SPECIAL FEATURE: COVID-19

COVID-19 IN AUSTRALIA: IMPACTS ON SEPARATED FAMILIES, FAMILY LAW PROFESSIONALS, AND FAMILY COURTS

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Around the globe, many families are experiencing significant anxieties linked to COVID-19. These include health concerns and economic pressures, both of which are frequently taking place against a backdrop of various levels of social isolation. In addition, many parents have been juggling home schooling requirements in the face of radically different work arrangements including the loss of employment altogether. Unsurprisingly, additional challenges and stresses are emerging for separated families, family law professionals, and family courts. In this article – written at a point-in-time in a rapidly evolving COVID-19 context – we reflect on key challenges for separated families in Australia, and some of the emerging professional responses.

Key Points for the Family Court Community:
- In the context of COVID-19, new challenges and stresses are emerging in Australia for separated families, family law professionals, and family law courts.
- Post-separation family relationship services and the courts are attempting to assist parents to manage problems that have emerged in the wake of the pandemic; in the context of social distancing, they are under pressure to deliver responses that are safe and are perceived to be safe.
- While all aspects of the Australian family law system were ill prepared for the disruption of the COVID-19 pandemic, both services and courts have been quick to respond and adapt.
- The need for rapid adaptation in response to social distancing has required embracing ‘virtual’ service delivery and ‘virtual’ court hearings. These largely untested processes require evaluation.
- Though there are obvious and less obvious dangers, we argue that the need to adapt service delivery in the context of a global pandemic is creating unanticipated opportunities for separated parents, family and relationship support services, and family courts.
- These opportunities and challenges need to be better understood and managed as we move beyond the necessarily immediate responses to the pandemic.

Keywords: Coronavirus; COVID-19; Divorce; Family Courts; Family Services and Mediation.

I. INTRODUCTION: FAMILIES AT TIMES OF CRISIS

COVID-19 represents a worldwide crisis, the likes of which is experienced only rarely. While the pandemic is changing the ways in which many family members are interacting with each other, there are few roadmaps to assist in developing new family relationship patterns or new coping strategies. Broadly speaking, however, times of crisis bring both opportunities and dangers.

Whatever their structural make up, some families do appear to be using their enforced and increased time together to rethink life’s priorities and to find more creative ways of being with each other. Some are experimenting with changes that speak to the very nature of family, prioritizing family support and family coherence, and reconsidering the purpose and location of both paid and unpaid work. This includes re-engaging with partners and children in ways that are less frenetic and more life
affirming (Cluver et al., 2020). It also includes finding creative ways to support and include those outside the immediate family, including key extended family members such as grandparents.

For members of these families, it is likely that pre-COVID experiences of home have mainly been linked to feelings of safety, support, and refuge (Fehlberg, Campo, Natalier, & Smyth, 2020; Fehlberg, Natalier, & Smyth, 2018). The strengths these family members derive from having created a sense of place and feelings of belonging are likely to be mitigating COVID-related stresses – fears about the virus itself, concerns about the future, economic worries, education concerns, problems associated with confined interpersonal space etc.

On the negative side, there is also evidence that restricted opportunities associated with COVID-19 are contributing to the intensification of existing family tensions, vulnerabilities or risks. Involuntary, protracted time together can act like a pressure cooker, exposing previously hidden cracks in relationships and exacerbating existing dangers. When ongoing emotional and financial stressors are paired with risky uncertain futures, relationships can easily contort and rupture. Minor irritations can become major pressure points; new tensions can emerge; old issues can resurface and intensify.

The more problematic end of these tensions and concerns are being typically expressed in the form of increased mental health issues and problems of addiction such as gambling3 and substance abuse (Alphabeta, 2020; Green, 2020). In addition, during times of fewer social interactions and fewer emotional outlets, relationships characterized by the exercise of coercive control are even more likely to unravel, sometimes with terrible consequences. Though these dynamics exist within all family structures, it is clear that separating and separated families are facing special COVID-related challenges.

II. SEPARATED FAMILIES

The main purpose of this article is to reflect at a particular point-in-time (June 2020) on the impact of COVID-19 on approximately 650,000 Australian separated families and their 1.3 million children, on their service needs, and on the current capacity of services to respond.

We begin by noting that not surprisingly there is anecdotal evidence that an increased number of Australian couples are currently seeking to separate or divorce. A similar story appears to be emerging in other countries (such as China, Canada, USA, and the UK) (Bamford, 2020; Devine, 2020; Dick, 2020; Fies, 2020; Yiying, 2020). In addition to evidence of increased rates of separation, there are also reports of couples who had planned to separate in the lead up to COVID-19 but who for now have had to separate under the same roof. Such separations clearly present a more challenging emotional climate for dealing with day-to-day issues for raising children and sometimes, unfortunately, for staying safe.

At its best, the largely unanticipated fallouts from COVID-19 have prompted securely separated families to reflect more keenly on what is important in their lives, especially with respect to the need for parents to work together in support of good quality parent–child relationships. In some cases, however, the uncertainties, anxieties and added complications being experienced in the wake of the virus appear to have destabilized post-separation parenting and financial arrangements that were hitherto functioning adequately albeit imperfectly (Fitzsimmons, 2020). Not surprisingly, almost all post-separation services, including courts, have been reporting increases in demand for assistance (Hall, 2020). This raises important questions regarding the best use of resources, a number of which are considered below.

For separated families, the logistical issues associated with the social isolation requirements in Australia have ranged from the relatively straightforward and achievable to the practically impossible. New challenges associated with multiple parenting locations are being reported, especially in those situations in which one or both parents have formed new relationships. Many of these new partners share children with their former partners who in turn have re-partnered, and so on. In scenarios such as this, it takes only one adult to wittingly or unwittingly break the ‘chain of safety’ to put multiple families at risk or at least be perceived to do so.
Moreover, as the Australian economy struggles with recession (Biddle, Edwards, Gray, & Sollis, 2020), job losses are likely to impact the payment of child support in significant ways (Daykin, 2020). There is little doubt that for some time, a sizeable number of payers (mostly fathers) – from retail workers to airline pilots – will continue to face difficulties meeting their child support obligations, whereas many low-income payers may be financially better off under generous additional (albeit temporary) income support payments (JobKeeper, and increased JobSeeker payments⁴) provided by the Australian Government. Of course, many payees (mostly mothers) in paid work will also have experienced fluctuating fortunes.

With the incomes of both parents counted under the child support income shares formula, shifting income disparities mean that child support liability can flip between parents in complex ways. The complex interrelationship between child support income and social security benefits means that the impacts of COVID-19 on the child support system is likely to be creating yet another headache for parents as well as for government. Applications to change child support can act as a lightning rod for existing tensions between parents. Alternatively, an upsurge in informal agreements being struck during this potentially chaotic and uncertain period can place some children under additional stress. To sum up: the financial knock-on effects of the virus on separated families are potentially mind boggling.

In addition, at the very time at which logistically complex and emotionally difficult discussions about finances and parenting are presenting themselves, traditional face-to-face services and decision-making forums have become difficult if not impossible to access. Online virtual service formats have rapidly become the norm if not the only option available.

As services strive to come to terms with family separation issues and new methods of delivery brought on by the pandemic, there is a need to consider where newly stretched resources are best allocated (see e.g., Biddle & Gray, 2020). Intervention strategies flow from assessing the nature of the presenting problem and the dynamics of the family in need of the service. From that, decisions can be made with regard to whether general information, support, facilitation, advice specialized referral or adjudication are needed.

In terms of the resources required to meet the spike in demand, it is useful to briefly review what we have learned in Australia about post-separation parental relationships and about the main pathways used to make post separation parenting decisions. Though COVID-19 has created raised levels of anxiety, sometimes in the face of parenting and economic issues that have not been faced before, a plausible working assumption based on earlier data (see Kaspiew et al., 2010) is that positive family dynamics will continue to assist separated parents and children whereas negative or dysfunctional dynamics will be associated with the need for more intensive facilitation, advice, specialized referral or adjudication.

Table 1 below summarizes relatively recent post separation data gathered over a six-year period on parents’ own reports of the quality of their relationships with former partners at discreet times after separation. The Longitudinal Study of Separated Families (LSSF) surveyed parents roughly a year after separation (Wave 1, see Kaspiew et al., 2009), a little over two years after separation (Wave 2, see Qu & Weston, 2010) and roughly five years after separation, (Wave 3, see Qu, Weston, Moloney, Kaspiew, & Dunstan, 2014). Two further separate surveys (Survey of Recently Separated Parents, see De Maio et al., 2013; Kaspiew et al., 2015) were conducted in 2012 and 2014.

Table 1 reveals high levels of consistency within and between the LSSF and SRSP surveys with respect to reports on quality of relationships. Broadly speaking, about three in five parents consistently reported ‘friendly’ or ‘cooperative’ post-separation relationships while a little over one in five, on average, described their relationships as ‘distant’. Of the remainder, about one in eight reported ‘lots of conflict’ while almost one in twenty said they were ‘fearful’ of a former partner or of a person linked to the family.

Table 2 summarizes data on decision-making pathways from the first wave of LSSF. One in ten parents reported at the time of the survey (roughly 12 months after separating) that ‘nothing had been sorted’ with respect to arrangements for the children (excluded in Table 2). The
remainder, consisting of parents who had resolved issues (72%) or who said they were in the process of sorting matters out (18%), were asked to specify their main resolution pathway.

Table 2 shows that just under eight in ten parents believed that arrangements for the children had come about largely through their own efforts (through discussions or ‘it just happened’). Of those who nominated professional help as the main pathway, the largest sub-group (9%), attributed this to counseling or mediation while 7% nominated lawyers and 5% named courts.

The data in both tables gives some cause for optimism with respect to the capacity of most separated parents in Australia to manage or resolve COVID-related issues. That is, it would be fair to assume that the majority of Australian separated parents are likely to have sufficiently good relationships and sufficient levels of resilience to negotiate their own adjustments to the current challenges. Of course, in such unprecedented times many of these families are likely to benefit from good quality information from independent trusted sources. Some may also need counseling or a form of facilitated assistance such as mediation while progressively smaller proportions are likely to need direct legal help and/or court intervention.

This analysis does not of course account for the roughly 10% of families who reported ‘nothing sorted’ with respect to parenting issues some 12 months after separating. Not surprisingly, the LSSF data (Kaspiew et al., 2009) reveal a strong correlation between this group of families and those in which there were reports of ‘fear’ or ‘lots of conflict.’ While some of those who had reached agreement or were in the process of reaching agreement (Table 2) may be at risk, and may need intensive intervention as a result of issues generated through COVID-19, the ‘nothing sorted’ category (10%)
is likely to comprise those most vulnerable and most in need of swift access to services and judicial intervention.

In the next part of this article, we highlight the special risks that COVID-19 has brought in its wake with respect to family safety, with a particular focus on separated families. Following this, we provide an overview of key service responses, including family court responses, that are aimed at meeting the COVID-related needs of separating and separated families. Because of the fluid nature of the situation in which Australia and the rest of the world finds itself, our overview at this stage should be regarded as ‘thoughts in the making.’

III. FAMILY VIOLENCE AND FAMILY SAFETY

As noted, whereas home is commonly thought of as a place of safety, support and refuge, these qualities sometimes rapidly erode during times of stress and uncertainty (Bradbury-Jones & Isham, 2020; Fehlberg et al., 2020). There is a growing research literature on the links between natural disasters, crises and national emergencies and increases in family violence and family breakdown (Davies & Barba, 2010; D. Parkinson, 2019; Schumacher et al., 2010). Spikes in family violence when families spend extended periods of time together are also well documented. This is further exacerbated by the fact that these extended periods are being spent in relative isolation, meaning there are fewer checks and balances than would normally exist via the scrutiny of neighbors, schools, etc.

Consistent with these observations, there has been a significant increase worldwide in requests for assistance from domestic violence services following the various levels of COVID-related lockdowns. In Australia, emerging evidence from the State of Queensland suggests that COVID-related isolation has prompted a rise in domestic violence trauma cases in emergency departments, with family violence-related hospital trauma cases on the rise and attacks reportedly increasing in brutality and severity (Bavas, 2020; see also Mazza, Marano, Lai, Janiri, & Sani, 2020; Pfitzer, Fitz-Gibbon, & True, 2020; Tuohy, 2020; Usher, Bhullar, Durkin, Gyamfi, & Jackson, 2020; Van Gelder et al., 2020; Zwartz, 2020). In the United Kingdom, deaths related to family and domestic violence have been reported to be more than double the normal rate in the first month of lockdown.

A linked concern in Australia is that alcohol sales have risen sharply during the current pandemic, surpassing even the Christmas sales (Foundation for Alcohol Research and Education, 2020). A recent national survey found that 70% of survey respondents reported drinking more than before COVID-19, and 34% are now drinking daily. Alcohol and substance abuse are well-known contributors to intimate partner violence (Catalá-Miñana et al., 2017; Humphreys, Myint, & Zeanah, 2020), and well-known impediments to managing post separating parenting disputes.

While the economic fallout of COVID-19 is widespread, it is by no means evenly distributed. Separated parents, especially mothers, form one cohort that is more likely to be economically disadvantaged even when times are good. They are also likely to be disproportionately represented in the COVID-19 economic downturn, which the International Monetary Fund (IMF) is predicting could continue to be felt for another decade.

In terms of appropriate responses for separated families, there are at least three key aspects of family violence that require consideration. First, though there are nuanced arguments around the edges, family safety is largely a gendered matter. The 2016 Australian Personal Safety Survey (Australian Bureau of Statistics, 2017) found that:

a. Women were nearly three times more likely to have experienced partner violence than men, with approximately one in six women (17% or 1.6 million) and one in sixteen men (6.1% or 547,600) having experienced partner violence since the age of 15.

b. Women were eight times more likely to experience sexual violence by a partner than men (5.1% or 480,200 women compared to 0.6% or 53,000 men).
Second, though stressful situations make family violence more likely, the violence itself is mainly prompted by a desire or need to exert coercive control. For this reason, the Australian Family Law Act 1975 (Cth) (FLA) defines family violence (Section 4AB. (1) and (3)) as,

violent, threatening or other behaviour by a person that coerces or controls a member of the person’s family (the family member), or causes the family member to be fearful.

Third, we know that family violence poses both a direct risk for children, especially when they become the focal point of the dispute, and a risk by proxy when children become witnesses to a parent’s dangerous behavior. Thus, in the same provision, the FLA also provides that:

a child is exposed to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence.

Australia is in a relatively fortunate position of having a largely subsidized suite of post-separation services (see Kaspiew et al., 2009 for a descriptive summary of services), including 65 Family Relationship Centres situated at strategic locations throughout the country (see Moloney, 2013; P. Parkinson, 2013). Though many separated families appear to be fairly resilient, the extent of that resilience in the face of COVID-19 is not clear. Of considerable concern is that minority of separated families who are especially vulnerable during the more stressful times of the pandemic – especially those family members who are potential recipients of violence and abuse.

The next two sections describe some of the ways in which separated families’ needs are being responded to in a new mainly virtual environment. We suggest that at the level of ‘ordinary’ (even if sometimes emotive and logistically complex) disputes, existing services have the capacity to continue to be responsive and helpful to those separated families who are adequately resourced and technologically literate. It is less clear at the moment how these services are able to adequately meet the needs of families with ‘ordinary’ disputes who fall below this threshold. In addition, notwithstanding the rapid evolution of online and virtual service and court responses, there is a variety of concerns about the capacity of this new suite of responses to keep parents and children safe.

IV. CHALLENGES FOR SEPARATION SUPPORT SERVICES

Since the pandemic was declared in Australia, distancing rules linked to interpersonal contact have created new challenges for post-separation services at the very time when most have also experienced a spike in demand. In considering the health and safety of their clients and their own staff, most services have had to radically change how they operate – the main shift being from face-to-face methods of intervention to the use of digital communication tools.

The efficacy of technology-supported processes and interventions in post-separation disputes has been explored in Australia for many years. It is probably fair to say, however, that until the pandemic, many social science and legal professionals in Australia assumed that until and unless it was demonstrated to be otherwise, digitally-based or online professional interventions should be regarded as fallback options to be employed mainly when geographical distance or unusual circumstances made face-to-face interventions difficult or impractical. A possible exception is ‘low technology’ telephone mediation, which in Australia and elsewhere appears to have achieved results at least as impressive as the face-to-face variety (Persaud, 2020).

In their rapid transition to more contemporary online forms of service delivery, many Australian professionals are grappling with new client-practitioner protocols. Responses have been mixed. At the less challenging end of the spectrum, many services have developed COVID-relevant information packages for families, including separated families. These services have found it relatively easy and inexpensive to deliver packages electronically to individual practitioners and other
organizations, who can in turn pass them on to their own networks. They have created similar packages for prospective, current and former clients and for those on publicly accessible contact lists. Just as importantly, these packages invariably contain contact details directing individuals not only to their own services but to a range of other services offering specialized assistance.

It has quickly become apparent to those who have not previously provided online services that there are potential gains, potential disadvantages and potential risks in working from online platforms. On the positive side, there have been pleasant surprises. One mediator, for example, reported that following two tense and seemingly unproductive face-to-face sessions with separated parents, a Zoom session was arranged following the lockdown of the mediator’s service. To the surprise of all, the session proved to be highly productive. Why this happened (and appears to be happening more broadly) is a question deserving of future empirical research. When asked to reflect on the process, however, both parents in this case suggested that it was easier to speak to each other from the relative calmness and emotional safety of their own social spaces. This new experience prompted these parents to arrange a further Zoom session with each other the following week. They agreed to contact the mediator again if they experienced future difficulties.

At the same time, many mediators are reporting significant challenges in setting up facilitated sessions in a post-COVID environment. Traditional face-to-face screening and assessment protocols, though not without risk, have built-in safety steps that can be largely monitored by the mediator. With more limited capacity to monitor and more limited visual cues, not all mediators are presently comfortable with making judgment calls regarding suitability during a computer-based interview. Among the particular concerns being currently expressed is the possibility that the client may not have sufficient privacy to share fears about risks to herself/himself or the children.

Working with children in an assessment or therapeutic capacity has also been significantly compromised as a result of the COVID-19 restrictions. The closure of school, childcare, and Maternal and Child Health centers along with widespread self-isolation by grandparents has meant that there are fewer eyes on children to monitor their wellbeing and safety. Online therapy with children is possible but challenging. Like forensic online interviews with children, this medium raises a number of ethical and practical issues, particularly related to privacy and safety (who else is eavesdropping on the interview?).

Of course, the provision of online services assumes that clients have access and can afford access to a reliable internet service. If that hurdle is cleared, service providers are finding while many separated parents seem to be ‘tech savvy’ some are struggling and at times find themselves relying on the very children they are concerned about for technical help.

In Australia, professional support groups, discussion groups and webinars focused on working more effectively in this digital environment have sprung up seemingly overnight. Counseling, mediation, advisory and assessment services, as well as courts, all bring different if overlapping challenges in working effectively in a digital space.

In addition, the idiosyncrasies of differing platforms need to be mastered. There are potential advantages as well as risks, for example, in recording a Zoom session. Either way, the practitioner needs to know how to record, where and how to safely keep a record, if that is agreed to, and how to ensure that the session is not recorded if that is deemed to be the appropriate action.

Beyond questions of process, COVID-19 has also raised challenging issues related to content. For example, how can fears be addressed regarding the health of an immune-compromised child who is spending time with a parent living in a more fluid and open family arrangement? How should home schooling be organized when children are moving between households? What arrangements should be made when crossing a State border to spend time with a parent, given that in some cases a child must then socially isolate for a fortnight – possibly in successive households?

Although such problems are often being seen as new and linked to the new world of COVID-19, some practitioners are suggesting that they more truly represent variations on the dilemmas that have always faced separated families, or perhaps more accurately the dilemmas that were mainly brought to the fore with the coming of ‘no fault’ divorce legislation. In the context of ‘no fault’ divorce, it is worth recalling Mnookin’s (1975, p. 260) much cited observation that, ‘[d]eveloping
what is best for the child poses a question no less ultimate than the purposes and values of life itself’.

From a content point of view therefore, it could be argued that the post separation issues raised by COVID-19 are in this same category. It is not so much that the virus has created new post separation problems. Rather, the virus is presenting parents, children and practitioners with new variations on problems, some of them admittedly difficult ones, that have always existed (Gerova, 2020; Human Rights Watch, 2020; United Nations, 2020; Wang, Zhang, Zhao, Zhang, & Jiang, 2020).

In considering how best to respond to COVID-linked disputes in an online environment, many practitioners have gone ‘back to basics.’ Regardless of how interventions are conducted, service providers are reminding each other that the core of good practice with separating and separated families remains the creation or reinforcing of trusting, respectful client-practitioner relationships within the context of appropriate risk assessment and appropriate triage. Whether the method of delivery is face-to-face or from a distance, there are reminders in the forums and webinars noted above that these principles of good practice must remain at the heart of all post-separation counseling, facilitative and assessment services as well as decision-making forums.

Nonetheless, there do appear to be limits to what can be achieved by non-court related services in the current environment. Children’s Contact Services, which have been an important innovation in assisting parents to re-engage with their children, are a good example. These services seek to provide a safe place for children to spend time with a parent about whom there are concerns or with a parent who has not yet developed a sufficiently robust parent–child relationship. They can also provide a safe, family-friendly location for ‘changeovers’ to occur so that parents can, for a time, avoid having face-to-face contact with each other. Most clients of Children’s Contact Services are court-referred. Many are at the time of the referral in the high-conflict category. Others have a history of family violence and/or mental health problems and/or and substance use.

With the onset of COVID-19, whether or not to continue with a face-to-face modality and/or with technologically-facilitated parent–child contact for these essential services has required swift and diligent assessment. Some Children’s Contact Services have significantly changed the way in which they deliver this service ‘face-to-face’ to reduce and mitigate the risks of social contamination. Others have made a decision that it is no longer feasible to offer their service face-to-face and comply with the necessary spatial distancing requirements opting for technologically-facilitated contact.

In both situations, safety assessments have also had to be amended significantly – especially where provision of non-face-to-face service delivery is concerned. In addition, even when Children’s Contact Services are continuing to operate, some separated parents have signaled they are no longer willing for the supervision of parenting arrangements to occur at these locations. For the present it is unclear where this leaves those parents required to use Children’s Contact Services, most of whom are non-resident fathers.

As noted below, Australia’s family law courts have experienced a significant increase in applications since the beginning of the pandemic and have responded by creating ‘COVID-19 lists’ and committing themselves to hear these cases with minimum delays. A major difficulty in child-related cases however is that psychologists and social workers who provide independent ‘family reports’ under the legislation will remain restricted in their capacity to make adequate assessments so long as face-to-face observations continue to be problematic. As the section below also notes, there are risks associated with ‘virtual hearings’ in cases of alleged violence and abuse, which would account for a substantial proportion of the ‘COVID-19’ lists.

Missing so far has been any commentary on the role of family lawyers, a decision having been made that this was beyond the scope of the paper. As noted, however, times of crisis can produce unexpected positive results. Though adversarial processes persist in family law disputes, there is also evidence (see Kaspiew et al., 2009) that Australia’s 2006 family law reforms were responsible for encouraging greater levels of cooperation between lawyers, mediators and other family relationship service providers.
In recent years, these working relationships have been especially successful in cases run by collaborative lawyers. Though collaborative law has its own set of rules and protocols, it is within the bounds of possibility that in these unusual times, lawyers, relationship practitioners and mediators might work more diligently to find new ways to cooperate – not only in the service of resolving ‘ordinary’ disputes, but also in the service of supporting the provision of realistic independent assessments in cases in which parents or children may be at risk.

With respect to litigation processes, it is worth recalling that several years ago, the Australian family law system experimented with ‘Less Adversarial Trials.’ Reviewed comprehensively by Harrison (2007), Less Adversarial Trials were described at the time as, ‘A better way’ and ‘A bold departure from the traditional common law approach to the conduct of legal proceedings’ (p. i).

Among other things, this ‘better way’ gave judicial officers greater scope to actively enquire into the evidence before them. In such a forum, exaggerated claims, which are more congruent with adversarial processes are less likely to be made – or if made, are less likely to survive for long. Unfortunately, enthusiasm for this initiative quickly waned. Though it was considered by some to be too resource-intensive, it could equally be argued that Less Adversarial Trials were never afforded an opportunity to proceed past the experimental stage. Rather the status quo of adversarial processes quickly reasserted itself and adversarial trials – even if sometimes in modified form – again became the norm.

For some years Australia’s family law court lists have been plagued by significant delays. Though there are several reasons for this, the posturing, ambit claims and theatre associated with adversarial trials are likely to be one of them. In these challenging times, when client representation is by means of a digital platform, it may be appropriate to reinstate the ‘bold new departure from traditional common law’ in the service of more humane processes and better court outcomes for families at risk.

V. CHALLENGES FOR FAMILY COURTS

As noted by Hrdinova, Berman, Pauley, and Ridgway (2020) in the U.S. context:

The COVID-19 pandemic has ushered in tremendous uncertainty and challenges for governments, businesses and individuals all over the world. The judicial branches of governments, which often structure work around in-person encounters and are committed to traditional norms of due process, face unique challenges when a jurisdiction seeks to shelter in place and enforce social distancing in the hopes of minimizing the spread of a communicable disease (p. 7).

Like most institutions, courts throughout Australia and the English-speaking world were generally ill-prepared for the disruption brought by the pandemic. However, as Legg and Song (2020) observe:

Justice Hamill in Rakielbakhour v DPP [2020] NSWSC 323 captured the moment, and the role of the justice system when he stated ‘[w]hile New South Wales moves steadily toward a complete ‘lock-down’ the rule of law, and the courts and lawyers who administer it, are considered to be an essential service’ (at [13]). This is a sentiment that has been expressed across the common law world (p. 68).

Not only have the Australian Family and Federal Circuit Courts (‘the Family Courts’) continued to sit, but urgent applications to these courts are suggested to have increased by almost 40% since COVID-19 reached Australia (Doran, 2020; Hall, 2020). In response, on April 26, 2020, the Family Courts established a separate COVID-19 list.7 By the end of May 2020, over five dozen judgments have been published arising from cases in which COVID-19 has been a relevant consideration. These cases have related to a range of issues including:
• Removal of supervision which would otherwise render a relationship impossible (Baginski & Medvitz [2020] FamCA 258);
• A consideration of health conditions and social distancing on parenting arrangements (Zeelan & Abney [2020] FCCA 884);
• The use of AV communications to replace face-to-face time and enable the continuation of a meaningful relationship during the pandemic rather than placing children at risk that would be necessitated by interstate travel (Banham v. Banham [2020] FCCA 1201);
• Affirmation that pandemic restrictions do not provide a general excuse for not complying with parenting orders of the Court (Mafton v. Salmet (No. 2) [2020] FCCA 903);
• Suspension or variation of orders to accommodate pandemic restrictions (Madar & McCormack [2020] FCCA 1152);
• The impact of COVID-19 on property prices and necessitating adjournment of proceedings (Gayner & Gayner [2020] FamCA 265); and
• Vacation of hearings due to due process considerations.8

No doubt many more judgments will appear as the pandemic continues.
In addition to the introduction of an AV-based national COVID-19 list, the Family Courts have also established an AV-based national arbitration list, seizing upon the ability to manage work nationally in a centralized fashion to provide certainty and consistency at little or no cost. Prior to the pandemic, the Family Courts had no capacity to conduct ‘on-line hearings’.9 Following the temporary closure of the Sydney Registry of the Family Courts on March 17, 2020,10 it was announced that limits would be imposed on the number of matters listed (focusing on urgent matters only), and limiting the duration of hearings and the number of people who would be allowed to be present in the courtroom at any time.11 Telephone attendances at Court events and Registrar and Family Consultant conferences commenced almost immediately.12 In fact, a number of judges within the Court immediately closed their Courtrooms and began to undertake all appearance work by telephone. On March 19, 2020 the family courts advised that ‘the principle basis upon which work will be conducted in the Courts in the near future will be by telephone, and when it becomes possible13 by videoconferencing’ [emphasis added].14

A joint practice direction requiring electronic filing and tender of documents was issued shortly thereafter to limit the need for physical attendance at Court registries.15 By later March 2020, social distancing measures began to be rolled out around the world. In response and on March 24, 2020 the President of the Family Division of the High Court of England and Wales issued a statement as to compliance with family law orders in light of increasing social distancing requirements.16 A similar statement was issued by the Chief Justice of the Family Courts on March 26, 2020.17

In a Herculean effort, the IT department of the Federal Court and the Family Courts rapidly deployed Microsoft Teams18 across the Courts to enable hearing work to continue. This was announced April 9 in a notice to the profession:

The Courts’ operations have had to be substantially adjusted since the beginning of March this year. Like many institutions and large organizations, the Courts have had to engage in a long overdue digital transformation. Microsoft Teams has been rolled out to each Judge, Registrar and Family Consultant. Each Judge and Registrar is now able to conduct hearings electronically from each Registry. Whilst urgent matters will be given priority, Judges now have the ability to continue to hear defended applications, trials and appeals.19

On April 22, 2020 a ‘practitioner and litigant guide to virtual hearings and Microsoft teams’ was published by the Family Courts.20 The rapid deployment of Microsoft Teams across various Federal and State Courts has not been without difficulty. While the ability to hear cases using the Teams platform was announced April 9, 2020, the ability to transcribe the proceedings was initially problematic (although broadly resolved by late April, 2020). Further, as many in the community have experienced, with an increasing move to ‘work from home’ arrangements, necessary hardware
has been in short supply. These supply issues initially created some delay in all courtrooms moving online.

The conduct of hearings using AV facilities has not been without problems. A number of reported cases, from both civil and criminal jurisdictions, have highlighted both practical and philosophical issues. In practical terms, bandwidth problems, hardware and software failures, difficulties in serving and tendering documents (or putting them to witnesses) and difficulties in engaging all necessary parties and litigants, have been reasonably widespread and acknowledged.21

In the Family Courts, these practical difficulties are, in some important respects, accentuated. In cases involving family violence, remote attendance at ‘virtual hearings’ may give rise to privacy or safety concerns as litigants are seen in their home environment and may increase stress and anxiety with an absence of support services available to litigants (which services are available at registries, such as duty solicitor services and Family Advocacy and Support Services).22 Impecunious litigants may not have access to hardware, software or reliable and secure internet connections. Matters in which parties need the assistance of interpreters present particular difficulties. Importantly, documents that are produced on subpoena are often of a sensitive and highly personal nature and cannot ordinarily be copied. To conduct a ‘virtual trial’ it may be necessary to allow records such as Police and Child Welfare records, personal medical records, (including counseling and psychologists records) or records of sexual assault investigations, to be copied, scanned and emailed to and between parties and/or their legal representatives.23

The subject matter of proceedings impacting upon the desirability of remote hearings is the subject of a limited body of case law. Whilst in the criminal jurisdiction substantial media attention has been drawn to the pronouncement of death sentences by zoom hearing,24 in the family law context, the Court of Appeal of England and Wales (CoAEW) have cast some doubt upon the efficacy of proceeding with family law matters by remote hearing. In Re A25 and Re B,26 the CoAEW identified ten factors that might obviate against use of remote hearings.

The factors that are likely to influence the decision on whether to proceed with a remote hearing will vary from case to case, court to court and judge to judge. We consider that they will include:

i) The importance and nature of the issue to be determined; is the outcome that is sought an interim or final order?
ii) Whether there is a special need for urgency, or whether the decision could await a later hearing without causing significant disadvantage to the child or the other parties;
iii) Whether the parties are legally represented;
iv) The ability, or otherwise, of any lay party (particularly a parent or person with parental responsibility) to engage with and follow remote proceedings meaningfully. This factor will include access to and familiarity with the necessary technology, funding, intelligence/personality, language, ability to instruct their lawyers (both before and during the hearing), and other matters;
v) Whether evidence is to be heard or whether the case will proceed on the basis of submissions only;
vii) The scope and scale of the proposed hearing. How long is the hearing expected to last?
viii) The available technology; telephone or video, and if video, which platform is to be used. A telephone hearing is likely to be a less effective medium than using video;
ix) The experience and confidence of the court and those appearing before the court in the conduct of remote hearings using the proposed technology;
x) Any safe (in terms of potential COVID 19 infection) alternatives that may be available for some or all of the participants to take part in the court hearing by physical attendance in a courtroom before the judge or magistrates.
From June 15, 2020 the Family Courts have resumed limited in-person hearings subject to limitations upon the number of persons present, staggered listing times (to regulate entry to the building), a prohibition on the physical tender of documents, the use of only 25% of Court rooms and cleaning regimes. However, even as this easing of restrictions has been implemented, Courts in the State of Victoria have faced renewed restrictions as the number of diagnosed cases have, again, surged in early June, 2020 and only now (September 2020) are beginning to fall.

In addition to online, virtual hearings, the pandemic has seen a rapid acceleration in the introduction of mandatory e-filing of all documents and the accelerated introduction of a Digital Court File to render paper files, effectively, redundant. Although e-filing of most documents has been possible since mid-2018, the uptake in registration for use of the Commonwealth Courts Portal and electronic filing has been far from complete. However, the e-filing of documents became a necessity with the closure of the Family Court registries to the public.

It would be hoped that once the need for social distancing and isolation are passed, there will be time for reflection and consider how to make the best use of the new technological tools, that necessity has delivered during the pandemic. There are, after all, both benefits and detriments in the use of online technology to conduct hearings. As observed pragmatically by Justice Perram in his concluding comments in Capic v. Ford Motor Company of Australia Limited (Adjournment):

If I could be sure that the crisis would have passed by October I would not hesitate to adjourn all the trials in my docket (save urgent cases) . . . Under ordinary circumstances, I would not remotely contemplate imposing such an unsatisfactory mode of a trial on a party against its will. But these are not ordinary circumstances and we have entered a period in which much that is around us is and is going to continue to be unsatisfactory. I think we must try our best to make this trial work. If it becomes unworkable then it can be adjourned, but we must at least try.”

The necessary movement to online, virtual hearings has been at the cost of ‘open justice.’ The principle of open justice is one of the most fundamental aspects of the system of justice in Australia, and the conduct of proceedings in public is an essential quality of an Australian court of justice.36 The present conduct of proceedings by ‘virtual hearing’ might be argued to not fulfill this essential element of justice. This issue has been addressed by both the Family Court and the Federal Court of Australia on the basis that the presence of the public would, in light of the health risks posed by such assemblages, be contrary to the interests of justice.37

The greatest disadvantages of virtual technology fall to the already disadvantaged. The poor are less likely to have access to reliable hardware, software and internet connections. Those with disabilities, the incarcerated, non-English speakers and children are far more likely to be marginalized or excluded from participation.

Victims of abuse and family violence are placed in a particularly invidious position. Notwithstanding that great strides have been made with respect to the protection of confidential communications in sexual assault and other counseling, psychological and medical services, the conduct of a virtual hearing increases the prospects of those records being not only ‘in the public domain.’38 If the hearing is to be effectively conducted, records can find their way into the hands of third parties as copying and scanning of material may be required to allow instructions to be obtained and advice given and material tendered or put to remote witnesses.

There will also be a need to consider perceptions of procedural justice. The conduct of a parenting hearing, where orders are sought to allocate sole parental responsibility to one parent or to dramatically change parenting arrangements, may well be perceived by those parents as less than fair when conducted by telephone or virtual hearing. The severity of the consequences that result from such hearings have far more in common with a criminal trial than commercial civil litigation and, hence, the factors considered in the criminal jurisdiction, as to whether a can or should proceed online, are arguably germane to matters before the Family Courts.

There is the real risk that economic considerations might make the replacement of physical hearings attractive, especially in remote and circuit locations. If that were so, then those communities
would be fundamentally disadvantaged and offered a lesser version of access to justice than their metropolitan counterparts.

But there are also great benefits to carry forward. The use of these emerging digital technologies can significantly enhance the protection of victims of violence who could safely participate remotely without the need to be in the same physical location as the other party/ies.\(^{31}\) The use of digital technology could greatly enhance access to justice if supplementing and augmenting regional and circuit work, reducing delays in the address of urgent applications for example. Savings for both the Family Courts and litigants could be achieved when simple and administrative matters are dealt with using telephone or AV facilities. And digital technology could greatly assist in affording access to justice for those who have difficulty attending in person because of distance or infirmity.

An unexpected benefit of AV hearings is observed in one case as the ability to observe a witness closely through the use of technology (Australian Securities and Investments Commission v. GetSwift Limited [2020] FCA 504).

The use of telephone and video appearance has positively impacted listing practices. Rather than all matters being listed at the same time, judges have adapted by listing matters to discrete listings or in small groupings of three or four matters at a time to minimize the number of people on the line, to reduce the ‘background chatter,’ and to ease strain on bandwidth. Those practices are highly likely to continue and to benefit both Court staff and litigants as well as reducing cost through avoiding unnecessary waiting.

VI. EPILOGUE

The global COVID-19 pandemic is creating unanticipated opportunities as well as serious health (both physical and mental), economic, and logistical challenges.\(^{32}\) In this article, we suggest that while opportunities exist around rethinking priorities, the challenges for separating families are especially likely to be accentuated.

For some separated families, the normal transitional tasks, especially those involving the negotiation of arrangements for children, have suddenly become considerably more complex. The anxieties and logistical problems associated with this invisible and highly contagious virus are placing additional stresses on parents, even the majority who describe their post separation relationships as friendly or cooperative. The evidence suggests that many parents in this category are likely to rise to the occasion. Some will benefit from information of the sort being produced by numerous relationship and dispute resolution services, many of which are not-for-profit organizations subsidized by Government. Though these organizations have generally been well placed to also provide counseling, mediation and other supportive services, the major challenge has become how to respond skillfully and appropriately using predominantly online platforms.

Skilled interventions using cloud-based video-conferencing platforms such as Zoom, Microsoft Teams, and Facetime are rapidly developing works-in-progress. Mistakes are being made but opportunities are evolving, sometimes with surprisingly positive results. Though great care must be taken to ensure that online sessions into private homes do not put clients, especially women, at risk, there is considerable speculation that COVID will have changed the range of intervention options, and perhaps assumptions about the cost of interventions, forever. In the meantime, these very services will be under pressure to deliver responses that are safe and are seen as safe. They will also be attempting to assist parents to manage problems that have simply not existed in the past.

As noted, at any given time, roughly one in five separated parents are struggling with, or are locked into, chronic high-conflict and/or dysfunctional behaviors associated with violence, serious mental health issues, or problems with addiction. For them, COVID-19 anxieties and logistical problems will prove considerably more difficult to negotiate. These families are more likely than ever to need swift, inexpensive and effective access to judicial decision-making. It is interesting to note in this regard that in a recent radio interview (Australian Broadcasting Commission, 2020 June 30), the Chief Justice of the Family Court of Australia predicted that in a post COVID-19
environment, Australia’s family courts would probably be hearing roughly 30% of cases online. Like family and relationship services, courts are working to address the challenge of finding the right balance between safe, effective and timely service delivery, and decisions that are both fair and seen to be fair.

VII. FUTURE RESEARCH

COVID-19 continues to impact separated families in ways not yet understood. It is critical that high-quality, ethical research is conducted to help policymakers, practitioners, service providers, and program administrators understand the impacts of the current health and economic crisis on separated families. Timely data on work (paid and unpaid) within households, family dynamics, financial stress, family violence, and family wellbeing, for example, are critical for making good policy decisions in uncertain times.

Looking to the future, there is an urgent need for ‘natural experiment’ longitudinal studies to examine the impacts of COVID-19 on couple relationships and post-separation family life. The division of household labor during lockdown warrants investigation as a potential wedge in couple relationships. Understanding the views and concerns of children is another critical piece of the pandemic jigsaw. Equally important is a systematic and rigorous investigation into the ways in which the pandemic has impacted judicial and legal practice, and court orders. Many day-to-day adjustments to parenting arrangements are likely to be occurring during the pandemic, and these need to be tracked and mapped.

In addition, separated parents, like their still-together counterparts, are increasingly making use of digital technologies to communicate with each other, and to stay connected with their children. The use of digital communication technology by separated families during COVID-19 offers important insights for communication and conflict specialists (Smyth, Ainscough, & Payne, 2020). There is also little systematic outcome data on the benefits (or otherwise) of using digital technology (e.g., smartphone divorce apps) by separated parents (Smyth & Fehlberg, 2019). And because technologically-mediated communication provides new opportunities for those who use violence to continue the cycle of abuse from afar, urgent research is needed on technologically-facilitated abuse (Markwick, Bickerdike, Wilson-Evered, & Zeleznikow, 2019). Finally, Indigenous separated families are being affected by the pandemic in ways that differ from the effects on mainstream Australia. These differences need to be understood and addressed (Markham, Smith, & Morphy, 2020). The same is true for migrant and ethnically-diverse separated families. Clearly, we are currently a long way from understanding the multitudinous, complex, ever-changing, and likely long-lasting impacts of COVID-19 on separated families and the broader community.

ENDNOTES

1For brevity, we use the pandemic’s common abbreviation ‘COVID-19’ throughout rather than its formal name and abbreviation ‘severe acute respiratory syndrome coronavirus 2’ (SARS-CoV-2) or its early provisional name and abbreviation ‘2019 novel coronavirus’ (2019-nCoV).
2By crisis we mean a significantly difficult or dangerous situation with the potential to bring multiple problems in its wake.
3For instance, based on a weekly sample of the transactions of ~250,000 Australian consumers, online gambling increased by 142% between April 27 and May 3 compared with a ‘normal week’.
4The Jobseeker coronavirus supplement is a payment available to employees stood down or let go as a result of the economic downturn due to COVID-19. It will fall from AU1,100 to AU800 from September 2020. By contrast, under the JobKeeper payment, businesses impacted by COVID-19 can access a subsidy to continue paying their employees. The Australian Government will provide a fortnightly payment of AU1,500 per eligible employee until September 2020. The Government has just announced that this payment will now continue until March 2021, but will fall from AU1,500 to AU1,200 a fortnight after September, 2020.
5The estimate of 53,000 men has a relative standard error of 25% to 50% and should be used with caution.
We are indebted to our New York pediatric psychiatrist colleague, William Kaplan MD, for this insight.

Practice Direction 3 of 2020 – the COVID-19 list. Accessible at http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/rules-and-legislation/practice-directions/2020/jpd032020

See e.g., Sayed & Alam [2020] FamCA 400, Walders & McAuliffe [2020] FCCA 1541 and C & M [2020] FCCA 1877.

Video facilities were accessible to conduct hearings between static locations such as other court rooms, correctional facilities and the like. Telephone attendance was accessible but, other than for circuit work and appearances by parties a significant distance from a Registry, sparingly used.

See http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/about/news/mr160320a. This closure caused the disruption and postponement of the “summer campaign” of call overs.

See http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/about/news/covid19-170320 and http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/about/news/2f-registrar-protocol

At that point it was not possible.

See http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/about/news/covid-notice

See https://www.judiciary.uk/announcements/coronavirus-crisis-guidance-on-compliance-with-family-court-child-arrangement-orders/

See http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/about/news/mr260320. As some States implemented ‘hard’ border closures a further guidance was issued 8 April, 2020 see http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/about/news/covid-info-borders.

Microsoft Teams is designed as ‘a hub for team collaborations’ rather than for the conduct of online hearings. It has been rapidly embraced and adapted for the purpose of hearings as a matter of necessity.

See http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/about/news/covid-notice-090420

http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/about/news/virtual-hearings

Let alone the stress and anxieties that follow from the circumstances discussed in R v. Macdonald and others above – intermittent connections, drop outs, not being able to hear what is occurring, etc.

Practice Direction 2 of 2020 provides, at paragraph 5, ‘Photocopy access will not be made to documents including a child welfare record, criminal record, medical record or police record, in accordance with sub-rule 15.30(2) of the Family Law Rules 2004 and sub-rule 15A.13(2) of the Federal Circuit Court Rules 2001’. Accessible at: http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/rules-and-legislation/practice-directions/2020/jpd022020

In Singapore the case of Public Prosecutor v. Punithan A/L Genasan reported at https://www.bbc.com/news/technology-52739676 and similarly in Zimbabwe reported at https://www.newzimbabwe.com/covid-19-man-sentenced-to-death-in-nigerias-first-virtual-ruling/

REFERENCES

Alphabeta. (2020). COVID19 economic impact: Real time tracking. Retrieved from https://www.alphabeta.com/illiontracking

Australian Broadcasting Commission. (2010, June 30). Law report. Radio National. Retrieved from https://www.abc.net.au/radiationalbums/lawreport/covid-19-and-family-law/12379060

Australian Bureau of Statistics (ABS) (2017). Personal safety survey, Australia, 2016 (Cat No 4906.0). ABS. Retrieved from https://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0

Bamford, M. (2020). How COVID-19 is changing our closest relationships. ABC radio. Retrieved from https://www.abc.net.au/news/2020-05-05/coronavirus-is-changing-our-closest-relationships/12180620
Bavas, J. (2020). Coronavirus isolation prompts rise in domestic violence trauma cases in Queensland emergency departments. *Health Minster warns*. Retrieved from https://www.abc.net.au/news/2020-04-17/coronavirus-queensland-prompts-increase-in-domestic-violence/12184498

Biddle, N., Edwards, B., Gray, M., & Solls, K. (2020). Hardship, distress, and resilience: The initial impacts of COVID-19 in Australia (COVID-19 impacts issues paper). Canberra, ACT: ANU Centre for Social Research & Methods, Australian National University.

Biddle, N., & Gray, M. (2020). Service usage and service gaps during the COVID-19 pandemic (COVID-19 impacts issues paper). Canberra, ACT: ANU Centre for Social Research & Methods, Australian National University.

Bradbury-Jones, C., & Isham, L. (2020). The pandemic paradox: The consequences of COVID-19 on domestic violence. *Journal of Clinical Nursing*, 29(13-14), 2047–2049. https://doi.org/10.1111/jocn.15296

Catalá-Miñana, A., Lila, M., Oliver, A., Vivo, J. M., Galiana, L., & Gracia, E. (2017). Contextual factors related to alcohol abuse among intimate partner offenders. *Substance Use & Misuse*, 52(3), 294–302.

Cluver, L., Lachman, J. M., Sherr, L., Wessels, I., Krug, E., Rakotomalala, S., & Butchart, A. (2020). Parenting in a time of COVID-19. *The Lancet*, 395(10231), e64. https://doi.org/10.1016/S0140-6736(20)30736-4. Retrieved from www.thelancet.com

Davies, S., & Barba, E. (2010). Europe braces for domestic abuse ‘perfect storm’ amid coronavirus lockdown. *Thomson Reuters Foundation News*. Retrieved from https://news.trust.org/item/20200326160316-7lbuf

Daykin, S. (2020). What happens when coronavirus means you can’t afford child support. *My Money*. Retrieved from https://www.moneymag.com.au/coronavirus-afford-child-support

De Maio, J., Kaspiew, R., Qu, L., Smart, D., Dunstan, J., & Moore, S. (2013). Survey of Recently Separated Parents (SRSP) 2012: Final report, Melbourne, Victoria: Australian Institute of Family Studies.

Devine, A. (2020). Agents brace for a rise in divorce couples seeking quick sales during Covid-19 crisis. *Daily Telegraph*. Retrieved from https://www.realestate.com.au/news/agents-brace-for-rise-in-divorced-couples-seeking-quick-sales-during-covid19-crisis/

Dick, S. (2020). Coronavirus lockdown prompts more couples to seek divorce. *The New Daily*. Retrieved from https://thenewdaily.com.au/news/national/2020/04/19/coronavirus-lockdown-divorce/

Doran, M. (2020). Coronavirus concerns see family courts rush through applications linked to COVID-19. *ABC News Online*. Retrieved from https://www.abc.net.au/news/2020/04/25/family-courts-to-fast-track-cases-coronavirus/12184498

Fehlberg, B., Campo, M., Natalier, K., & Smyth, B. (2020). The meaning of home for children and young people after separation. *Journal of Social Welfare and Family Law*, 42(3), 219–318.

Fehlberg, B., Natalier, K., & Smyth, B. (2018). Children’s experiences of home after parental separation. *Child and Family Law Quarterly*, 30, 3–21.

Fies, A. (2020). Surge in divorces anticipated in wake of COVID-19 quarantine. *ABC News*. Retrieved from https://abcnews.go.com/US/surge-divorces-anticipated-wake-covid-19-9996/story?id=70170902

Fitzsimmons, C. (2020). Separated parents using pandemic to reopen custody fights. *Sydney Morning Herald*. Retrieved from https://www.smh.com.au/lifestyle/life-and-relationships/separated-parents-using-pandemic-to-reopen-custody-fights-20200403-p54h04.html

Foundation for Alcohol Research and Education (FARE). (2020). *Alcohol sales & use during COVID-19: Polling snapshot*. ACT: FARE. Retrieved from http://fare.org.au/wp-content/uploads/COVID-19-POLL.pdf

Gerova, V. (2020). *Kids Helpline sees surge in Coronavirus related calls*. Retrieved from https://10daily.com.au/news/australia/a200325p12/b-kids-helpline-sees-surge-in-coronavirus-related-calls-20200325

Green, E. (2020). Addiction crisis looms as most vulnerable fall through pandemic cracks. *10daily*. Retrieved from https://apple.news/ASWMw0A4QCQyz23zLeJfVa0TA

Hall, B. (2020). Surge in ‘urgent’ family court cases as COVID-19 pressures boil over. *Sydney Morning Herald*. Retrieved from https://www.smh.com.au/national/surge-in-urgent-family-court-cases-as-covid-19-presures-boil-over-20200424-p54nml.html

Harrison, M. (2007). Finding a better way. *A bold new departure from the traditional common law approach to the conduct of legal proceedings*, Canberra, ACT: Family Court of Australia.

Hrdinova, J., Berman, D. A., Pauley, M., & Ridgway, D. (2020). *Documenting the challenges (and documents) as Ohio courts respond to COVID-19* (Ohio State Public Law Working Paper No. 541). Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3574733

Human Rights Watch. (2020). COVID-19’s devastating impact on children: Governments should mitigate harm, protect most vulnerable. *Human Rights Watch*. Retrieved from https://www.hrw.org/news/2020/04/09/covid-19s-devastating-impact-children

Humphreys, K. L., Myint, M. T., & Zeanah, C. H. (2020). Increased risk for family violence during the COVID-19 pandemic. *Pediatrics*, 145(4), e20200982.

Kaspiew, R., Carson, R., Dunstan, J., De Maio, J., Moore, S., Moloney, L., ... Tayton, S. (2015). *Experiences of separated parents study (evaluation of the 2012 family violence amendments)*. Melbourne, Victoria: Australian Institute of Family Studies.

Kaspiew, R., Gray, M., Weston, R., Moloney, L., Hand, K., Qu, L., & The Family Law Evaluation Team. (2009). *Evaluation of the 2006 family law reforms*, Melbourne, Victoria: Australian Institute of Family Studies.
Kaspiew, R., Gray, M., Weston, R., Moloney, L., Hand, K., Qu, L., & The Family Law Evaluation Team. (2010). Family violence: Key findings from the evaluation of the 2006 Family Law Reforms. Family Matters, 85, 38–48.

Legg, M., & Song, A. (2020). The courts and the pandemic: The role and limits of technology. Law Society Journal, 66, 68–70.

Markham, F., Smith, D., & Morphy, F. (2020). Indigenous Australians and the COVID-19 crisis: Perspectives on public policy. Canberra, ACT: Centre for Aboriginal Economic Policy Research.

Markwick, K., Bickerdike, A., Wilson-Evered, E., & Zeleznikow, J. (2019). Technology and family violence in the context of post-separated parenting. Australian and New Zealand Journal of Family Therapy, 40, 143–162.

Mazza, M., Marano, G., Lai, C., Janiri, L., & Sani, G. (2020). Danger in danger: Interpersonal violence during COVID-19 quarantine. Psychiatry Research, 289, 113046.

Mnookin, R. (1975). Child-custody adjudication: Judicial functions in the face of indeterminacy. Law and Contemporary Problems, 39, 266–293.

Moloney, L. (2013). From helping court to community-based services: The evolution of Australia’s Family Relationship Centres. Family Court Review, 51(2), 214–223.

Parkinson, P. (2013). The idea of family relationship centres in Australia. Family Court Review, 51(2), 195–213.

Persaud, K. (2020, July). Telephone mediation in an age of social distancing. Does it work? Mediate.com. Retrieved from https://www.mediate.com/articles/persaud-telephone-mediation.cfm

Pfitzner, N., Fitz-Gibbon, K., & True, J. (2020). Responding to the ‘shadow pandemic’: Practitioner views on the nature of and responses to violence against women in Victoria, Australia during the COVID-19 restrictions, Melbourne, Victoria: Monash Gender and Family Violence Prevention Centre.

Qu, L., & Weston, R. (2010). Parenting dynamics after separation: A follow-up study of parents who separated after the 2006 family law reforms. Australian Institute of Family Studies.

Qu, L., Weston, R., Moloney, L., Kaspiev, R., & Dunstan, J. (2014). Post-separation parenting, property and relationship dynamics after five years, Melbourne, Victoria: Australian Institute of Family Studies.

Schumacher, J. A., Coffey, S. F., Norris, F. H., Tracy, M., Clements, K., & Galea, S. (2010). Intimate partner violence and Hurricane Katrina: Predictors and associated mental health outcomes. Violence and Victims, 25(5), 588–603.

Smyth, B., & Fehlberg, B. (2019). Australian post-separation parenting on the smartphone: What’s ‘App-ening? Journal of Social Welfare and Family Law, 41(1), 53–71.

Smyth, B. M., Ainscough, G., & Payne, J. L. (2020). Modes of communication between high-conflict separated parents: Exploring the role of media multiplexity and modality switching. Journal of Family Communication, 20(3), 189–205.

Sourdin, T., & Zeleznikow, J. (2020). Courts, mediation and COVID-19. Electronic copy Retrieved from https://ssrn.com/abstract=3595910

Tuohy, W. (2020). Number of couples seeking separation advice soars during lockdown. Sydney Morning Herald. Retrieved from https://www.smh.com.au/national/number-of-couples-seeking-separation-advice-soars-during-lockdown-20200605-p54zzf.html

United Nations. (2020). Policy brief: The impact of COVID-19 on children. Retrieved from https://un.org.au/files/2020/04/Policy-Brief-on-COVID-impact-on-Children-16-April-2020.pdf

Usher, K., Bhullar, N., Durkin, J., Gyamfi, N., & Jackson, D. (2020). Family violence and COVID-19: Increased vulnerability and reduced options for support. International Journal of Mental Health Nursing, 29(4), 549–552. https://doi.org/10.1111/inn.12735

Van Gelder, N., Peterman, A., Potts, A., O’Donnell, M., Thompson, K., Shah, N., & Oertelt-Prigione, S. (2020). COVID-19: Reducing the risk of infection might increase the risk of intimate partner violence. EClinicalMedicine, 21(100348), 1–2. https://doi.org/10.1016/j.eclinm.2020.100348

Wang, G., Zhang, Y., Zhao, J., Zhang, J., & Jiang, F. (2020). Mitigate the effects of home confinement on children during the COVID-19 outbreak. Lancet, 595(10228), 945–947.

Yiying, F. (2020). Spousal distancing: The Chinese couples divorcing over COVID-19. Sixth Tone. Retrieved from https://www.sixthtone.com/news/1005435/spousal-distancing-the-chinese-couples-divorcing-over-covid-19

Zwartz, H. (2020). Amid coronavirus lockdowns, use of online domestic violence reporting tool spikes. ABC news. Retrieved from https://www.abc.net.au/news/2020-05-23/coronavirus-lockdown-domestic-violence-spikes-in-australia/12238962

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