $df=5$, $p<0.05$.

a copy of its database for the six Registries available to the JRC for analysis.

288 In analysing the Family Court data, the two independent variables consistently examined were Registry and initiating document. That is, the data was tested to discern any differences between Family Court Registries, and between cases initiated by Form 7 or Form 12A.

Litigant demographics

289 While solicitors' files dealt only with a single client, Family Court files dealt with (at least) two parties. Demographic and representation information was recorded by reference to litigant status (applicant or respondent). In cases involving more than two parties, details of additional parties were recorded separately. However, the great majority of cases contained only one applicant (98%) and one respondent (96%).

Sex

290 56% of applicants and 46% of respondents were female; 44% of applicants and 54% of respondents were male. There were no significant differences between Registries or initiating documents in relation to the sex of applicants and respondents.

Age

291 The median age of both applicants and respondents was 37.6 years. The age groups of all litigants are shown in Table 5.2.

TABLE 5.2 Litigant age groups

Age group	Number	Percent
0–20 years	22	1.1
21–30 years	387	19.3
31–40 years	845	42.0
41–50 years	457	22.7
51–65 years	262	13.0
over 65 years	37	1.8
Total	2010	100

292 There were significant differences between Registries²⁴⁹ and between initiating documents²⁵⁰ in relation to the median age of litigants. Adelaide litigants were younger than the median (median age of both applicants and respondents 34.3 years), while Sydney litigants were older (median age of applicants 40.4 years and respondents 40.7 years). Parties filing a Form 12A were older (median age 38–39 years) than parties to Forms 7 (median age 37 years). The age difference between Registries is not apparently explained by the different proportions of Forms 12A included in the sample from each Registry.

293 In the solicitors' data sets there were significant differences between the median ages of male and female clients. The Family Court data revealed a significant difference between the ages of male and female respondents (male median 39.8 years; female median 34.2 years),²⁵¹ but not between male and female applicants.

249 Applicants: Kruskal-Wallis $\chi^2=35.630$, $df=5$, $p<0.001$; Respondents: Kruskal-Wallis $\chi^2=34.782$, $df=5$, $p<0.001$.

250 Applicants: Mann-Whitney $U=81305.000$, $p<0.05$; Respondents: Mann-Whitney $U=70939.500$, $p<0.001$.

251 Mann-Whitney $U=81063.000$, $p<0.001$.

Ethnicity

294 The Family Court questionnaire categorised litigants born in Australia and New Zealand together, so the results are not directly comparable with those obtained from solicitors (although it may be observed that in the solicitors' data there were very few clients born in New Zealand). Moreover, data on the applicant's and respondent's country of origin was missing in around half of all cases. In those cases for which data was available, 78.6% of applicants and 68.8% of respondents were born in Australia or New Zealand. 21.4% of applicants were born overseas, including 16.2% born in a non-English speaking country. A higher proportion of respondents was born overseas: 31.2%, including 22.8% born in a non-English speaking country.²⁵²

295 There were significant differences between Registries in relation to litigants' country of origin. Brisbane had relatively high proportions of Australian/New Zealand-born litigants, and Adelaide also had relatively low proportions of overseas-born litigants, while Melbourne, Sydney and Parramatta had relatively high proportions of overseas-born litigants.²⁵³ Almost half of the respondents in the Melbourne registry for whom country of origin information was available (46.6%) were born overseas, and these included a relatively high proportion of respondents born in other English-speaking countries. Otherwise, a high proportion of overseas-born litigants was more likely to mean a high proportion of litigants born in non-English speaking countries. There was no significant difference between originating documents in relation to litigants' country of origin.

296 The questionnaire asked whether applicants and respondents used an interpreter at a court appearance, but in just over half of all cases the

252 This is a particularly high proportion of overseas-born and NESB litigants, compared to the total Australian population (74% born in Australia): ABS, 1996 Census of Population and Housing, Summary of Findings (Australia) (1999).

253 Applicants: $\chi^2=39.007$, $df=5$, $p<0.001$; respondents: $\chi^2=35.151$, $df=5$, $p<0.001$.

response to this question was 'not applicable' (51%).²⁵⁴ Where the question of an interpreter was relevant, they were used by only 2-3% of both applicants and respondents. This compares to a known 15% of applicants and 18% of respondents from non-English speaking backgrounds. It is also considerably lower than the figures for interpreter usage by solicitors' family law clients (5-12%). The very small numbers of interpreters used made it impossible to discern statistical differences between Registries. It is possible that interpreters may have been present in some instances but this was not recorded on the court file, or that clients were not present and/or interpreters were not used for some types of appearances (eg. mentions or directions). However, it is notable that no interpreters were used by either applicants or respondents for a court appearance in the Newcastle Registry, although, as indicated above, this was not a Registry with a particularly low proportion of non-English speaking background clients.

Occupations

297 Applicants' and respondents' occupations at the time the initiating documents were filed were coded using ASCO categories, with additional categories for 'home duties', 'unemployed or benefit recipient', and 'small business owner'. The 'unemployed' category was used for those seeking work at the time of filing. Occupational data was missing for almost one quarter of applicants (23%) and over one third of respondents (35%). There was a considerable spread of occupations among litigants, with the largest single category of both applicants and respondents being 'home duties' (16% and 13% respectively).

254 The circumstances in which this response was used were not entirely clear from the data. It appeared to relate to the party's language background (born in Australia/NZ/another English speaking country), rather than to the nature of the party's contact with the court, however the categorisation was still somewhat inconsistently applied, particularly where the party's country of birth was unknown.

298 There were significant differences between both Registries²⁵⁵ and initiating documents²⁵⁶ as to litigants' occupations. The 'small business owner' category and the Newcastle Registry were excluded from the Registries calculation due to the small numbers of litigants for whom information was available in those categories –

- Sydney litigants tended to be clustered in upper/white collar occupational categories, with a relatively high proportion of managers and administrators (respondents), professionals (both applicants and respondents), clerks (respondents) and sales and personal service workers (applicants), and relatively low proportions of tradespersons (respondents), unemployed/benefit recipients (respondents) and home duties (both applicants and respondents).
- Melbourne litigants also tended to be clustered in the upper occupational bracket, with relatively high proportions of managers and administrators (applicants), professionals (respondents) and paraprofessionals (both applicants and respondents), and a relatively low proportion of unemployed/benefit recipients (respondents).
- Adelaide litigants tended to be clustered in 'lower' blue collar occupations or to be out of the workforce, with relatively low proportions of professionals (both applicants and respondents) and tradespersons (respondents), and relatively high proportions of plant and machine operators/drivers (applicants), labourers and related workers (respondents) and home duties (both applicants and respondents).
- Brisbane had a relatively high proportion of tradesperson respondents and a relatively low proportion of white collar (professional and clerical) respondents.
- Form 7 applicants included a relatively low proportion of professionals, and a relatively high proportion of unemployed/benefit recipients.

255 Applicants: $\chi^2=78.817$, $df=36$, $p<0.001$; respondents: $\chi^2=75.950$, $df=36$, $p<0.001$.

256 Applicants: $\chi^2=42.272$, $df=10$, $p<0.001$; respondents: $\chi^2=30.125$, $df=10$, $p<0.005$.

- By contrast, parties to Form 12A were concentrated in middle to upper occupational categories – professionals, tradespersons and clerks – with a relatively low proportion of labourers and related workers, unemployed/benefit recipients and home duties.

Incomes

299 Income data was available for only a minority of litigants – 37% of applicants and 30% of respondents. The data was far more likely to be present in property cases (64%) than in cases concerning children only (9%). For those parties for whom income information was available, the median weekly income for applicants was \$483 and for respondents was \$546. These figures translate into median annual incomes of \$25,116 and \$28,392 respectively. The annual income ranges for all parties for whom income data was available are shown in Table 5.3.

TABLE 5.3 Incomes of Family Court litigants

Income range	Number	Percent
\$0–\$10,000	82	11.8
\$10,001–\$20,000	155	22.4
\$20,001–\$30,000	164	23.7
\$30,001–\$40,000	105	15.2
\$40,001–\$50,000	86	12.4
\$50,000–\$75,000	64	9.2
\$75,001–\$100,000	19	2.7
\$100,000 +	18	2.6
Total	693	100

300 There were no significant differences between the median incomes of parties to Form 7 and Form 12A applications (ie. between parties disputing property via a Form 7 or a Form 12A application). Neither was there a significant difference between respondents' median incomes by Registry, although there was a significant difference between applicants' median incomes by Registry,²⁵⁷ with Sydney applicants having median weekly incomes higher than the overall median (\$632 per week compared to \$483 overall), and Brisbane and Newcastle applicants having median weekly incomes lower than the overall median (\$400 and \$408 per week, respectively). In addition, there were significant gender differences between median incomes of both applicants and respondents, with male litigants having median weekly incomes of \$603.50–\$637.50 while female litigants had median weekly incomes of \$414–\$426.

Summary

301 In summary, the typical Family Court case involved a female applicant and male respondent (although the reverse situation was almost equally likely), both aged in their mid to late 30s. There was a considerable amount of missing data in relation to litigants' country of origin, occupation and income. From the information available, most litigants were born in Australia or New Zealand, and fell into a range of occupational categories (the highest single occupational group being home duties). Female litigants had median annual incomes in the low \$20,000s, while male litigants had median annual incomes in the low \$30,000s. It is possible that if income information was available from parties to children only cases, median income figures would be even lower.

302 Demographic differences between Registries included litigants' ages, country of origin and occupations, and applicants' median incomes. Sydney litigants tended to be older, in upper/white collar

257 Kruskal-Wallis $\chi^2=18.498$, $df=5$, $p<0.005$.

occupations, and applicants had higher incomes than the average, though there was also a relatively high proportion of litigants from non-English speaking backgrounds. Melbourne too had a relatively high proportion of litigants born overseas and in 'upper' level occupations. By contrast, Adelaide litigants were younger, and more likely to be Australian-born and in lower blue collar occupations or not employed. Brisbane litigants also tended to be Australian-born, with lower applicant incomes than the average, and respondents in upper blue collar occupations.

- 303 Demographic differences between initiating documents related to litigants' ages and occupations. Parties to Forms 7 were younger and more likely to be unemployed/benefit recipients than parties to Forms 12A, who tended to be in middle to upper occupational categories. This pattern is associated with the types of matters dealt with by, and funding available for, different applications, but it points to a distinct class difference in processes used for resolving family law disputes.

Case characteristics

Matters involved

- 304 The matters involved in the cases in the sample are set out in Table 5.4. The table differentiates between matters raised in the most recent initiating document, and matters raised in the case as a whole (including in the Form 7A, or in previous Forms 7 or 12A). It excludes matters which occurred in fewer than 5% of cases.

TABLE 5.4 Matters raised in Family Court cases

Order sought	No. initiating	Total No.	Total % of cases
Contact	532	614	58.9
Residence	497	601	57.7
Property	538	590	56.6
Child welfare	254	340	32.6
Costs	119	191	18.3
Vary/confirm/discharge previous orders	109	136	13.1
Location/recovery and related issues	80	104	10.0
Spouse maintenance	34	58	5.6

Note: total % > 100, since more than one matter possible per case.

305 The table shows a similar pattern to private solicitors' cases in having residence, contact and property high on the list of matters involved. Although contact and residence appeared in higher proportions of cases overall, property came out on top in the most recent initiating documents. The categorisation of other parenting matters was different from that adopted in the solicitors' surveys, so that the 'child welfare' category here covers care/welfare/development and specific issues, while applications to vary, confirm or discharge previous orders were categorised according to the substantive matter involved in the solicitors' survey. The variation etc. category includes applications to vary a child support assessment. The high proportion of applications for costs is interesting, given the very low proportion of costs orders found in the solicitors' data, confirmed here by an equally low proportion of costs orders made by the court (in 2% of cases).

306 There were significant differences between initiating documents in relation to matters raised. Not surprisingly, Form 12A cases were significantly more likely to concern property than were Form 7

cases,²⁵⁸ while Form 7 cases were significantly more likely than Form 12A cases to concern residence,²⁵⁹ contact,²⁶⁰ child welfare,²⁶¹ and applications for location/recovery orders,²⁶² variation etc. of previous orders,²⁶³ and costs.²⁶⁴

307 In addition, there were significant differences in the matters involved in cases between Registries. The Adelaide Registry had a relatively low proportion of property matters and a relatively high proportion of residence matters, while the opposite was true of Sydney.²⁶⁵ This pattern may reflect the different litigant demographics for the two registries identified above. Adelaide also had relatively high proportions of child welfare and location/recovery matters, while Melbourne had a relatively low proportion of child welfare matters and Newcastle had a relatively low proportion of location/recovery matters.²⁶⁶ Melbourne and Newcastle also had relatively low proportions of costs applications, while Brisbane had a relatively high proportion of cases including costs applications.²⁶⁷ Finally, Parramatta had a high proportion of applications for variation etc. of previous orders, while Sydney had a low proportion of such applications.²⁶⁸

308 There was also a gender difference in relation to broad matter types, with men most likely to make applications in relation to children

258 Initiating document: $\chi^2=162.357$, $df=1$, $p<0.001$; total case: $\chi^2=137.388$, $df=1$, $p<0.001$.

259 Initiating document: $\chi^2=30.127$, $df=1$, $p<0.001$; total case: $\chi^2=56.363$, $df=1$, $p<0.001$.

260 Initiating document: $\chi^2=56.778$, $df=1$, $p<0.001$; total case: $\chi^2=81.686$, $df=1$, $p<0.001$.

261 Initiating document: $\chi^2=29.286$, $df=1$, $p<0.001$; total case: $\chi^2=54.601$, $df=1$, $p<0.001$.

262 Initiating document: $\chi^2=8.942$, $df=1$, $p<0.005$; total case: $\chi^2=13.890$, $df=1$, $p<0.001$.

263 Initiating document: $\chi^2=17.336$, $df=1$, $p<0.001$; total case: $\chi^2=23.837$, $df=1$, $p<0.001$.

264 Initiating document: $\chi^2=27.346$, $df=1$, $p<0.001$; total case: $\chi^2=48.730$, $df=1$, $p<0.001$.

265 Property – initiating document: $\chi^2=32.926$, $df=5$, $p<0.001$; total case: $\chi^2=29.159$, $df=5$, $p<0.001$.
Residence – total case: $\chi^2=15.641$, $df=5$, $p<0.01$.

266 Child welfare – initiating document: $\chi^2=31.205$, $df=5$, $p<0.001$; total case: $\chi^2=38.212$, $df=5$, $p<0.001$.
Location/recovery – initiating document: $\chi^2=13.153$, $df=5$, $p<0.05$; total case: $\chi^2=14.471$, $df=5$, $p<0.05$.

267 Initiating document: $\chi^2=26.805$, $df=5$, $p<0.001$; total case: $\chi^2=35.466$, $df=5$, $p<0.001$.

268 Initiating document: $\chi^2=14.217$, $df=5$, $p<0.05$; total case: $\chi^2=12.413$, $df=5$, $p<0.05$.

only, while women were more likely to make applications relating to property only or to both children and property.²⁶⁹ This appears to reflect the relative (gendered) concerns of parties on the breakdown of a relationship, still based on the traditional division of labour within the family – for men that they will lose contact with their children, and for women that they will be left with few financial resources. UK research confirms that men are more likely to be applicants in proceedings concerning children than in other types of proceedings.²⁷⁰

- 309 The mean number of orders sought per initiating document was 2.1. Due to the need to aggregate disparate data elements it was difficult to calculate a mean for all orders sought per case, however a close approximation can be obtained by calculating the mean number of orders sought in the cases included in Table 5.4, which was 2.5 – very close to the figures obtained from Legal Aid Commissions (2.3) and private law firms (2.7) (recalling that the solicitors' data included some divorce cases, whereas divorce applications were not included in the Family Court data).
- 310 Two-thirds of cases concerned children, with 44% of those cases involving one child and a further 40% involving two children. There were significant differences in the proportions of cases concerning children between Registries and initiating documents. Adelaide had a relatively low proportion of cases not involving children (29%), while Sydney had a relatively high proportion (47%), and a correspondingly low proportion of children's cases (53%).²⁷¹ Predictably, too, a higher proportion of cases initiated by a Form 7 (73%) concerned children than did cases initiated by a Form 12A (41%).²⁷²

269 $\chi^2=32.794$, $df=2$, $p<0.001$.

270 Sarah Maclean, *Report of the Case Profiling Study: Legal Aid and the Family Justice System* (Legal Aid Board Research Unit, 1998), pp.17, 34.

271 $\chi^2=18.353$, $df=5$, $p<0.005$.

272 $\chi^2=78.962$, $df=1$, $p<0.001$.

Domestic violence and child abuse

- 311 The questionnaire asked whether there was current evidence of a Family Violence Order, Domestic Violence Order or Apprehended Violence Order, and whether a notification of risk of child abuse had been filed. The domestic violence question is comparable to the question on the solicitors' survey as to whether a State domestic violence order had been obtained. It will be recalled that this question was generally answered affirmatively in a lower proportion of cases than the proportion involving allegations of domestic violence between the parties or a history of violence in the relationship. Thus the Family Court questionnaire provided a fairly stringent test of the existence of family violence, more so given its emphasis on "current" evidence rather than any domestic violence orders made.
- 312 In all, 16% of Family Court files contained current evidence of a domestic violence order, compared to 28% of LAC cases, 23% of private solicitors' cases and 14% of CLC cases in which a party had obtained a State domestic violence order. In 89% of the cases containing current evidence of a family violence order, the perpetrator of violence was male and the victim female.
- 313 There were significant differences between Family Court Registries in relation to current evidence of family violence orders,²⁷³ with Melbourne and Sydney having low proportions of cases with current evidence of a domestic violence order (12% each) and Newcastle having a high proportion of such cases (33%). There was also a significant difference in relation to initiating documents,²⁷⁴ with cases initiated by a Form 7 far more likely to include current evidence of a domestic violence order (20%) than cases initiated by a Form 12A (4%). This highlights the point that domestic violence is likely to be raised and evidence produced only in contexts in which it is considered to be relevant to the particular court proceedings.

273 $\chi^2=21.855$, $df=5$, $p<0.005$.

274 $\chi^2=36.321$, $df=1$, $p<0.001$.

314 A notification of risk of child abuse was filed in 4% of cases overall – 6% of cases involving children. This was considerably lower than the proportions of solicitors' cases involving allegations of child abuse (12% of CLC cases – 22% of LAC cases), although closer to the proportions of those cases in which child abuse allegations were substantiated by Community Services (4% of CLC cases – 10% of LAC cases). Once more there were significant differences between Family Court Registries,²⁷⁵ and initiating documents.²⁷⁶ Brisbane had a relatively high proportion of notifications (7%) while Sydney had a relatively low proportion (2%) (but also, as noted above, a relatively low proportion of cases involving children). Consistent with the greater emphasis on children's matters in Form 7 cases, those cases had a higher proportion of risk of child abuse notifications (5%) than did cases initiated by a Form 12A (0.4%).

Summary

315 In summary, the typical Family Court cases concerned some combination of contact, residence and property matters, with a mean of 2.5 matters and 1-2 children involved per case.

316 There were, however, significant differences between both Registries and initiating documents as to the types of matters raised in cases, whether children were involved, current evidence of a domestic violence order, and notifications of child abuse. Broadly, Form 12A cases were more likely to concern property, while Form 7 cases were more likely to concern children, and to include evidence of domestic violence and child abuse. In relation to Registries, a particular contrast emerged between Adelaide and Sydney, with Adelaide cases most likely to include children's matters and least likely to include property matters, while the opposite was true of Sydney cases. Sydney also had low proportions of cases including current evidence

275 $\chi^2=25.120$, $df=10$, $p<0.01$.

276 $\chi^2=63.646$, $df=2$, $p<0.001$.

of a domestic violence order and notifications of risk of child abuse. However, Adelaide was not Sydney's opposite in these respects, with Newcastle having the highest proportion of cases with current evidence of a domestic violence order, and Brisbane having the highest proportion of cases including a notification of risk of child abuse.

Dispute resolution

317 The Family Court questionnaire recorded much detailed information about case processing, including dates and numbers of various pre-hearing events and mediation and conciliation counselling sessions, dates and outcomes of interim and final hearings, documents and witnesses involved, and stage and nature of finalisation. The material concerning stages reached, stage of resolution and time to resolution is analysed here, since it is comparable with the data gathered from solicitors' files.

Court processes

318 8% of cases overall were transferred from a State Court. Parramatta had the highest proportion of transfers (15%) while Adelaide, consistent with the minimal usage of State Courts for family law matters in South Australia, had the lowest proportion of transfers (0.6%). A further 2% of cases were appealed from a State Court – 22 cases in all, of which half occurred in the Newcastle Registry. Appeals were more likely in Form 12A cases than in Form 7 cases,²⁷⁷ and possibly indicated situations where consent orders had been made and then proved unworkable, or made before a party obtained legal advice. The only way to get the orders varied or revoked would then be to lodge an appeal. Around half of the appealed cases concerned children and half property.

277 $\chi^2=38.475$, $df=2$, $p<0.001$.

319 Within the Family Court, Form 7 cases were allocated to direct, standard or complex tracks. Information on the case management track to which a case was allocated was, however, not recorded or otherwise missing in a high proportion of Form 7 cases (42%), particularly in Melbourne (52% missing) and Adelaide (67% missing). Standard track was the most frequently used where case management information was available (84% of such cases). Direct track was more likely to be used in property cases than in cases involving residence and/or contact.²⁷⁸

320 The incidence of various types of court events is shown in Table 5.5. Family Court mediation and compliance conferences are excluded, since they occurred in only a tiny proportion of cases each.

TABLE 5.5 Stages reached in Family Court cases

Stage	Number	Percent
Directions hearings	736	70.6
Interim orders	451	43.3
Procedural	403	38.7
Chambers	389	37.3
Family Court counselling	302	29.0
Conciliation conference	204	19.6
Pre-hearing conference	181	17.4
Final hearing	149	14.3

Note: total % > 100, since more than one stage possible per case.

321 The court events recorded on the Family Court questionnaire were not fully comparable with the stages and attempted resolution types

278 Property: $\chi^2=5.823$, $df=1$, $p<0.05$; residence: $\chi^2=6.687$, $df=1$, $p<0.05$; contact: $\chi^2=4.840$, $df=1$, $p<0.05$.

recorded on the solicitors' survey. For example, the solicitors' survey counted Family Court counselling regardless of court order, whereas the Family Court questionnaire only recorded court-ordered counselling. The solicitors' survey also did not distinguish between directions hearings and procedural events. Conciliation conferences and pre-hearing conferences were recorded in comparable proportions of Family Court and private solicitors' cases.

322 As with the solicitors' data, the major form of "primary dispute resolution" in the Family Court cases was Family Court counselling. While Family Court mediation is available in the Melbourne, Sydney, Parramatta and Brisbane Registries of the Court, it occurred in only 1% of cases in the sample. According to the Family Court's Annual Report 1997-98, approximately 40% of Family Court counselling cases are initiated on a voluntary basis.²⁷⁹ Based on the figure for court-ordered counselling in Table 5.5, the total proportion of cases involving Family Court counselling could be as high as 48%. The Annual Report also suggests, however, that the year 1997-98 may have seen a higher than usual proportion of cases in which counselling was ordered by the court rather than entered voluntarily. This was because charges for voluntary counselling and mediation were introduced in mid-1997. These charges were disallowed by the Senate five months later, but were levied in the interim. As a result, there was a 25% increase in cases going to counselling post-filing, as a way of avoiding the charges.²⁸⁰ This phenomenon would have affected the cases in the Family Court sample.

323 In addition, despite the fact that only court-ordered Family Court counselling was recorded on the Family Court questionnaire, a similar trend was found in the Family Court data as was found in the solicitors' data, that is, for Family Court counselling to be positively related to the presence of family violence and child abuse allegations. A

279 Family Court of Australia, Annual Report 1997-98 (1999), p.28.

280 *Ibid.*, p.19.

significantly higher proportion of cases in which a notification of risk of child abuse was filed were sent to conciliation counselling (49%) than of cases with no notification (38%) or cases not concerning children (9%).²⁸¹ Likewise, a significantly higher proportion of cases including current evidence of a domestic violence order were sent to conciliation counselling (48%) than of cases not including such evidence (26%).²⁸² According to the Annual Report, individual counselling interviews were held in 34% of new cases due to fear of family violence. This was greater than the proportion of cases in the sample that went to counselling with current evidence of a family violence order (27%).

324 The incidence of most types of court events varied significantly by Registry and by initiating document. In particular, the great majority of Form 12A applications (96.5%) were dealt with in chambers,²⁸³ while the other stages were almost exclusively confined to Form 7 cases. Differences between Registries included –

- a high proportion of procedural hearings in Adelaide,²⁸⁴ directions hearings in Brisbane,²⁸⁵ and interim orders in both Registries,²⁸⁶ but low proportions of pre-hearing conferences,²⁸⁷ compliance conferences²⁸⁸ and final hearings²⁸⁹ in both Registries
- low proportions of procedural hearings and interim orders in Parramatta and Sydney, but high proportions of pre-hearing conferences in both Registries, a high proportion of compliance conferences in Sydney, and a high proportion of final hearings in Parramatta

281 $\chi^2=88.167$, $df=2$, $p<0.001$.

282 $\chi^2=34.317$, $df=1$, $p<0.001$.

283 $\chi^2=438.533$, $df=1$, $p<0.001$.

284 $\chi^2=83.213$, $df=5$, $p<0.001$.

285 $\chi^2=18.608$, $df=5$, $p<0.005$.

286 $\chi^2=71.194$, $df=5$, $p<0.001$.

287 $\chi^2=57.273$, $df=5$, $p<0.001$.

288 $\chi^2=77.992$, $df=5$, $p<0.001$.

289 $\chi^2=60.577$, $df=5$, $p<0.001$.

- a relatively high proportion of final hearings in Melbourne, which was otherwise close to the mean in relation to most events
- a high proportion of Family Court counselling²⁹⁰ and final hearings in Newcastle.

325 The high proportions of interim hearings and low proportions of final hearings in Adelaide and Brisbane may signal local legal responses to delays experienced in reaching final hearing dates in the respective Registries (see discussion below), although researchers in Brisbane have also suggested that limits on legal aid funding imposed by LAQ mean that “for the vast majority of assisted persons, the interim hearing is effectively the final hearing”.²⁹¹ The high proportion of final hearings in Newcastle may be associated with the relatively high alleged violence content of Newcastle cases (see above), while the IAC data also indicated that Parramatta cases tend to be complex and highly contested, resulting, as here, in a high proportion of final hearings.

326 There were fewer variations between Registries as to the mean numbers of each type of court event per case (the number of counselling sessions, interim orders and final hearings were not recorded on the Family Court questionnaire). The mean number of directions hearings per case was 2.4, and of procedural events per case was 2.7. Adelaide had a higher mean number of directions hearings per case (3.2), and Melbourne had a lower mean (2.0).²⁹² Sydney had the highest mean number of procedural events per case (3.6), while Parramatta had the lowest (1.9).²⁹³

327 The mean number of pre-hearing court events overall was 3.5, and there was no significant difference between Registries on this measure.

290 $\chi^2=20.599$, $df=5$, $p<0.005$.

291 John Dewar and Stephen Parker, with Barbara Tynan and Donna Cooper, *Parenting, Planning and Partnership: The Impact of the New Part VII of the Family Law Act 1975* (Family Law Research Unit, Griffith University, Working Paper No. 3, March 1999), 60–61.

292 Kruskal–Wallis $\chi^2=17.965$, $df=5$, $p<0.005$.

293 Kruskal–Wallis $\chi^2=20.337$, $df=5$, $p<0.005$.

This is almost identical to the mean number of Family Court dates found in the IAC and private solicitors' data (3.6). There was, not surprisingly, a significant difference between Form 7 and Form 12A cases, with the mean number of pre-hearing court events for the former being 4.2, and for the latter being 1.2.²⁹⁴ When Form 7 cases were considered alone, there was a significant difference between Registries,²⁹⁵ with Brisbane having a relatively low mean number of pre-hearing court events (3.6), and Adelaide having a relatively high mean (5.1).

Stage of resolution

328 The questionnaire recorded the stage at which each case was removed from the active pending cases list. As noted above, virtually all Form 12A cases were disposed of in chambers. The major stages at which Form 7 cases were resolved are set out in Table 5.6. As can be seen, by far the most common disposition stage (in more than half of all Form 7 cases) was at or after directions hearings.

TABLE 5.6 Stages at which Form 7 cases were removed from the active pending cases list

Stage	Number	Percent
Before directions hearing/in Chambers	108	13.3
At/after directions hearing/s	430	53.2
At/after interim orders	13	1.6
At/after conciliation conference	55	6.8
At/after pre-hearing conference	67	8.3
At final hearing	136	16.8
Total	809	100

294 Mann-Whitney U=23186.000, p<0.001. The figure for Forms 12A counts approval of the application in chambers as a court event.

295 Kruskal-Wallis $\chi^2=17.660$, df=5, p<0.005.

329 For cases that went to a final hearing, the mean length of hearing was 1.6 days – similar to that found in the private solicitors data (1.5 days). There were no significant differences between Registries in this respect. The longest hearings (from Melbourne and Sydney) ran for six days.

330 There were significant differences between Registries in relation to stages of disposition²⁹⁶ –

- Sydney had a relatively high proportion while Newcastle had a relatively low proportion of cases disposed of before a directions hearing
- Adelaide and Brisbane had relatively high proportions of cases completed at or after directions hearings, while Parramatta and Sydney had relatively low proportions of cases completed at that stage
- Adelaide also had relatively low proportions of cases finalised at or after conciliation conference and at or after pre-hearing conference. Brisbane had relatively low proportions of cases finalised at or after pre-hearing conference and at final hearing
- by contrast, Parramatta had high proportions of cases finalised at or after pre-hearing conference and at final hearing, Sydney had a relatively high proportion of cases finalised at or after conciliation conference, and Newcastle had a relatively high proportion of cases finalised at final hearing.

331 The types of matters involved in the case, parties' representation status and parties' incomes were not related to the likelihood of a case proceeding to final hearing. Party and case characteristics that were associated with final hearings included party's language background, presence of previous applications, presence of notification of risk of child abuse and presence of a child representative. Parties born in non-English speaking countries were significantly more likely than

296 $\chi^2=140.170$, $df=20$, $p<0.001$ (cases disposed of at interim hearing excluded due to small numbers).

parties born in Australia, New Zealand, or another English-speaking country to proceed to hearing.²⁹⁷ Cases in which a previous Form 7 or 12A had been filed were also significantly more likely to proceed to hearing than cases in which only one initiating application had been filed.²⁹⁸ Cases in which a notification of risk of child abuse had been filed were significantly more likely to proceed to hearing than were cases without such notifications.²⁹⁹ Likewise, the presence of a child representative significantly increased the chances of a case proceeding to hearing.³⁰⁰ A relatively high proportion of cases with current evidence of a family violence order also proceeded to hearing, although the difference in this respect failed to reach statistical significance.³⁰¹ A logistic regression analysis was performed to determine the relative strength of these factors. Only the presence of a child representative remained significant in this analysis. The estimated probability of a case proceeding to hearing was 32% if a child representative was involved, but only 13% if the case did not involve a child representative.³⁰²

332 The processes by which cases were finally resolved are set out in the Table 5.7. The table includes all cases in the sample, both those initiated by a Form 7 and those initiated by a Form 12A.

297 Applicants: $\chi^2=12.288$, $df=2$, $p<0.005$; respondents: $\chi^2=9.570$, $df=2$, $p<0.01$.

298 $\chi^2=8.081$, $df=1$, $p<0.005$.

299 $\chi^2=6.559$, $df=2$, $p<0.05$. The Monash study of child abuse cases in the Family Court also found that such cases were disproportionately likely to end in a hearing: Thea Brown, Margarita Frederico, Lesley Hewitt and Rosemary Sheehan, 'Child Abuse and the Family Court', Trends & Issues in Crime and Criminal Justice no.91, June 1998 (Australian Institute of Criminology).

300 $\chi^2=24.699$, $df=1$, $p<0.001$.

301 $\chi^2=3.028$, $df=1$, $p=0.082$.

302 As noted in the IAC chapter, this finding has some similarity with the conclusion of the British profiling research, that one of the few predictors of high cost in a children's case was if the outcome included supervised contact: Sarah Maclean, Report of the Case Profiling Study: Legal Aid and the Family Justice System (Legal Aid Board Research Unit, 1998), 41.

TABLE 5.7 Means of resolution of Family Court cases

Process	Number of cases	Percent
Application for consent orders (Form 12A)	247	23.8
Consent orders (negotiated settlement)	584	56.3
Withdrawn/discontinued	32	3.1
Determination		
stood out/struck out	23	2.2
dismissed	38	3.7
default	51	4.9
judgment	63	6.1
Total	1038	100

333 In line with the findings from the solicitors' data sets, consent orders negotiated by the parties following an application for final orders were the most frequent resolution type, occurring in over half of the cases in the Family Court sample. By contrast, only a small proportion of cases (16%) involved a determination by the court.

334 There were some differences between the way different kinds of matters were typically resolved. A relatively high proportion of property cases, as noted earlier, were dealt with by means of a Form 12A application rather than court proceedings.³⁰³ Residence matters, on the other hand, were resolved by a low proportion of Form 12A applications, and a relatively high proportion of undefended orders,³⁰⁴ while contact matters were resolved by relatively high proportions of both negotiated settlements and undefended orders.³⁰⁵ Cases involving child welfare matters had relatively high proportions of both undefended

303 Initiating document: $\chi^2=185.218$, $df=4$, $p<0.001$; total case: $\chi^2=174.059$, $df=4$, $p<0.001$.

304 Initiating document: $\chi^2=44.521$, $df=4$, $p<0.001$; total case: $\chi^2=68.401$, $df=4$, $p<0.001$.

305 Initiating document: $\chi^2=60.442$, $df=4$, $p<0.001$; total case: $\chi^2=84.631$, $df=4$, $p<0.001$.

and defended orders, and withdrawals.³⁰⁶ No location/recovery matters were discontinued or withdrawn, and a relatively high proportion of cases with previous location/recovery or child maintenance issues were resolved by court orders following a contested hearing.³⁰⁷

- 335 Differences between Registries³⁰⁸ included a relatively low proportion of Form 12A resolutions in Brisbane but relatively high proportions in Adelaide and Sydney. Conversely, Brisbane had a relatively high proportion of negotiated settlement consent orders, while Adelaide, Sydney and Newcastle had relatively low proportions of this form of resolution. As observed earlier, Brisbane had a low proportion of orders following a contested hearing, compared to Newcastle's high proportion. Finally, Melbourne and Parramatta had relatively low proportions of withdrawals, while Sydney had a high proportion of withdrawals.

Disposition time

- 336 Two disposition times were calculated for Family Court cases: first, the time between the filing of the most recent Form 7/12A application and its removal from the active pending cases list; and secondly, the time between the filing of the first Form 7/12A application on the file and the latest removal from the current pending cases list. In cases containing only one initiating application, these times would be the same, however 17.5% of cases contained a previous Form 7/12A and would therefore have different disposition times for the most recent application and overall.
- 337 An initial observation to be made in relation to duration of Family Court cases is the significant difference between resolution times for

306 Initiating document: $\chi^2=45.753$, $df=4$, $p<0.001$; total case: $\chi^2=60.072$, $df=4$, $p<0.001$.

307 Location/recovery total case: $\chi^2=24.375$, $df=4$, $p<0.001$; child maintenance total case: $\chi^2=11.224$, $df=4$, $p<0.05$.

308 $\chi^2=79.214$, $df=20$, $p<0.001$.

cases initiated by Forms 7 and Forms 12A.³⁰⁹ Median resolution time for Form 7 cases (most recent application) was 5 months, while median resolution time for Form 12A cases was less than one month. This is not surprising, but it does suggest that the distinction between initiating documents is an important one when discussing case processing times. The following discussion focuses on Form 7 cases. There is little more to be said regarding the disposition time of Form 12A applications.

338 Table 5.8 sets out median and 90th percentile disposition times for Form 7 cases removed from the active pending cases list at various stages of the litigation process. The proportion of cases in each category was shown in Table 5.6 above.

TABLE 5.9 Form 7 cases — disposition time by stage of disposition

Stage	Median disposition time	90% disposition time
Before directions hearing	5.0 months	15.3 months
At/after directions hearing/s	4.0 months	16.0 months
At interim hearing	6.0 months	19.2 months
At/after conciliation conference/s	6.0 months	15.5 months
At/after pre-hearing conference/s	13.0 months	26.3 months
At final hearing	11.0 months	25.3 months
Total	5.0 months	21.0 months

339 The table shows the major dividing line in terms of case disposition times lay between cases that reached a pre-hearing conference, and those that did not. There was little difference between the groups of cases on either side of that line. Although some cases resolved at

309 Most recent application: Mann-Whitney U=13590.500, p<0.001; total cases: Mann-Whitney U=21690.500, p<0.001.

interim hearing took over a year and a half to do so, there was broad comparability between the time taken to dispose of cases at all stages before a pre-hearing conference. Similarly, cases disposed of at or after a pre-hearing conference were finalised no more quickly (in fact slightly less quickly) than cases that proceeded to hearing.

340 Family Court performance standards specify targets for hearing times for matters allocated to the various case management tracks. The times from most recent application to hearing for cases in the sample that proceeded to hearing, compared to the performance standards, are shown in Table 5.9.

TABLE 5.9 Hearing times for Family Court cases compared to performance standards

Track	Performance standard	No. cases	% within standard	Median time
Direct	6 months	24	37.5%	10.5 months
Standard children	10 months	57	43.9%	12.0 months
Standard financial	11 months	23	21.7%	19.0 months
Complex	12 months	3	33.3%	15.0 months

341 The table shows that fewer than 50% of cases on each track which proceeded to hearing did so within the time frame specified in the Court's performance standards. Standard financial matters were most likely to exceed the time standards, followed by direct track matters (the number of complex matters proceeding to hearing was too small to enable any meaningful conclusions to be drawn). Standard children's matters came closest to the time target, but even so fell outside in 56% of cases. The times within which 90% of cases reached a hearing were 23.5 months for direct track cases, 26 months for standard children's cases, and 33.8 months for standard financial cases.

342 Comparing the time frames specified in the Court's performance standards with the disposition times for all cases (including those settled before hearing), approximately 50% of cases on each track were disposed of within the specified time, but the targets were considerably exceeded in the upper 25% of cases. Cases with 'unknown' track allocations were disposed of significantly more quickly (median 3 months) than those whose allocation was recorded.³¹⁰ It appears that the reason for case management information being missing in the majority of these cases was that they were resolved early in the litigation process – most usually at or after a second or subsequent directions hearing, or at interim hearing.³¹¹

343 Client characteristics were not generally associated with case duration, although duration did tend to increase with age for both applicants and respondents.³¹² A range of case characteristics were associated with case duration. Cases transferred from a State court had a significantly longer median disposition time (8 months) than did cases initiated in the Family Court (5 months).³¹³ Consistent with the finding that standard financial track cases took longer to reach a hearing, and possibly also with the finding of increased duration with increased age, cases concerning property (6 months) and spouse maintenance (8.5 months) had significantly longer median disposition times than did cases not involving those matters (5 months).³¹⁴ Cases involving Family Court counselling (7 months) and interim orders (6 months) had significantly longer median disposition times than did cases without those steps (4 months and 5 months respectively).³¹⁵ Finally, in line with the earlier discussion concerning cases going to hearing, cases in which a notification of risk of child abuse was filed

310 Kruskal-Wallis $\chi^2=219.663$, $df=4$, $p<0.001$.

311 $\chi^2=102.637$, $df=5$, $p<0.001$.

312 Applicants: $r=0.142$, $p<0.01$; respondents: $r=0.152$, $p<0.01$.

313 Mann-Whitney $U=22578.500$, $p<0.005$.

314 Property: Mann-Whitney $U=71110.500$, $p<0.05$; spouse maintenance: Mann-Whitney $U=7355.000$, $p<0.01$.

315 Family Court counselling: Mann-Whitney $U=54475.000$, $p<0.001$; interim orders: Mann-Whitney $U=62568.000$, $p<0.01$.

had a significantly longer median disposition time (12 months) than cases without (5 months),³¹⁶ and cases involving a child representative had a significantly longer median disposition time (13.5 months) than cases without (4 months).³¹⁷

344 In addition, parties' representation status appeared to affect case duration. Cases in which the applicant was represented when the Form 7 was filed had a significantly longer median disposition time (6 months), than did cases in which the applicant was not represented at that stage (4 months).³¹⁸ Cases in which the respondent was represented when the Form 7 was filed, and those in which the respondent was represented at finalisation, had significantly longer median disposition times (6 months) than cases in which the respondent was unrepresented at commencement (3 months) or at finalisation (4 months).³¹⁹ These figures suggest that an unrepresented party tends to reduce case disposition time. This may be because they do not particularly wish to contest the case, and hence focus on reaching an agreement without perceiving the need for a lawyer; or it may be because without a lawyer they are in a relatively weak bargaining position and are 'railroaded' into an agreement by the other side.³²⁰ There was no statistical relationship between parties' representation status and cases proceeding to hearing, however.

345 Differences between Registries in disposition times for Form 7 cases were also significant.³²¹ Table 5.10 shows the median and 90th percentile disposition times for each Registry.

316 Mann-Whitney U=7358.000, p<0.001.

317 Mann-Whitney U=12594.000, p<0.001.

318 Mann-Whitney U=28493.000, p<0.05.

319 Commencement: Mann-Whitney U=37318.500, p<0.001; finalisation: Mann-Whitney U=50244.000, p<0.001.

320 A variety of research on unrepresented litigants is being conducted or proposed by the ALRC, the Court and the JRC, which will examine further the reasons why litigants appear unrepresented and finalise early.

321 Kruskal-Wallis $\chi^2=17.231$, df=5, p<0.005.

TABLE 5.10 Form 7 disposition times by registry

Registry	Median disposition time	90% disposition time
Adelaide	4.0 months	22.0 months
Brisbane	6.0 months	21.1 months
Melbourne	4.0 months	24.0 months
Parramatta	6.0 months	18.9 months
Sydney	5.0 months	13.0 months
Newcastle	5.0 months	20.0 months
Total	5.0 months	21.0 months

346 It can be seen that while mediation disposition times between the six Registries were fairly comparable, the 90th percentile times were more varied. Sydney had the shortest disposition time for 90% of cases by a considerable margin. The longest times were found in Melbourne and Adelaide. These findings are consistent with the levels of delay reported in the Family Court's Annual Report, which show Melbourne, Adelaide and Newcastle experiencing the longest delays before hearing for standard track matters, and Sydney having consistently shorter average times to hearing.³²²

347 A backwards stepwise regression was performed to determine the relative influence of the various factors discussed above on Form 7 disposition time.³²³ The model produced incorporated 10 variables.

322 Family Court of Australia, Annual Report 1997-98 (1999), pp.22, 32, 34.

323 That is: applicant age, respondent age, property order sought, spouse maintenance order sought, notification of risk of child abuse, transferred from local court, Family Court counselling, interim order sought, list allocation recorded on file, applicant represented at commencement, respondent represented at commencement or finalisation, child representative involved, case dealt with by Brisbane, Melbourne or Adelaide Registry (other Registries did not have an individually significant effect on disposition time, and hence were not included in the regression).

Disposition time increased if –

- allocation to a case management track was recorded on the file³²⁴
- the case was handled by the Brisbane or Adelaide Registries of the Family Court³²⁵
- the case commenced in a State Court and was transferred to the Family Court³²⁶
- spouse maintenance was an issue in the case³²⁷
- the applicant was older,³²⁸ and
- the respondent was represented at finalisation.³²⁹

Disposition time decreased if –

- there was no child representative³³⁰
- the respondent was unrepresented at commencement,³³¹ and
- there was no Family Court counselling.³³²

The overall model explained 44% of the variance in the data on Form 7 disposition times,³³³ which is quite a good result, although the model's complexity still makes prediction in any given case difficult. Clearly, too, the model does not provide prescriptions for reducing the length of cases, for example by removing access to child representation or counselling. There is no guarantee that the particular cases involving these interventions would be shorter without them, nor that other cases would be shorter if a party was unrepresented.

324 $t=9.222, p<0.001.$

325 Brisbane: $t=3.409, p<0.005$; Adelaide: $t=2.999, p<0.005.$

326 $t=2.808, p<0.01.$

327 $t=2.437, p<0.05.$

328 $t=2.103, p<0.05.$

329 $t=2.006, p<0.05.$

330 $t=-7.034, p<0.001.$

331 $t=-4.206, p<0.001.$

332 $t=-3.238, p=0.005.$

333 $R^2=0.438, F=36.336, df=10, p<0.001.$

348 The above analysis applies to the time taken to dispose of the most recent application for final orders. Once previous applications were factored in, median disposition time increased from 5 months to 7 months, and 90th percentile disposition time increased from 21 months to 38.9 months. With the exception of handling by the Adelaide Registry, the factors included in the regression model for Form 7 disposition time remained significant, in the same direction, in relation to total disposition time.³³⁴

Summary

349 To summarise, dispute resolution processes and times diverged markedly between cases initiated by a Form 7 or by a Form 12A. The typical Form 12A case was most likely to deal with property issues, was dealt with in chambers and had a median disposition time of less than one month. The typical Form 7 case was either allocated to the standard case management track, or there was no record of list allocation on the file. It proceeded to one or more directions hearings and interim orders, with a mean of 4.2 court events, and was disposed of by means of consent orders following a negotiated settlement, at the directions hearings stage.³³⁵ Median resolution time was 5 months if there had been no previous applications in the case, and 7 months if there had been.

350 Form 7 cases with no recorded list allocation were disposed of considerably more rapidly than cases in which case management track was recorded on the file. In addition, cases that did not reach a pre-

334 Applicant's age: Spearman's R=0.069, p<0.05; Brisbane Registry: Mann-Whitney U=83918.000, p<0.001; case transferred from State Court: Mann-Whitney U=26569.000, p<0.001; recorded case management track: Mann-Whitney U=44317.500, p<0.001; spouse maintenance an issue: Mann-Whitney U=12480, p<0.001; child representative appointed: Mann-Whitney U=14762.000, p<0.001; respondent represented at commencement: Mann-Whitney U=46140.500, p<0.001; respondent represented at finalisation: Mann-Whitney U=54494.500, p<0.005; Family Court counselling: Mann-Whitney U=63747.000, p<0.005.

335 The same finding was made by the British profiling study: Sarah Maclean, Report of the Case Profiling Study: Legal Aid and the Family Justice System (Legal Aid Board Research Unit, 1998), p.45.

hearing conference were disposed of considerably more rapidly than cases that did so. The most salient predictor of cases proceeding to a final hearing was the presence of a child representative, and this factor also significantly increased case disposition time. Disposition time was further significantly increased by presence of spouse maintenance as an issue in the case, and use of Family Court counselling. Conversely, disposition time was significantly decreased if the respondent was unrepresented at commencement and/or at finalisation, and (for cases with no previous applications only) if the case was handled by the Sydney Registry of the Family Court.

- 351 There were considerable differences between Registries in relation to almost all aspects of dispute resolution: the proportion of cases transferred from State Courts, the incidence of various types of court events, the mean number of court events per case, the stages at which cases were removed from the active pending cases list, the ways in which cases were resolved, and the time taken from case commencement to disposition. In relation to delays, the data shows that all Registries were able to meet performance targets for case finalisation for approximately 75% of cases, but only Sydney came close to meeting the targets for 90% of cases. In the other five Registries the upper 25% of cases experience considerable delays, with the worst affected being Melbourne and Adelaide.

Funding and representation

- 352 The Family Court questionnaire recorded whether or not the applicant and respondent were represented at the commencement and at finalisation of their case, together with the type of representation at each stage, and whether there was evidence of legal aid in relation to either party.

Litigants' funding status

353 In a very high proportion of cases (91% of applicants and 93% of respondents) there was no evidence of legal aid. In particular, there was virtually no evidence of whether any parties to Form 12A applications were legally aided. As might also be expected, there was more likely to be evidence of an in-house practice acting for a party than of a party represented by a private solicitor being legally aided. Hence the proportion of in-house legal aid among all identified legal aid cases (around one third) was not an accurate reflection of the true situation. The data did, however, confirm the trend identified in the solicitors' data sets, of a legally-aided party being disproportionately likely to have a legally-aided opponent.³³⁶

Litigants' representation status

354 The majority of both applicants and respondents were represented at the commencement of their case, although applicants (90%) were more likely to be represented than respondents (72%). There were no significant differences between Registries in the representation status of Family Court litigants, although Form 12A applicants were significantly less likely to be unrepresented (6%) than were Form 7 applicants (11%).³³⁷ The great majority of both applicants (98%) and respondents (97%) who had legal representation at the commencement of their case were represented by a private solicitor.

355 The majority of both applicants and respondents were also represented at the time their case was finalised. While the proportion of represented applicants fell marginally (88%), the proportion of represented respondents remained the same (72%). The fall in relation to applicants occurred only in Form 7 cases (13% unrepresented at finalisation). The proportion of applicants unrepresented at finalisation did not differ between cases that went to hearing and other cases. The

336 $\chi^2=19.466$, $df=1$, $p<0.001$.

337 $\chi^2=5.601$, $df=1$, $p<0.05$.

proportion of respondents unrepresented at finalisation in cases that went to hearing was lower (23%) than the overall figure. There was a significant difference between Registries in relation to respondents' final representation, with a lower proportion of Adelaide respondents (61%) and a higher proportion of Melbourne respondents (78%) represented at the close of their cases.³³⁸ Again, the great majority of parties represented at finalisation were represented by a private solicitor (97% each).

356 Overall, 85% of applicants and 67% of respondents were represented throughout their case, 8% of applicants and 11% of respondents had representation for part of their case, and 7% of applicants and 23% of respondents remained unrepresented throughout their case. For both applicants and respondents whose representation status changed during their case, the change was most likely to occur at the directions hearing stage. Parties' representation status had a strong tendency to mirror each other. Thus, wholly unrepresented applicants were most likely to face a wholly unrepresented respondent, partially represented applicants were disproportionately likely to face a partially represented respondent, and fully represented applicants were most likely to face a fully represented respondent.³³⁹

Unrepresented litigants

357 As noted earlier, the presence of an unrepresented respondent tended to reduce case disposition time. This effect was also evident in relation to the sub-group of cases that went to hearing. Although the number of cases that went to hearing with an unrepresented respondent was not large, fairly clear contrasts emerged. Cases that went to hearing in which the respondent had been unrepresented at the commencement of the case (n=28) had a median disposition time of 3.5 months (most recent Form 7) – 5 months (including previous applications), compared to times of 13–19 months for cases that went to hearing in

338 $\chi^2=18.111$, $df=5$, $p<0.005$.

339 $\chi^2=97.837$, $df=1$, $p<0.001$.

which the respondent was represented at commencement (n=107).³⁴⁰ Cases that went to hearing in which the respondent was unrepresented at finalisation (n=31) had median disposition times of 4-7 months, compared to 13-18 months for cases that went to hearing with a represented respondent (n=103).³⁴¹ Finally, cases that went to hearing in which the respondent was wholly unrepresented (n=20) had median disposition times of 3-4 months, compared to 13-18 months for cases that went to hearing in which the respondent was represented throughout (n=100), and 13.5-26 months for cases that went to hearing in which the respondent was partially represented (n=14).³⁴² A relatively high proportion of cases that went to hearing in which the respondent was unrepresented throughout resulted in a default judgment or undefended orders. These findings present a picture of unrepresented respondents being unwilling or unable to contest their cases, and consequently spending relatively little time in the Family Court system, rather than, as might be assumed, dragging out their cases and consuming a disproportionate amount of the court's resources.

358 There was no significant gender difference between unrepresented respondents. There was an overall tendency for unrepresented respondents to be male, but this disappeared in relation to cases that went to hearing. By contrast, there were significant gender differences between unrepresented applicants, who were more likely to be male.³⁴³ In Form 7 cases, partially represented applicants significantly increased case disposition time.³⁴⁴ Otherwise, applicant's representation status did not affect disposition times.

340 Most recent Form 7: Mann-Whitney U=529.500, p<0.001; all applications: Mann-Whitney U=743.500, p<0.001.

341 Most recent Form 7: Mann-Whitney U=837.000, p<0.001; all applications: Mann-Whitney U=1061.500, p<0.01.

342 Most recent Form 7: Kruskal-Wallis $\chi^2=28.501$, df=2, p<0.001; all applications: Kruskal-Wallis $\chi^2=18.655$, df=2, p<0.001.

343 Commencement: $\chi^2=11.891$, df=1, p<0.005; finalisation: $\chi^2=4.966$, df=1, p<0.05; overall: $\chi^2=15.211$, df=2, p<0.001.

344 Most recent Form 7: Kruskal-Wallis $\chi^2=36.052$, df=2, p<0.001; all applications: Kruskal-Wallis $\chi^2=15.365$, df=2, p<0.001.

Child representation

359 A child representative was appointed in 12.7% of Family Court cases. This is the same proportion as was found in the private solicitors' cases, although higher than in LAC cases (8.7%). There were significant differences between Registries,³⁴⁵ with Brisbane having a particularly high proportion of cases involving a child representative (18.8%) and Melbourne a relatively low proportion (8.6%). These differences may be attributable to different Legal Aid Commission policies on the funding of child representatives, impacting on the Court's decision-making in this regard, although it is also notable that Brisbane had a higher than average proportion of cases containing a notification of risk of child abuse.

Summary

360 In summary, in the majority of Family Court cases both the applicant and the respondent were represented throughout their case by a private solicitor, and there was no child representative. Family Court files provided only very limited information on whether parties were funded by legal aid. Respondents were more likely than applicants to be wholly or partially unrepresented (in around one third of cases). Presence of an unrepresented respondent reduced disposition times for Form 7 cases, including those that went to hearing (when the unrepresented respondent tended not to appear or to defend the case). Unrepresented respondents were equally likely to be male or female, while unrepresented applicants were most likely to be male.

361 There were few differences between Registries and initiating documents in relation to representation. Form 7 applicants were less likely to have legal representation than Form 12A applicants (although as noted above, were still represented in the great majority of cases). The Adelaide Registry had the highest proportion of respondents

345 $\chi^2=11.667$, $df=5$, $p<0.05$ (calculation involving children's cases only).

unrepresented at finalisation, while Melbourne had the lowest, and also the lowest proportion of cases in which a child representative was appointed.

Conclusion

- 362 There was a substantial degree of congruence between data derived from solicitors and from the Family Court in relation to case characteristics and dispute resolution processes, which tends to engender confidence in both sets of data.
- 363 The Family Court data demonstrates considerable differences between Registries and between initiating documents. Demographic differences, particularly in litigants' ages, occupations and incomes, appeared to be related to differences in case characteristics, such as relative proportions of property and children's matters, and evidence of domestic violence and child abuse allegations, and also (although less clearly) to levels of unrepresented litigants.
- 364 There was a basic difference between the ways in which Form 7 and Form 12A cases were disposed of. Within the Form 7 group, resolution at the directions hearing stage by negotiated consent orders was most common, although the likelihood of a case proceeding to hearing, and case disposition time, increased if a child representative was appointed. Case disposition time decreased, on the other hand, if the respondent was unrepresented throughout, which occurred in around one quarter of cases.
- 365 There were multiple differences between Registries in relation to almost all aspects of procedure. Median case disposition times were relatively short for all Registries, but there was greater variation among the longest 25% of cases, with evidence of considerable delays at some Registries. Connections between client and case differences and case processing differences were not necessarily direct, but were suggested, for example, in Registries with lower

income/occupation clients having lower proportions of cases proceeding to hearing (Adelaide, Brisbane) or a higher proportion of respondents unrepresented at finalisation (Adelaide), while a Registry with higher income/occupation clients and a higher proportion of property matters had the lowest case disposition times (Sydney).

- 366 The consistent evidence of Registry by Registry variations indicates a need to take this factor into account in future research on the Family Court.

Comparisons and Conclusions

367 In gathering information about family law cases from the four different data sources tapped for this study, we achieved varying levels of coverage of the four states that the study initially aimed to include. The majority of our data on in-house Legal Aid Commission practices came from NSW and South Australia, the majority of our data on private solicitors' cases came from NSW and Victoria, and the majority of our data on Community Legal Centres' family law casework came from Victoria and South Australia. For a variety of reasons (minimal amounts of adult family law representation/casework done by LAQ and by Queensland CLCs, and a poor response rate from Queensland family law solicitors) we obtained little data on Queensland family law cases, other than from the Brisbane Registry of the Family Court. The kinds of differences discovered in the analysis of the four data sets (between legal aid offices, states, and court Registries) would caution against generalisation from the locations we have covered. Rather, we would expect that other locations would exhibit local variations to a considerable extent.

368 The following discussion highlights areas of similarity and difference between the four data sets, under the headings employed in the previous chapters: client demographics, case characteristics, dispute resolution processes, and funding and representation details.

369 Comparisons between different service providers are limited, however, by the fact that legal aid guidelines restrict the types of matters that will be funded, broadly to matters concerning children. This impacts on the work of LACs, and of private solicitors acting for legal aid clients. Further, CLCs generally only provide representation in matters for which legal aid is unavailable, and individual casework guidelines may further restrict the types of matters that will be taken on for representation.

Client demographics

Sex

370 Family law cases (unlike other areas of litigation) by definition involve equal numbers of female and male litigants. The Family Court data showed that women were slightly more likely to be applicants and men slightly more likely to be respondents in cases going to the Court. However this tendency was far from statistically significant. Funding and casework guidelines focusing on low socio-economic status and special needs meant that LAC and CLC clients were most likely to be female. Private solicitors' legal aid clients, however, were fairly evenly divided between men and women, although it should also be noted that women received 65% of legal aid grants in family law in the four states covered by our study in 1996–97.³⁴⁶ Nevertheless, the data suggests that there may be a gendered pattern of access to public and private legal aid services in family law. The sex of clients by service provider is shown in Table 6.1

TABLE 6.1 Sex of clients by service provider

Sex	LAC%	PSSF%	PSLA%	CLC%	FC apps%	FC resps%
Male	33.1	47.9	37.8	26.0	44.2	54.6
Female	66.9	52.1	62.2	74.0	55.8	45.4

PSSF = private solicitor, self-funded; PSLA = private solicitor, legally-aided.

Age

371 There was a considerable age difference between legal aid clients (median 31.5–33 years) and self-funded clients (median 41.5 years), with CLC clients (median 36 years) – and Family Court litigants

346 Legal Aid and Family Services, *Legal Aid in Australia 1996–97 Statistical Yearbook* (Attorney-General's Department, July 1998), p.19.

(median 37.6 years) – falling in between. There was a consistent difference between the median ages of male and female clients, with males being older, on average, than females.

Ethnicity

372 A fairly substantial minority of family law clients were born outside Australia and New Zealand, ranging from around 20% of private solicitors' clients and Family Court applicants for whom information was available, to around 33% of LAC and CLC clients and Family Court respondents for whom information was available. The solicitors' data showed no statistical difference between legally-aided and self-funded clients in this respect, although legally-aided clients may have been more recent arrivals in Australia. In all data sets the majority of overseas-born clients were born in a non-English speaking country, however there were regional variations. Adelaide and Brisbane had relatively low proportions of NESB clients/litigants, compared to relatively high proportions in Melbourne, Sydney and Parramatta. The proportion of Australian and overseas-born clients of each service provider is shown in Table 6.2.

TABLE 6.2 Clients' place of birth by service provider

Place of birth	LAC%	PSSF%	PSLA%	CLC%	FC apps%	FC resps%
Australia*	64.1	78.5	82.4	63.8	78.6	68.8
Other ES country	10.0	9.9	2.7	9.2	5.2	8.4
NES country	25.9	11.6	14.9	27.0	16.2	22.8

* Family Court figures include New Zealand.

373 Overall, 5% of private solicitors' clients and 10–13% of CLC and LAC clients used an interpreter. This contrasts with the very low figure of 2–3% for recorded interpreter usage in the Family Court.

The Family Court figure is likely to be less reliable as an index of interpreting needs, since the presence of an interpreter may not have been recorded on the file, and/or the client may not have been present for some court appearances. However the finding of no recorded interpreter usage at one Family Court Registry (Newcastle) may also indicate difficulties for NESB litigants in accessing interpreting services through the court.

- 374 Only a very small number of clients in each data set were of Indigenous background. However, the figure of 3–4% Indigenous clients for IACs and CLCs exceeds their representation in the overall Australian population (2% in the 1996 census), reflecting their concentration in the lower socio-economic groups targeted by those service-providers. IACs' Indigenous clients were evenly divided between men and women, however the majority of CLCs' Indigenous clients were women, and were assisted by WLRC in Sydney.

Occupation

- 375 Occupational data was missing in between one quarter and one half of the cases in each sample. Where the information was available, occupational distributions varied, not surprisingly, between locations, between legally-aided and self-funded clients, and between court application types. Relatively high proportions of private solicitors' legal aid clients and of CLC clients were engaged in home duties. The proportion of IAC clients engaged in home duties, however, was similar to the proportion of private solicitors' self-funded clients and Family Court parties in that occupational group. Managers and administrators, professionals and other upper white collar occupations were over-represented among self-funded clients, Form 12A applicants, clients of city firms and suburban firms in high income areas, and at the Sydney Registry of the Family Court. By contrast, the Brisbane Registry had a relatively low proportion of white collar litigants and a relatively high proportion in trades occupations, while the Adelaide Registry had a high proportion of litigants in lower blue collar occupations or unemployed. In addition, there was a relatively high

proportion of unemployed parties to Form 7 applications in the Family Court. This is likely to be an effect of legal aid being available for the purposes of issuing proceedings rather than for negotiations.

Income

376 The IAC and private solicitors' data sets both showed approximately 85% of legally-aided clients reliant on social security benefits. The figure was slightly lower for CLCs (72%). More notable was the fact that 17% of self-funded clients were reliant on social security. These clients often had property to be divided, and hence were ineligible for legal aid. However some may have been excluded from legal aid by the merits test, or may not have been advised by their lawyer to make a legal aid application.³⁴⁷

377 Where it was available, income data for those IAC, private solicitors' legal aid and CLC clients not reliant on social security, indicated a median annual income of \$20–21,000. Self-funded clients, by contrast, had a median annual income of around \$35,000. Family Court litigants (including those on social security) had median annual incomes of \$25–28,000, although this figure was higher for Sydney and lower for Brisbane and Newcastle, as would be expected from the occupational data, above. In all data sets other than the IACs there was a significant gender difference in incomes, in the order of \$10,000 p/a for private solicitors' and Family Court clients.

Housing status

378 Around half of IAC and private solicitors' legal aid clients, and one third of CLC clients, lived in private rental accommodation, and around 15% lived in public housing. Self-funded clients were more likely to live in their own homes, with a mortgage or owned outright.

347 This is a question to be explored further in the second part of this research project.

Disability

379 Clients were recorded as having some form of physical, intellectual or psychiatric disability in 15% of LAC cases, 10% of CLC cases, and 9% of private solicitors' cases, although the figures varied from a high of 32% at one CLC, to 24% in the Sydney office of the LAC NSW and in firms from low socio-economic areas, to none in city firms. To the extent that a client's disability may affect the 'difficulty' of a case, this variable is clearly not evenly distributed between different family law service providers. While client dis/ability was not related to case resolution times or likelihood of proceeding to hearing, it might affect the amount of time the lawyer needs to spend with their client, although in the private solicitors' data set, clients with a disability were more likely than other clients to 'sack' their lawyer and become self-representing by choice.

Summary

380 In summary, legal aid clients were likely to be female, relatively young (median age in the early 30s), reliant on social security and living in private rental accommodation or public housing. As between LACs and private solicitors, the former were more likely to have clients who were female, who were born in a non-English speaking country, who needed an interpreter, who were Indigenous, and who had a disability. Private solicitors' legal aid clients were more likely to have been born in Australia.

381 Self-funded clients were more likely to be male, older (median age in the early 40s), born in Australia, have their own income, and be living in their own home. Although self-funded clients had a higher median income than legal aid clients, their incomes remained strikingly modest. Male self-funded clients had a median annual before-tax income of \$37,000, while female self-funded clients had a median annual income well below this.

382 CLCs had the highest proportions of female clients and clients born in a non-English speaking country, and relatively high proportions of Indigenous clients and clients with a disability. The median age of CLC clients was in the mid 30s. While the majority of CLC clients were reliant on social security, the proportion was lower than for legal aid clients. Nevertheless CLC clients reliant on their own incomes had similarly low incomes (median around \$20,000 where this information was available). Around half of CLC clients lived in either private rental accommodation or public housing, with around 20% living in their own homes.

383 Within and around these broad profiles, the four data sets showed demographic variability between LAC offices, law firms in different geographical areas and socio-economic locations (particularly in relation to client disability), Family Court Registries, CLCs in different geographical areas and with different casework priorities, and parties to consent or contested applications to the Family Court.

Case characteristics

Relationships involved

384 The majority of cases in each of the solicitors' data sets concerned the breakdown of a marriage, however the proportion of marriages ranged from 47% among private solicitors' legal aid cases, to over 60% among LAC and CLC cases, and 88% among self-funded cases. The types of relationships involved by service providers are shown in Table 6.3.

TABLE 6.3 Relationships by service provider

Relationship	LAC%	PSSF%	PSLA%	CLC%
Marriage	61.9	88.4	47.2	67.0
De Facto relationship	23.8	9.1	41.7	25.5
Other	14.3	2.5	11.1	7.4

385 Median length of marriages in legal aid and CLC cases was 6–7 years, while median length of marriages in self-funded cases was twice that figure (14 years). De facto relationships were of consistently shorter duration: median 2–4 years in all cases. Around 10% of legal aid and CLC cases concerned a relationship other than a marriage or de facto relationship, usually a casual sexual relationship that had resulted in a child whose care or financial support was now in dispute. The Family Court data did not distinguish between marriages and de facto relationships.

Matters involved

386 The most commonly occurring matter types in the Family Court cases were contact, residence and property (each occurring in over half of all cases), followed by child welfare issues. In the solicitors' cases contact and residence also predominated, although more so in legal aid than in self-funded cases. Property was the most frequently occurring matter in the cases of self-funding clients, while it was present in only 10% of legal aid cases. General child welfare issues ranked fourth across all case types. Proportions of dissolution applications varied widely across the solicitors' data sets, from 15% of self-funded cases, 12% of CLC cases and 8% of LAC cases to none in private solicitor legal aid cases. CLCs also had quite a different mix of matter types from other service providers, with no single matter arising in more than 50% of cases. Contact was present in 40% of CLC cases, and child support/child maintenance was dealt

with in around one third of cases, largely due to the fact that two of the CLCs sampled had specialist child support services. Location/recovery and related issues had a higher incidence in the Family Court data (10%) than in the solicitors' data (less than 5% in each dataset).

- 387 Local variations in matter types related particularly to divorce, property and contact issues. The Melbourne office of Victoria Legal Aid undertook a relatively high proportion of divorces (generally for NESB clients) compared to other legal aid offices. As between the two women's legal services sampled, WLRC (NSW) dealt with a relatively high proportion of divorces, while WLS (SA) dealt with no divorces, but a relatively high proportion of property matters. Divorce applications were also more likely to be filed by city firms than by country firms. The Sydney office of the LAC NSW handled a relatively low proportion of residence/contact cases, and the same was true for the Sydney Registry of the Family Court (which, conversely, had a relatively high proportion of property cases). The Parramatta LAC office tended to see cases involving ongoing contact problems, including applications for location/recovery orders, while the Parramatta Registry of the Family Court had a relatively high proportion of applications for variation etc of previous orders, a phenomenon possibly consistent with the LAC experience. Finally, over all Court Registries, Form 12A applications tended to be associated with property matters, while Form 7 applications were associated with children's matters.
- 388 Where property was involved, the most commonly occurring types of property across the three solicitors data sets were the matrimonial home, followed by household possessions.
- 389 The mean number of matters raised per case was around 2.5 – consistent across the LAC, private solicitors' and Family Court data sets. There were again local variations, with, for example, the Sydney and Parramatta LAC offices having considerably lower and higher means respectively, while for private solicitors, country and NSW firms had lower means, and suburban firms in high socio-economic

areas and Victorian firms had higher means. CLC cases tended to include fewer matters, with a mean of 1.8 matters per case.

Domestic violence and child abuse

390 There were known allegations of domestic violence in around 60% of CLC and private solicitors' legal aid cases, 40% of LAC cases, and 25% of self-funded cases. In around 90% of these cases the alleged perpetrator of violence was male and the person subjected to violence was female. In around 70% of these cases there was evidence of a history of violence in the relationship, and in around 60–65% at least one of the parties had obtained a state domestic violence order (other than in CLC cases, where the proportion of violence cases in which a domestic violence order was known to have been obtained was 44%). The presence of a history of violence and/or a domestic violence order in such a high proportion of cases containing allegations of violence provides strong support for the veracity of those allegations. The fact that criminal charges had been brought in relation to the violence was recorded on the file in 25% of LAC cases and 15% of private solicitors' cases that included allegations of domestic violence, however there were large state-based differences, with 42% of Parramatta LAC cases and 30% of NSW private solicitors' case involving criminal charges, compared to 6% in the Melbourne office of Victoria Legal Aid and 7% for Victorian private solicitors' cases more generally. This clearly indicates different police responses to domestic assaults and breaches of domestic violence orders.

391 The only indicator of domestic violence recorded from the Family Court files was "current evidence" of a State domestic violence order. This was present in 16% of Family Court cases overall, which accords with the rate of domestic violence orders in private solicitors' self-funded cases.

392 As noted above, there were some local variations in the incidence of criminal charges relating to domestic violence, attributable to local police practices. Other variations appeared to be more a product of when the issue of violence was considered relevant to the case. Thus, for example, violence was more likely to be recorded in the files of female clients, more likely to be recorded in Form 7 cases than in Form 12A cases, and more likely to be recorded in cases concerning children. Family Law files thus perhaps provide more of an indication of when violence is considered relevant in family law proceedings than of the overall incidence of violence among separating couples.

393 28% of private solicitors' legal aid cases, 22% of IAC and 12-14% of self-funded and CLC cases included allegations of child abuse. These allegations were substantiated by Community Services in up to one half of the cases (IACs), although there were frequent 'unknown' responses to this question. A Monash study of Family Court cases involving allegations of child abuse observed that "the families [in such cases] were not usually families known to State child protection services..but families where various forms of violence had lead to family breakdown"³⁴⁸ Our findings appear to be consistent with this.

394 In the Family Court, 4% of cases included a notification of risk of child abuse. The Brisbane Registry of the Court had a higher than average proportion of notifications filed, which may be a cause (or effect) of the relatively high proportion of cases at that Registry in which a child representative was appointed (see previous chapter). In addition, notifications of risk of child abuse were clearly considered more relevant, and hence filed significantly more often, in Form 7 cases than in Form 12A cases.

395 There were some associations between the presence of domestic violence and child abuse allegations and particular matters raised in cases. IAC cases involving such allegations included a higher than average proportion of applications for location/recovery orders. In

348 Thea Brown et. al., 'Child Abuse and the Family Court', Trends and Issues in Crime and Criminal Justice No.91, June 1998 (Australian Institute of Criminology), p.3.

private solicitors' cases, domestic violence allegations were associated with applications for Family Court restraining orders. In the Family Court, files including current evidence of a domestic violence order or a notification of risk of child abuse were more likely than otherwise to involve applications for variation, confirmation or discharge of previous orders.³⁴⁹ Thus while domestic violence and child abuse allegations did not generally have statistically significant effects on case processing times or methods of resolution, they did appear to add a level of difficulty to a case and to consume greater court resources than might otherwise occur.³⁵⁰

Summary

396 In summary, residence and contact issues were prominent in all categories of cases, however wide variations in case characteristics arose from legal aid guidelines and local office policies, CLC casework guidelines, and solicitors' understandings of when domestic violence and child abuse are relevant in family law proceedings. As between Family Court Registries, Sydney had a high proportion of property matters (consistent with its demographic base), Brisbane had a high proportion of notification of risk of child abuse, and Parramatta had a high proportion of 'difficult' cases – indicated here by applications for location/recovery orders and for variations of previous orders, and as noted in the next section, by a high proportion of cases proceeding to hearing.

397 Interesting observations from the solicitors' data included –

- differences in marriage duration between legally-aided and self-funded cases

349 Domestic violence: $\chi^2=5.639$, $df=1$, $p<0.05$; child abuse: $\chi^2=8.403$, $df=1$, $p<0.005$.

350 This is also the subject of further investigation in Part 2 of the research.

- the tendency of de facto relationships to break down earlier than marriages. On the assumption that de facto relationships may be serial relationships, this points to different needs for dispute resolution between different kinds of relationships
- cases handled by firms in high income suburbs tending to involve a higher number of matters than cases handled by other firms, suggesting either parties with more to argue over, or services tailored to the client's financial capacity
- domestic violence allegations made in family law cases being verified by a history of violence between the parties and/or the presence of a State domestic violence order in around two thirds of cases.

Dispute resolution

398 A considerable amount of complex data concerning dispute resolution was gathered from the four data sources. This data was divided conceptually into information on resolution processes employed, the stage at and method by which cases were resolved, and the time taken to resolve or dispose of the case. Again, legal aid policies and CLC casework guidelines restricted the kinds of dispute resolution processes available in legal aid and CLC cases. Legal aid in the states from which the bulk of our data was drawn is generally granted only for contested proceedings, not just for negotiations. Legal aid applicants must have pursued other avenues of dispute resolution on their own, and if there is no real dispute between the parties, legal aid will not be granted. Thus, in effect, self-funded litigants and their lawyers have access to a wider range of strategies than do legally-aided litigants within the terms of their grant. In contrast to the legal aid situation, the CLCs surveyed tended to encourage clients to pursue non-litigious means of resolving their disputes, and to eschew contested matters for reasons of resource conservation.

Resolution processes

- 399 The above observations were borne out by the fact that while 5% of private solicitors' cases had no court involvement, the proportion of CLC cases with no court involvement was 41%. In a further 14% of private solicitors' cases there were no court dates, since they involved a Form 12A application. LAC cases were less consistent with expectations, with 17% of cases having no court involvement, although in some of those the client may have lost contact before proceedings could be issued.
- 400 The LAC NSW had a policy of using a Local Court rather than the Family Court where possible, hence over 40% of LAC cases had Local or Magistrates Court involvement. The figure was half that for private solicitors (21% Local or Magistrates Court involvement), and half again for CLCs (10% Local or Magistrates Court involvement). The proportion of cases begun in the Local/Magistrates Court and then transferred to the Family Court was 9% for LACs and 6% for private solicitors, consistent with the proportion of transfers found in the Family Court data set (8%). Family Court usage ranged from around one third of LAC cases and around half of CLC cases, to over 80% of private solicitors' cases.
- 401 Table 6.4 sets out the dispute resolution methods attempted and Family Court stages reached across the three solicitors' data sets. The private solicitors' data is divided into self-funded and legally-aided cases. Data from the Family Court sample is not included in the table, since it is not directly comparable to the other three samples due to different sampling methods, counting techniques and definitions.

TABLE 6.4 Family Court stages reached and forms of resolution attempted by service provider

Stage/resolution type	% LAC cases	% PSSF cases	% PSLA cases	% CLC cases
Private resolution	7.0	39.7	18.9	21.9
Application for consent orders (Form 12A)	5.9	28.1	9.5	13.3
Application for final orders	70.1	60.3	75.7	35.7
Negotiations between solicitors	40.0	74.4	59.5	33.7
Solicitor negotiations w. unrep. party	30.9	7.4	10.8	28.1
Family Court counselling	24.4	27.3	58.1	12.8
Directions hearing/s	45.1	43.0	54.1	17.3
Interim orders	13.3	16.5	23.0	2.6
Conciliation conferences	3.0	24.8	8.1	0.5
Pre-hearing conference	6.8	14.9	20.3	1.0
Consent orders	18.2	38.0	25.7	11.2
Final orders	14.2	19.8	25.7	12.8

Note: total %s > 100, since more than one stage/resolution type possible per case.

402 The table shows that across all three data sets, the most frequently occurring dispute resolution processes were applications for final orders and solicitor negotiations, followed by directions hearings and, in the case of self-funded and CLC cases, attempts at private resolution. This clearly indicates that the typical family law case, whoever the lawyer and whatever the funding status, is dealt with by means of "litigotiation" – a mixture of both court-based and out of court processes. The mere filing of a Form 7 does not commit the parties to an inevitably litigious path to resolution.

403 The table also shows low proportions of Form 12A applications and conciliation conferences, and high proportions of applications for final orders, in legally-aided cases compared to self-funded cases. In

other respects, however, legal aid cases handled by private solicitors showed a different profile from legal aid cases handled by in-house solicitors, for example higher levels of attempted private resolutions, negotiations between solicitors, Family Court counselling, interim orders and pre-hearing conferences, and lower levels of solicitor negotiations with unrepresented parties (suggesting LAC clients are more likely to face unrepresented opponents than are private solicitors' legally-aided clients). Private solicitors' legal aid cases also had higher levels of both consent orders and final orders, indicating, as noted in earlier chapters, the higher proportion of private solicitors' cases that were resolved, compared to the higher proportion of LAC cases unresolved.

- 404 Self-funded cases had generally higher levels of out of court work than did legal aid cases – attempted private resolutions, applications for consent orders, negotiations between solicitors, and negotiated settlements resulting in consent orders – and a lower proportion of applications for final orders. In other respects, though, there was more similarity between LAC and self-funded cases, in the proportions of cases involving Family Court counselling, directions hearings and interim orders. Self-funded cases included higher proportions of pre-hearing conferences and final orders than LAC cases, but lower proportions of these steps than private solicitors' legal aid cases.
- 405 Consistent with their emphasis on non-litigious solutions, CLC cases contained generally low proportions of even early Family Court stages such as applications for final orders, Family Court counselling and directions hearings. These cases also had lower proportions of negotiations between solicitors and consent orders than the other groups of cases. However they did include a high level of solicitor negotiations with an unrepresented party, suggesting that CLC clients as much as LAC clients have a tendency to be facing an unrepresented opponent.

406 In all data sets the major form of 'PDR' employed was Family Court counselling. Only very small proportions of cases attended Family Court or community-based mediation, and since our solicitors' data included few responses from Queensland, we did not gain an accurate picture of the impact of the legal aid conferencing policy in that state. Given our data sources, we were also unable to obtain information about the use of community-based family mediation by people who do not see a lawyer – either because they do not feel the need for or cannot afford a lawyer, or because they have consulted a lawyer, IAC or CLC and been referred directly to mediation. Studies of federally-funded community mediation services in Melbourne and Sydney in 1995 indicated that around 40% of clients were referred to mediation by a solicitor or Legal Aid, 5–10% were referred by the Family Court, and the remainder (ie. the majority) came to mediation by other pathways.³⁵¹ This is a matter that might usefully be the subject of further research.

407 Across all data sets, the presence of Family Court counselling was positively correlated with the existence of domestic violence and child abuse allegations. This may be explained by the fact that both Family Court counselling and the raising of such allegations are most likely to occur in children's cases. It should also be noted that the Family Court counselling service offers separate counselling sessions where fear of violence makes it inappropriate for parties to attend a joint session. The proportion of separate counselling sessions reported in the Family Court's Annual Report is commensurate with the proportions of cases found in the study going to counselling with evidence of a history of violence and/or with a current domestic violence order. Although numbers were small, there were also positive relationships between violence and child abuse allegations and other forms of PDR (mediation and legal aid conferences) in the IAC and

351 Anthony Love, Lawrie Moloney and Tom Fisher, *Federally-Funded Family Mediation in Melbourne: Outcomes, Costs and Client Satisfaction* (AGPS, 1995), p.43; Lawrie Moloney et. al., *Managing Differences: Federally Funded Family Mediation in Sydney: Outcomes, Costs and Client Satisfaction* (AGPS, 1996), p.77.

private solicitors' data sets. These services do not screen out cases involving violence between the parties. While they purport to apply safeguards to ensure that violence is not simply perpetuated through the PDR process, the adequacy and effectiveness of those safeguards is open to question.

408. Notable variations in dispute resolution processes included different levels of usage of Local/Magistrates Courts among LAC offices, differences between CLCs as to the degree of Family Court involvement and use of Form 12A applications, and a relatively high proportion of cases from firms located in high-income suburbs reaching a pre-hearing conference and judicial determination. There were also interesting patterns associated with different Registries of the Family Court. Both the LAC and Family Court data showed a high proportion of cases resulting in judicial determination at the Parramatta Registry. In the same data sets, cases handled by the Adelaide Registry included a high proportion of interim orders but a low proportion of final hearings. The Family Court data showed a similar pattern for the Brisbane Registry, and while we did not have sufficient data from solicitors to discern any comparable trend, it is verified by other research.³⁵² According to the Family Court data, too, Adelaide cases had the highest mean number of directions hearings (3.2) and all pre-hearing events (5.1) per case. These findings are indicative of delays in getting to hearing in the Adelaide Registry in particular.

409 The mean number of stages reached and resolution types attempted per case ranged from 2.1 for CLCs and 3.5 for LACs to 4.3 for private solicitors. The lower number for CLCs probably results from their particular case handling practices and preferences, although there may also be an element of under-counting by those who completed the survey forms. There were considerable variations between LAC offices and CLCs in this respect, but fewer variations within the

352 John Dewar and Stephen Parker, with Barbara Tynan and Donna Cooper, *Parenting, Planning and Partnership: The Impact of the New Part VII of the Family Law Act 1975* (Family Law Research Unit, Griffith University, Working Paper No. 3, March 1999).

private solicitors' data set. In particular, there was no difference between self-funded and legally-aided cases, although cases handled by firms located in high-income suburbs had a higher mean (5.3). In all three data sets, the presence of domestic violence allegations increased the mean number of stages reached and resolution types attempted per case, and the same was true for child abuse allegations in all but the IAC data set (it is possible that IAC solicitors, some of whom also do child care and protection work, may be more experienced in dealing with child abuse allegations, and hence handle such cases more efficiently).

- 410 The mean number of Family Court dates scheduled per case was remarkably consistent between the IAC, private solicitors' and Family Court data sets (3.6 dates/3.5 pre-hearing events per case). The figure for CLCs was lower (2.2), again likely attributable to CLCs' approach to case handling, but possibly also incorporating some degree of under-counting. Variations included a higher mean number of court dates for cases handled by private firms in high income suburbs and a lower mean for city firms, and differences between IAC offices, attributable to differences in case characteristics (eg. presence of a child representative, domestic violence allegations, an unrepresented party) and relative degrees of State Court usage.
- 411 Where cases went to a State, Local or Magistrates Court, the mean number of court attendances was 2.3 for private solicitors' cases, 2.6 for CLC cases and 3.1 for IAC cases.

Stage and method of resolution

- 412 The stages at which cases from the four data sets in which a Form 7 was filed were resolved are set out in table 6.5. It should be noted that the stage "at final hearing" might refer to an undefended or contested hearing, including hearings that settled part way through. For the three solicitors' data sets, there was also a proportion of unresolved cases, ranging from 11% for private solicitors to 44% for CLCs. By

contrast, the Family Court files by definition were resolved in order to be included in the sample. The solicitors' figures in the table have been re-calculated to represent proportions of resolved Form 7 cases, in order to make them comparable with the figures from the Family Court.

TABLE 6.5 Stages at which Form 7 Cases were resolved by service provider

Stage	% LAC cases	% PLF cases	% CLC cases	% FC cases
Before directions hearing	18.0	14.4	25.7	13.3
At/after directions hearing/s	18.0	22.4	43.6	53.2
At/after interim orders	12.7	10.4	2.5	1.6
At/after conciliation conference	2.5	11.2	0.0	6.8
At/after pre-hearing conference	6.1	8.0	2.5	8.3
At final hearing	42.6	33.6	25.7	16.8
Total	100	100	100	100

413 It can be seen that quite low proportions of cases were resolved at or after a conciliation conference or pre-hearing conference across all data sets. With the exception of CLCs, around 15% of cases were resolved prior to the first directions hearing.

414. A number of factors may account for the discrepancies between the resolution rates shown in the solicitors' data sets and the Family Court data in relation to the directions hearing/s, interim orders and final orders stages. One possibility, particularly with the LAC cases, is that both Family and State Court hearings are included, and State Court cases were more likely to result in a "final hearing". Another possibility is that events were counted differently. Thus, for example, if a Registrar or Judicial Registrar made final orders in a case, this may have been counted as resolution at a final hearing on the solicitors' surveys, but as resolution at a directions hearing on the Family Court

coding sheet. It is likely that the Family Court data is more reliable in this respect. In relation to resolution by interim orders, however, the solicitors' data is the more reliable source, since the Court would not usually know that a case in which interim orders had been made had effectively been resolved. Hence, one would expect a low proportion of cases to be removed from the active pending cases list following interim orders, but this would not necessarily be an accurate reflection of case outcomes.

- 415 Average length of Family Court hearing for private solicitors' and Family Court cases was approximately one and a half days, while for LAC and CLC cases it was a day or less (State Court hearings were also less than a day on average). There was no difference in hearing lengths between Registries in the Family Court data, however the private solicitors' data showed hearings in NSW cases being longer on average (two days) than hearings in Victorian cases (one day).
- 416 There were some variations in the proportion of cases going to hearing (as defined) between firms in high and low income areas, and between legally aided and self-funded cases in the private solicitors' data set, although the differences just failed to reach statistical significance. In the LAC and Family Court data, as observed earlier, a relatively high proportion of cases at Parramatta proceeded to hearing (however defined). Regression analysis indicated the main predictors of matters proceeding to hearing for each data set, however there was no consistency between data sets, and predictive power in each case was low. For LAC cases, those with more matters in dispute were more likely to go to hearing; for PLF cases, those involving relatively short marriages and relatively few children were more likely to go to hearing; and from the Family Court data, cases involving a child representative had the greatest chance of proceeding to hearing.
- 417 Table 6.6 shows the means by which the matters in each of the solicitors' data sets were resolved. This table is not confined to Form 7 cases, and it also includes the proportion of matters unresolved in each data set. Family Court data is not included in the table because

it is not comparable: the solicitors' data refers to individual matters within cases, whereas the Family Court data refers to cases as a whole; there is no information from the Family Court data about out of court settlements; and the proportion of Forms 12A in the Family Court data was artificially constructed by the sampling method.

TABLE 6.6 Means of resolution of family law matters by service provider

Nature of resolution	% LAC cases	% PSSF cases	% PSLA cases	% CLC cases
Out of court	4.8	14.9	16.8	14.8
Application for consent orders (Form 12A)	0.9	16.8	0.5	12.0
Interim orders	2.4	2.8	2.6	2.2
Consent orders (negotiated settlement)	28.7	38.3	33.7	13.3
Undefended final orders	7.1	0.6	0.5	0.6
Final orders following contest	18.3	7.0	16.3	4.6
Other/unknown	6.6	8.2	4.2	3.1
Unresolved	31.2	11.4	25.2	49.4
Total	100	100	100	100

418 It can be seen that, as predicted earlier, self-funded matters included a much higher proportion of Form 12A applications than did legal aid matters. When a Form 7 was filed, self-funded matters were more likely than legal aid matters to reach a negotiated settlement, and half as likely to have final orders made by the court following a contested hearing. In addition, a considerably lower proportion of matters in self-funded cases remained unresolved.

419 Matters handled by private solicitors (however funded) were three times as likely as LAC matters to settle without court involvement. Conversely, LAC matters were far more likely to be finalised at an undefended hearing. This is probably a function of the higher

proportion of unrepresented opponents in LAC cases. As between the two different forms of legal aid delivery, matters handled by private solicitors were more likely to arrive at negotiated consent orders than were matters handled by LACs, and less likely to remain unresolved (one quarter as opposed to one third of matters). There were similar results across all four data sets for resolutions by interim orders.

- 420 The CLC column in table 6.6 is dominated by the fact that almost half of CLC matters remained unresolved at the time the file was closed. The great majority of resolved matters were settled rather than adjudicated, with settlement methods divided fairly evenly between out of court, Form 12A application, and negotiated consent orders following a Form 7.
- 421 In both the LAC and CLC data sets, there was considerable variation between offices and Centres as to the proportions of cases and matters resolved and unresolved. In both data sets, too, unresolved cases were associated with lack of court involvement, but did not have significantly shorter closure times than resolved cases. Matters that tended to remain unresolved in "resolved" cases included property (LAC cases), contact (LAC and private solicitors' cases) and child support (private solicitors' and CLC cases). Variations in resolution types in the Family Court cases included a low proportion of Form 12A applications and high proportion of negotiated consent orders in the Brisbane Registry; the opposite pattern in the Adelaide and Sydney Registries; and a low proportion of negotiated consent orders and high proportion of defended hearings at the Newcastle Registry.
- 422 As noted in the previous chapter, a substantial proportion of Family Court cases (18%) included an application for costs. Across all data sets, however, costs were actually awarded in only around 2% of cases.

Resolution and closure times

423 Resolution times for the solicitors' and Family Court data are not comparable, since in the case of solicitors, time was calculated from date of first instructions to date of resolution, while for the Family Court, time was calculated from the date the (most recent) initiating application was filed to date of removal from the active pending cases list. Hence solicitors' resolution times and Family Court disposition times are discussed separately in this section.

424 Table 6.7 sets out the median and 90th percentile resolution times for cases handled by different legal service providers under different funding arrangements.

TABLE 6.7 Resolution Times by Service Provider

Stage	No. cases resolved	Median resolution time	90% resolution time
Legal Aid in-house	301	4.0 months	14.0 months
Private solicitor — self-funded	112	11.0 months	25.7 months
Private solicitor — legally-aided	62	6.0 months	19.4 months
Private solicitor — both	10	15.0 months	36.6 months
Community Legal Centre	107	6.0 months	14.2 months

425 It can be seen that LACs had the shortest median and 90% resolution times, followed by CLCs. Private solicitors' cases took longer than LAC cases, but different funding arrangements did affect the length of those cases, with (wholly) legally-aided cases being resolved more quickly than (wholly) self-funded cases. While the number of private solicitors' cases with mixed funding (both legal aid and the client's own funds) was very small, resolution times for that category seem to indicate that they had the worst of both worlds.

426 The time difference between IAC and private solicitors' legal aid cases may be explained by the additional transaction time experienced in the latter, in getting the legal aid application, and further stages of the case, approved by the IAC. It appeared, too, that private solicitors' legal aid cases involved further transaction time between resolution and file closure (median 3 months elapsed for legally-aided cases, compared to one month for self-funded cases), probably for the same reason. The difference between the two categories of private solicitors' cases may be explained by the presence of property issues in self-funded cases but not generally in legally-aided cases. As discussed below, a property dispute increased resolution time, and the time difference between legally-aided and self-funded cases was virtually the same as the time difference between cases with and without property in issue.

427 In cases that did not involve the court process, median resolution time across all data sets was 4-5 months, which was the same as the median for all IAC cases, and not significantly shorter than the median for all CIC and private solicitors' legally-aided cases. 90% resolution times for cases not going to court ranged from 10.3 months (IACs) to 24.4 months (private solicitors). In each data set there were some categories of cases in which proceedings had been issued which resolved more quickly than cases in which no proceeding were issued (eg. cases resolving after the filing of a Form 7, or at the interim order stage). These findings suggest that "litigation" per se does not necessarily cause delay in a case, and cases involving court proceedings can resolve more quickly than cases without. Moreover, the fact that self-funded cases took longer to resolve than legally-aided cases, even though, as shown above, self-funded cases were more likely to be resolved by negotiation while legally-aided cases were more likely to be resolved by decision of the court, suggests that settlement is not necessarily quicker than contested proceedings. In this instance, the type of matter involved (property) was more conducive to delay than the type of dispute resolution process adopted.

- 428 Particular client characteristics were not generally associated with the time cases took to resolve, although in the CLC data set, cases involving the breakdown of a marriage took longer to resolve than cases involving the breakdown of a de facto relationship. Case characteristics had more bearing on resolution times, with the issues of residence, property, spouse maintenance, child support and child maintenance affecting times in one or other of the data sets. The presence of domestic violence or child abuse allegations did not have a significant impact on resolution time. However in the LAC data, the presence of a child representative significantly increased resolution time.
- 429 Particular features of dispute resolution had a major impact on resolution times. In the LAC and CLC data sets, resolution time was affected by which office or CLC handled the case. Across all three data sets, cases handled by the Family Court had longer median resolution times than cases handled by a State Court, and, of greatest statistical significance, the more court stages reached and forms of dispute resolution attempted, the longer cases took to resolve. Nevertheless, it did not prove possible to devise a single regression model that would account for resolution times in all three data sets; each threw up different explanatory factors. Moreover, none of the regression models were powerful enough to form a basis for future predictions. The data in all cases was "noisy": subject to a wide range of variations and influences.³⁵³
- 430 In the Family Court, median disposition time for Form 7 cases was 5 months, with 90% of cases disposed of within 21 months. Disposition time jumped considerably if a case was not resolved prior to a pre-hearing conference (this pattern was also evident in the private solicitors' data set). The Family Court data showed that approximately 25% of cases took longer to resolve than the targets set for time to

353 Similarly, the British profiling research found it very difficult to model cost drivers in family law cases, and also found significant cost drivers located towards the end of the process (eg. whether the case ended in a contested hearing) rather than towards the beginning, making prediction even more difficult. Sarah Maclean, Report of the case Profiling Study: Legal Aid and the Family Justice System (Legal Aid Board Research Unit, 1998), p. 40.

hearing in the Court's case management guidelines. For this proportion of cases, there is indeed a problem of delay in the Family Court. The level of delay varied between Registries, with Adelaide and Melbourne experiencing the greatest problems and Sydney the least.

- 431 Again, demographic characteristics of parties (other than applicant's age) did not have a bearing on case duration, while a number of case characteristics did have an influence. These included the presence of spouse maintenance in the case (consistent with the private solicitors' data) and presence of a child representative (consistent with the IAC data). In addition, handling by the Adelaide or Brisbane Registries, transfer from a State Court, and Family Court counselling significantly increased disposition time, while an unrepresented respondent had the opposite effect. The best regression model for disposition time in the Family Court was more powerful than any of those emerging from the solicitors' data, but was also fairly complex, again confounding efforts at prediction.

Summary

- 432 In summary, the majority of family law cases involved an application for final orders, solicitor negotiations, and attendance at one or more directions hearings, before arriving at a settlement which was embodied in consent orders. The main form of PDR used was Family Court counselling, which appears to provide adequate screening for domestic violence. It is not possible to be so confident in relation to other PDR options.
- 433 Considerable local and funding-type variations persisted in the area of dispute resolution. Characteristics of dispute resolution were more likely to be related to case characteristics than to client characteristics, however they were also related to other characteristics of dispute resolution, ie. service providers' policies, preferences and strategies for case handling, court behaviour, and the interactions between them. It was interesting to note in this context that legal-aid cases

were quicker but more likely to go to hearing while self-funded cases were the opposite. At the same time, cases handled by firms in high income areas were more likely to proceed to advanced stages in the Family Court, and had a higher mean number of forms of dispute resolution attempted and court attendances scheduled than cases handled by other private law firms.

Funding and representation

Client's funding

434 The relative proportion of self-funded (65%) and legally-aided cases (35%) in the data obtained from solicitors is misleading, since the samples were deliberately constructed to include sufficient numbers and proportions of each type of case to enable valid conclusions to be drawn about each one, rather than to accurately represent the total population of family law cases. Neither does the Family Court data give a good indication of the relative proportion of legally-aided and self-funded cases in the system overall, since evidence of legal aid was rarely found on Family Court files unless a party was represented by an in-house legal aid solicitor. General practice information gathered from private solicitors, however, indicated that legal aid cases make up around 25% of private solicitors' family law work.

435 In the great majority of CLC cases, the client had been formally or informally assessed as being ineligible for legal aid, and there was no funding for the client's case other than the assistance provided by the CLC.

436 Where clients were legally-aided, the majority were assessed to pay only the compulsory contribution.³⁵⁴ A relatively small proportion were required to pay an additional contribution, although private solicitors' legal aid clients were more likely to be required to do so than IAC clients.

354 This has now been abolished in Victoria.

437 A higher proportion of private solicitors' legal aid clients than of IAC clients had difficulties with their funding, as shown in Table 6.8.

TABLE 6.8 Legal Aid difficulties by service provider

Problem	LAC cases	Referred cases
Client determined to be ineligible for legal aid	4.4%	11.5%
Application for extension of aid rejected	2.8%	12.6%
Legal aid grant terminated	23.1%	6.9%
Legal aid cap reached (referred cases only)		9.2%
Terms of grant limited way case could be handled	4.9%	21.8%
Total with one or more problems	30.3%	39.1%

438 The considerably higher proportion of private solicitors' legal aid cases in which it was recorded that the terms of the client's legal aid grant limited the way the case could be handled may be partly attributable to 'political' statements by solicitors filling in the forms—ie. their view that all legal aid grants have this effect. The only category of problem in which there was a higher proportion of LAC cases was termination of legal aid grants, which is attributable both to a higher proportion of LAC clients losing contact, and LACs being apparently more alert to changes in clients' eligibility status and more ready to terminate grants when this occurred.

Client's representation

439 LAC and CLC cases showed a high degree of client movement, although this was usually after rather than before they reached the office or legal centre that participated in the survey. 10% of LAC clients and 16% of CLC clients had had previous representation.

However the IAC or CLC ceased to act for the client in around 40% of cases. In IAC cases the reasons for ceasing to act were evenly divided between the client losing contact and the client's grant being terminated or exhausted. In CLC cases the major reason for ceasing to act was that the client lost contact, although there was some variation between CLCs on this point. A similar proportion of private solicitors' clients had had previous representation (17%), but the solicitor ceased to act in only 16% of cases, most usually because the client moved to another solicitor, or again lost contact. Client movement was more likely in legal aid than in self-funded cases, and more likely in Victoria than in NSW.

Child representation

440 We have seen that presence of a child representative is associated with cases of longer duration and/or which are likely to proceed to a contested hearing. In the private solicitors' and Family Court data sets, there was a child representative appointed in 13% of cases, although less than 10% of IAC cases included a child representative. The Family Court data also showed variations between Registries, with a relatively high proportion of child representatives appointed in Brisbane, and a relatively low proportion in Melbourne.

Other party's representation and unrepresented parties

441 The other party was wholly or partially unrepresented in around 40% of IAC and CLC cases (with significant variations between offices and legal centres), but in only 12.5% of private solicitors' cases (with a lower percentage in property cases). In the Family Court data set, 15% of applicants and 34% of respondents were wholly or partially unrepresented, with variations between Registries and between Form 7 and Form 12A cases. There was no gender difference between unrepresented respondents in the Family Court, but unrepresented applicants were more likely to be male.

- 442 The private solicitors' and Family Court data indicated that a party's funding and representation status is most likely to mirror that of the other party. Thus, a self-funded party is most likely to have a self-funded opponent, a legally-aided party is most likely to have a legally-aided opponent, and an unrepresented party is most likely to have an unrepresented opponent. The private solicitors' data also suggested that cases are more likely to resolve where both parties are self-funded than where both parties are legally-aided.
- 443 Funding and representation status also had an impact on case resolution and disposition times. Private solicitors' cases in which both parties were legally-aided took the shortest time to resolve, while cases in which both parties were self-funded took the longest time, and cases with mixed pairs fell in between. The presence of an unrepresented opponent reduced IAC case resolution time and similarly, the presence of an unrepresented respondent reduced Family Court case disposition time, both in all cases and in cases that went to hearing. The latter, however, included a high proportion of default judgments and undefended hearings. These observations may be interpreted as demonstrating disadvantage/lack of power on the part of unrepresented respondents, or simply a choice to reach an early resolution rather than fight the case.

Summary

- 444 In summary, legal aid work made up around a quarter of the family law work of the solicitors who responded to the survey. The majority of legal aid clients paid only the compulsory contribution, and private solicitors' clients were less likely than IAC clients to have their legal aid grant terminated. Partly in consequence, private solicitors' clients were less likely to leave the service-provider than were IAC and CLC clients. In a substantial minority of IAC and CLC cases the service provider ceased to act for the client before the case was resolved. IAC and CLC clients were also more likely to face an unrepresented opponent, although in general, parties' funding and representation

status tended to mirror each other. In general, too, an unrepresented party made a case shorter (due to early settlement or default or undefended judgment), while cases with two self-funded parties took the longest median time to resolve.

Conclusion

445 The purpose of the profiling study was to lay the groundwork for subsequent comparisons of the legal services provided to self-funding and legally-aided family law clients. We needed to identify areas of commonality between the services provided to different clients by different providers, in order to ensure that we would not be comparing "apples and oranges".

446 We have found that the family law casework services offered by CLCs at the time of the survey were substantially different from those offered by other providers in the field. CLCs were more likely to restrict the range of clients and types of matters dealt with, in particular targeting clients whose cases fell outside legal aid eligibility guidelines, but who were also unable to afford private legal representation. CLCs also often restricted assistance to particular types of dispute resolution processes. Thus, CLCs provided a specialised service aimed at filling gaps rather than 'competing' with other mainstream service providers in family law.

447 In relation to the other providers (IACs and private solicitors), there is a degree of common ground, although this is restricted by the parameters of legal aid funding. In essence, IACs, private solicitors for legal aid clients and private solicitors for self-funding clients all deal with children's matters, of which residence and contact are the most common. The majority of children's cases involve at least a Form 7 application, and focusing on cases in which a Form 7 is filed also deals with the issue that legal aid is likely to be granted for proceedings rather than negotiations. Such a focus, however, leaves aside around 40% of self-funded cases which concern property only.

- 448 Within this common field, we would still expect to find differences between IAC cases, private solicitors' legal aid cases and private solicitors' self-funded cases, in terms of client demographics, other matters involved in the case (particularly property issues in self-funded cases), levels of violence allegations, resolution processes, and opponent's funding/representation status. In addition, we would expect to find local variations, centred around Family Court Registries, and this factor needs to be built into the research design for the second stage of the project (and should be taken into account in other family law research).
- 449 We would also hope to replicate (or at least test further) other findings of the profiling study, such as that the cases of legal aid clients are resolved more quickly than those of self-funding clients, that firms in high income areas appear to offer their clients a greater quantity of services than others, and that the "ordinarily prudent self-funding litigant" seems prepared to spend quite a substantial amount of his/her scarce resources on family law proceedings.
- 450 Beyond its original aim, the profiling study has also yielded considerable detailed information about family law clients, cases, and dispute resolution processes which we hope will be of use to policymakers, academics and service providers. There is very little equivalent data available from other sources. The study sheds light on issues as diverse as the use of PDR in family law, the way family violence impacts on family law cases, delays in the Family Court, and the effect on the Court of unrepresented litigants. As noted in the introduction, this is the most extensive and comprehensive profiling study of family law cases undertaken anywhere. As such, it makes a substantial contribution to the literature on family law and legal aid services.

Appendix 1

Part 1 Survey

CASE ID _____
(JRC use only)

JUSTICE RESEARCH CENTRE

LEGAL AID SERVICES IN FAMILY LAW**PART 1 SURVEY – SOLICITORS' FILES**

The following survey is designed to collect information about family law files. To allow us to construct an accurate representation of the cases dealt with by different service providers it is vital that we are able to collect the most accurate information possible. Could you please assist us by completing this form and providing all information that you have recorded in your files.

FILE IDENTIFIER _____

(Please give us some way of identifying this file that will allow us to contact you and ask further questions about it if necessary – eg. if you miss a question, or an answer is unclear – but which also preserves client confidentiality. For instance, you may provide your firm's file reference number so long as the client's name is not disclosed, or you may prefer to keep your own record of the files included in this survey, with a separate means of identification. This information will not be recorded in any data base or reported in any of the results of the survey.)

A) CLIENT DEMOGRAPHICS

1. **WHAT WAS THE CLIENT'S SEX?** Male Female
(tick one)
-
2. **WHAT WAS THE CLIENT'S YEAR OF BIRTH?** 19_____
-
3. **AT THE BEGINNING OF THE CASE WHAT WAS THE CLIENT'S POSTCODE?**
-
4. **WAS THE CLIENT BORN IN AUSTRALIA?** yes no
IF NO: **Go to Q. 5**
- a) **WHAT WAS THE CLIENT'S COUNTRY OF BIRTH?** _____
(please print)
- b) **WHICH YEAR DID S/HE ARRIVE IN AUSTRALIA?**
(fill in one; give the most recent date if client entered Australia more than once)
- 19_____ OR unknown
-
5. **DID THE CLIENT REQUIRE THE ASSISTANCE OF AN INTERPRETER?**
(tick one)
- no yes

6. **WAS THE CLIENT OF ABORIGINAL OR TORRES STRAIT ISLANDER DESCENT?**

(tick one)

yes

no

unknown

7. **WHAT WAS THE CLIENT'S OCCUPATION?** _____

(please print)

8. **AT THE BEGINNING OF THE CASE DID THE CLIENT**

(tick one)

mainly depend on his/her own income? £ go to Q. 9

mainly depend on social security benefits? £ go to Q. 10

mainly depend on the financial support of a spouse/partner/other relative? £ go to Q. 10

mainly depend on some other income source? [specify _____]

£ go to Q. 9

have no income? £ go to Q. 10

9. **AT THE BEGINNING OF THE CASE, WHAT WAS THE CLIENT'S APPROXIMATE GROSS INCOME?** (fill in one)

\$ _____ / per week OR \$ _____ / per annum

OR

unknown

10. **AT THE BEGINNING OF THE CASE WAS THE CLIENT LIVING IN**

(tick one)

his/her own home – owned outright

his/her own home – with mortgage

private rental accommodation

public housing

a caravan park

a parent's or relative's home

temporary/emergency accommodation

a boarding house

other accommodation [specify _____]

11. **DID THE CLIENT HAVE ANY VERIFIED PHYSICAL, INTELLECTUAL OR PSYCHIATRIC DISABILITIES?** (tick one)

no

yes

unknown

B) MATTERS INVOLVED IN THE CASE AND COMPLEXITY OF THE CASE**12. DID THE CASE CONCERN** *(tick one and fill in appropriate details)*

<input type="checkbox"/>	a marriage?	Number of years _____
<input type="checkbox"/>	a de facto relationship?	Number of years _____
<input type="checkbox"/>	other relationship?	[Specify _____]

13. HOW MANY PARTIES OTHER THAN THE CLIENT (not including a child representative) WERE INVOLVED IN THE CASE?

14. WHAT MATTERS WERE INVOLVED IN THE CASE?*(tick all that apply and fill in details if appropriate)***Decree**

<input type="checkbox"/> (1) DISSOLUTION	<input type="checkbox"/> (2) ANNULMENT
--	--

Children

<input type="checkbox"/> (3) RESIDENCE/CUSTODY	<input type="checkbox"/> (4) CONTACT/ACCESS
--	---

<input type="checkbox"/> (5) CARE, WELFARE, DEVELOPMENT/GUARDIANSHIP
--

<input type="checkbox"/> (6) SPECIFIC ISSUES [specify _____]

<input type="checkbox"/> (7) PARENTING PLAN

Property

<input type="checkbox"/> (8) PROPERTY DIVISION	<input type="checkbox"/> (9) SOLE USE & OCCUPATION
--	--

Maintenance/Child Support

<input type="checkbox"/> (10) SPOUSE/DEFACTO MAINTENANCE	<input type="checkbox"/> (11) CHILD MAINTENANCE
--	---

<input type="checkbox"/> (12) CHILD SUPPORT	<input type="checkbox"/> (13) PARENTAGE TESTING
---	---

Enforcement

<input type="checkbox"/> (14) INJUNCTIONS/RESTRAINING ORDERS [specify _____]

<input type="checkbox"/> (15) BREACH OF ORDER (s112AD)	<input type="checkbox"/> (16) CONTEMPT
--	--

<input type="checkbox"/> (17) LOCATION/RECOVERY ORDERS
--

Other

<input type="checkbox"/> (18) CROSS-VESTED MATTERS [specify _____]

<input type="checkbox"/> (19) OTHER [specify _____]

15. **WHAT WERE THE YEARS OF BIRTH OF THE CHILD OR CHILDREN WHO WERE THE SUBJECT OF THE CASE?**

1. 19__ 2. 19__ 3. 19__ 4. 19__ 5. 19__ 6. 19__

OR the case did not concern children

16. **WHAT FORMS OF PROPERTY WERE THE SUBJECT OF THE CASE?**

(tick all that apply)

<input type="checkbox"/> matrimonial home	<input type="checkbox"/> family car/s	<input type="checkbox"/> household possessions
<input type="checkbox"/> other real estate	<input type="checkbox"/> business	<input type="checkbox"/> superannuation
<input type="checkbox"/> other property [specify _____]		OR <input type="checkbox"/> the case did not concern property

17. **WERE THERE ANY ALLEGATIONS OF DOMESTIC VIOLENCE BETWEEN THE PARTIES?** (including physical, emotional, sexual violence, threats, economic abuse – whether or not they were formally raised in proceedings) *(tick all that apply)*

no **E go to Q.18** unknown **E go to Q.18**

yes – allegations that the client was subjected to violence

yes – allegations that the client perpetrated violence

IF YES:

a) WAS THERE A HISTORY OF VIOLENCE IN THE RELATIONSHIP?

yes no unknown

b) DID EITHER PARTY OBTAIN A STATE DOMESTIC VIOLENCE ORDER? (count both interim and final orders) *(tick one and fill in details if appropriate)*

yes [number _____] no unknown

c) IF EITHER PARTY OBTAINED A STATE DOMESTIC VIOLENCE ORDER, WAS IT ALLEGEDLY BREACHED?

yes no unknown

d) WERE ANY CRIMINAL CHARGES BROUGHT IN RELATION TO THE VIOLENCE?

yes no unknown

22. WHAT FORMS OF DISPUTE RESOLUTION WERE ATTEMPTED AND HOW WERE MATTERS ACTUALLY RESOLVED?

(This question deals with processes which were attempted and successfully employed to resolve matters in the case.)

- a) IN THE 'ATTEMPT' COLUMN, PLEASE PLACE A TICK NEXT TO ALL THE METHODS OF DISPUTE RESOLUTION ATTEMPTED IN THE CASE.
- b) IN THE 'RESOLUTION' COLUMN, PLEASE INDICATE WHICH OF THE LISTED DISPUTE RESOLUTION METHODS *FINALLY* RESOLVED *EACH SEPARATE MATTER* IN THE CASE.
 In specifying each matter, please use the following code numbers:

- | | | |
|-----------------------------------|--|------------------------------------|
| (1) dissolution; | (2) annulment; | (3) residence/custody; |
| (4) contact/access; | (5) care, welfare, development/guardianship; | (6) specific issues; |
| (7) parenting plan; | (8) property division; | (9) sole use and occupation; |
| (10) spouse/de facto maintenance; | (11) child maintenance; | (12) child support; |
| (13) parentage testing; | (14) injunctions/restraining orders; | (15) breach of an order – s.112AD; |
| (16) contempt; | (17) location/recovery orders; | (18) cross-vested matters; |
| (19) other | | |

Attempted
(tick all that apply)

Resolved
(fill in matter numbers for how each matter was finally resolved; if no resolution, leave blank)

- | | | |
|--------------------------|--|-------|
| <input type="checkbox"/> | PRIVATE RESOLUTION | _____ |
| <input type="checkbox"/> | PRIVATE MEDIATION | _____ |
| <input type="checkbox"/> | LEGAL AID CONFERENCE | _____ |
| <input type="checkbox"/> | FAMILY COURT COUNSELLING | _____ |
| <input type="checkbox"/> | FAMILY COURT MEDIATION | _____ |
| <input type="checkbox"/> | NEGOTIATIONS BETWEEN SOLICITORS | _____ |
| <input type="checkbox"/> | SOLICITOR NEGOTIATIONS WITH AN UNREPRESENTED PARTY | _____ |
| <input type="checkbox"/> | APPLICATION FOR CONSENT ORDERS (FORM 12A) | _____ |
| <input type="checkbox"/> | APPLICATION FOR FINAL ORDERS | _____ |
| <input type="checkbox"/> | DIRECTIONS HEARING/S | _____ |
| <input type="checkbox"/> | CONCILIATION CONFERENCE | _____ |
| <input type="checkbox"/> | PRE-HEARING CONFERENCE | _____ |
| <input type="checkbox"/> | INTERIM ORDERS in ___Family/___State court | _____ |
| <input type="checkbox"/> | CONSENT ORDERS in ___Family/___State court | _____ |
| <input type="checkbox"/> | UNDEFENDED ORDERS in ___Family/___State court | _____ |
| <input type="checkbox"/> | FINAL ORDERS/DECREE in ___Family/___State court | _____ |
| <input type="checkbox"/> | APPELLATE DECISION | _____ |
| <input type="checkbox"/> | OTHER [specify _____] | _____ |
| <input type="checkbox"/> | UNKNOWN | _____ |

23. WERE ANY ORDERS FOR COSTS MADE?*(tick all that apply)*

- no orders for costs OR order/s in favour of the client orders against the client

D) FUNDING and REPRESENTATION DETAILS**24. WAS THE OTHER PARTY (or principal other party if more than one) REPRESENTED BY** *(tick all that apply – eg. if representation changed during the course of the case)*

- a private law firm £ funded by: legal aid OR self OR
 pro bono OR unknown
- a Legal Aid Office, in-house a Community Legal Centre
 self-representing unknown

25. WAS THERE A CHILD REPRESENTATIVE APPOINTED?

- no
- yes £ Legal Aid Office, in-house OR private lawyer, legally aided
OR not legally aided

26. HOW WAS THE CLIENT'S LEGAL REPRESENTATION FUNDED?*(tick EITHER all that apply in the first column OR one in the second column)*

- | IN PART | IN FULL |
|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> Self-funded |
| <input type="checkbox"/> | <input type="checkbox"/> Legal aid – compulsory payment waived |
| <input type="checkbox"/> | <input type="checkbox"/> Legal aid – compulsory payment only |
| <input type="checkbox"/> | <input type="checkbox"/> Legal aid – additional client contribution (cash or charge over house) |
| <input type="checkbox"/> | <input type="checkbox"/> Community Legal Centre |
| <input type="checkbox"/> | <input type="checkbox"/> Pro bono |
| <input type="checkbox"/> | <input type="checkbox"/> No legal representation |

27. **DID ANY OF THE FOLLOWING OCCUR AT ANY STAGE DURING THE CASE?**
(tick all that apply)

- The client was determined to be ineligible for legal aid
 - The client's application for an extension of aid was rejected
 - The client's legal aid grant was terminated
 - The client's legal aid cap was reached
 - The terms of the client's grant of aid limited the way the case could be handled
 - None of the above
-

28. **DID THE CLIENT HAVE PREVIOUS LEGAL REPRESENTATION IN THIS CASE BEFORE COMING TO THIS LEGAL SERVICE PROVIDER?**

(tick one; if more than one previous representative, specify most recent)

- no previous representation
 - yes Ξ private lawyer – legally aided private lawyer – self funded
 - Community Legal Centre Legal Aid Office, in-house
-

29. **DID THIS LEGAL SERVICE PROVIDER CEASE TO ACT FOR THE CLIENT?**

- no
- yes Ξ
(tick one)
 - client moved to [other] private solicitor – self-funded
 - client moved to [other] private solicitor – legally-aided
 - client moved to other legal representation – in-house Legal Aid Office or Community Legal Centre
 - client moved to [other] private solicitor – pro bono
 - client moved to other legal representation – unknown funding status
 - client became self-representing by choice
 - client became self-representing due to exhaustion of funds (legal aid or other)
 - client lost contact/no further instructions
 - other reason [specify _____]

THIS IS THE END OF THE SURVEY. THANK YOU FOR YOUR TIME AND CO-OPERATION

Appendix 2

Summary of Commonwealth Legal Aid Guidelines

Summary of Commonwealth Legal Aid Guidelines

Applications must meet –

- the means test
- the guidelines, and
- the merits test.

If a matter satisfies all these tests, the relevant Legal Aid Commission determines in accordance with the guidelines the nature and extent of legal assistance to be granted, if any (applications meeting the tests and guidelines may still be rejected, having regard to “available funds and competing priorities”).

The means test is the test used by the relevant Legal Aid Commission as at the date of application for assistance.

The merits test consists of –

- the legal and factual merits test: the application or response for which assistance is sought must have “reasonable prospects of success”;
- the “ordinary prudent self-funding litigant test”: a grant of assistance may only be made where it is considered that an ordinarily prudent self-funding litigant would risk his or her funds in proceedings;
- the “appropriateness of spending limited public legal aid funds” test: a grant of assistance may only be made when the costs involved are warranted by the likely benefit to the applicant or, in some circumstances, the community.

The guidelines relate to particular types of Commonwealth family law matters, for example –

Parenting orders

Legal assistance may be granted where there is a dispute about a substantial issue, and there has either been a recent attempt to resolve the dispute by primary dispute resolution, or primary dispute resolution is inappropriate or impractical, eg. where there is a likelihood of violence or abuse.

Child maintenance/child support

Stage 1 matters (pre-Child Support Act) should normally be dealt with by a child support service or information service provided by the Legal Aid Commission or a Community Legal Centre. Legal assistance may be granted if use of such a service is not appropriate or impractical because—

- the case is very complex
- the applicant needs urgent orders
- the applicant has language or literacy problems or an intellectual, psychiatric or physical disability
- legal assistance has been granted for other proceedings and maintenance cannot be separated from those proceedings
- the child is over 18
- the applicant is defending an application for child maintenance or increased maintenance in circumstances where the case is complex or urgent, or
- paternity is in dispute in a case of apparent liability for maintenance.

For Stage 2 (post-Child Support Act) matters, legal assistance may be granted in relation to an application to depart from a child support assessment where Legal Aid Commission or Community Legal Centre services are unable to assist, and the applicant wishes to oppose the application, or a Departure from Assessment officer has made a departure decision with which the applicant is not satisfied. Grants will usually be limited to assistance for Magistrates Court proceedings, unless such proceedings are not available.

Divorce

Legal assistance may be granted where –

- an application for dissolution is imperative (eg. if it would end continued harassment or ill treatment of the applicant), or
- the applicant suffers special hardship such as a disability or disadvantage which prevents self-representation, or
- aspects of the application warrant legal assistance (eg. difficulties in proving the marriage, or need to dispense with service) and for reasons of complexity, it would not be reasonable to expect the applicant to conduct the proceedings without legal representation.

Property

Legal assistance may only be granted in relation to real estate, the preservation of assets, funds from which the applicant can only receive a deferred benefit (eg. superannuation), or where assistance is to be granted for other family law matters (other than spouse maintenance). With real estate, the applicant must be likely to retain the family home, but unable to borrow sufficient funds both to buy out the other party and pay the anticipated legal costs of the proceedings.

Legal assistance for representation is limited to proceedings where the equity in the property in dispute is less than \$20,000. Such assistance will usually only be for Magistrates Court proceedings.

Where the equity in the property in dispute is less than \$10,000, assistance may only be granted for negotiations or other primary dispute resolution processes.

In addition, the guidelines specify an overall spending limit in any case of \$10,000 for party professional costs (including counsel, experts reports and other disbursements). In some States this is an absolute limit, while in others the Legal Aid Commission retains some discretion to extend the grant of aid by a further \$2,000 in exceptional circumstances. The

guidelines in some States further specify that if it appears likely that the cost of any case will exceed \$10,000, the case should be handled by the Legal Aid Commission in-house wherever possible.

Procedures to enforce final orders are treated as separate matters, with a costs limit of \$2,000.