



Being a family lawyer and being *child focused* — A question of priorities?

Cate Banks*

This article provides empirical data that challenges current perceptions about the role of the family lawyer in the family breakdown discourse. It demonstrates how the dichotomous perception that family lawyers are aggressive, self-interested litigators or impartial adversarial advocates may not be well-founded. Data from this study suggests an alternative model. Acknowledging the lawyer as a subjective participant on a very complex journey with a client is a more realistic portrayal of what family lawyers do from day to day. This article focuses on lawyers understandings of being child focused, how those understandings are incorporated into their family law practice and what challenges they present. The analysis suggests that lawyers who identify as child focused often face ethical challenges that they do not feel well equipped to deal with.

Introduction

The emphasis on the child has become an integral part of family law discourse. Much of the shift towards a child focused ideal has come from the reforms contained in the Family Law Reform Act 1995 (Cth) enacted in 1996, replacing concepts of custody, access and guardianship, with children's rights and parents' responsibilities.¹ The Children Act 1989 (UK) was a significant point of reference for these changes.² Internationally, the signing of the United Nations Convention on the Rights of the Child (UNCROC) by Australia in 1990 gave added impetus to the primacy of children in family law. Since 1995, the resolution of family breakdown has seen the increasing participation of a variety of professionals including social workers, psychologists, marriage counsellors, mediators and domestic violence workers. The contracting out of services from the Family Court led the way for wider social science sector

* LLB (Hons), B Com, PhD, Research Fellow, Socio-Legal Research Centre, Griffith Law School. This paper arose out of a qualitative study funded by a Griffith University New Researcher Grant and the Socio-Legal Research Centre. The findings can be accessed at <<http://www.griffith.edu.au/centre/slrc/>> — C Banks with B Hook, *A Question of Priorities: How Family Lawyers Address the Best Interest of the Child Report*, on SLRC website. I would like to thank Professor Sandra Berns, Dr Kathryn Dwan, Dr Tenzin Bathgate, Ms Zoe Rathus and Dr Bridget Mandikos and the comments from the two anonymous referees for their insightful comments.

1 Australian Law Reform Commission, *For the sake of the kids: Complex contact cases and the Family Court*, Article No 73 1995; H Rhoades, R Graycar and M Harrison, *The Family Law Reform Act: The first three years*, University of Sydney and Family Court of Australia, 2000; Family Law Council, *The Best Interests of the Child? The interaction of public and private law in Australia*, Discussion Paper No 2, Commonwealth of Australia, 2000; R Bailey-Harris, 'The Family Law Reform Act 1995: A New Approach to the Parent-Child Relationship' (1996)18 *Adelaide L Rev* 83.

2 J Dewar, 'The Family Law Reform Act 1995 (Cth) and the Children Act 1989 (UK) Compared — Twins or Distant Cousins' (1996) 10 *AJFL* 18.

involvement, precipitating external debates about how family law works.³ Studies about the impact of separation and divorce have become more persuasive and acceptable in the legal community and research related to the effects of conflict on children, age-stage considerations for contact orders, child inclusive mediation and interagency collaboration has resulted in changes within the family law system.⁴

In 2003, the House of Representatives Standing Committee on Family and Community Affairs suggested that child focused practice should be adopted as widely as possible as a way of countering some of the negative impacts of the adversarial system.⁵ The Best Practices Principles by the Family Law Council in 2004 although not binding in any way to lawyers, implicitly indicated that being child focused was an important aspect of family law practice.⁶ The Family Court has also made some significant shifts away from the traditional adversarial processes and the Magellan and Columbus projects are early examples of this.⁷ The Children's Cases Program which has now been rolled out across all court registries, is the most contemporary example.⁸ In the Children's Cases Program, now known as the Less Adversarial Trial,⁹ a more inquisitorial approach has been adopted to try and resolve all children's matters, which is a significant departure from the traditional adversarial means of resolving family law disputes.¹⁰ Lawyers have had to make significant changes in their practices as these new and innovative ways of managing

3 J Kelly, 'Parents with Enduring Child Disputes: Focused Interventions with Parents in Enduring Disputes' (2003) 9(1) *Jnl of Family Studies* 51; L Moloney and T Fisher, 'Why a Focus on Children ? Why Now?' (2003) 9(1) *Jnl of Family Studies* 9; B M Smyth, 'Post-separation Fathering: What does Australian Research Tell Us?' (2004) 10(1) *Jnl of Family Studies* 20; see also L Moloney, 'Child focused parenting after Separation: Socio-Legal Developments and Challenges' (2000) 21(2) *Australian and New Zealand Jnl of Family Therapy* 61; P Amato and J Gilbreth, 'Non-resident fathers and children's well-being: A meta analysis' (1999) 61 *Jnl of Marriage and the Family* 557.

4 The Hon Justice Diana Bryant, 'The Role of the Family Court in promoting child-centred practice' (2006) 20 *AJFL* 127.

5 Inquiry of the House of Representatives Standing Committee on Family and Community Affairs, *Every Picture Tells a Story: Report on the Inquiry into Child Custody Arrangements in the Event of Family Separation*, December 2003, Canberra (*Every Picture Inquiry*), p 98, para 4.139, at <<http://www.aph.gov.au/house/committee/fca/childcustody/report.htm>>.

6 Family Law Council, *Best Practice Guidelines for lawyers doing family law work*, Commonwealth of Australia, 2004.

7 Both programs were judge led tightly managed, inter-disciplinary and inter-organisational programs and prioritised children's interests in cases involving child abuse and violence. The Magellan project was an initiative of the Family Court of Australia, and was conducted in the Melbourne and Dandenong Registries in the late 1990s. The Family Court of Western Australia conducted the pilot Columbus Project, an equivalent program, in 2001–2003.

8 The Hon Chief Justice Diana Bryant, Family Court of Australia 'State Of The Nation', Address to the 12th National Family Law Conference, Perth, 23 October 2006. The Hon CJ Bryant, 'The role of the Family Court in promoting child-centred practice' (2006) 20 *AJFL* 127. An evaluation of the trial CCP in Sydney and Parramatta was conducted for the Family Court of Australia by Professor Rosemary Hunter (June 2006) but is not yet available. Another smaller study conducted by Dr Jennifer McIntosh, *The Children's Cases Pilot Project: An exploratory study of impacts on parenting capacity and child well being — Final Report to the Family Court of Australia*, March 2006, has been available to the public for approximately 12 months.

9 Now mandated in Div 12A of Pt VII in Family Law Act 1975 (Cth) Div 12A of Pt VII.

10 This is an interesting shift from the position taken by the High Court in *R v Watson; Ex Parte Armstrong* (1976) 136 CLR 248 at 257–8 where the High Court unambiguously decided that

children's matters have been implemented.

Background

The Family Law (Shared Parental Responsibility) Act 2006, which commenced operation in July 2006, heralds yet another change in the management of relationships following family breakdown. These latest child focused reforms have been promoted by the Commonwealth Attorney-General as 'a cultural shift in how family separation is managed: away from litigation and towards cooperative parenting'.¹¹ The aim of the reform is to move away from the traditional adversarial processes to non-adversarial processes in order to institute a more child focused regime:

The new laws reflect the Government's belief that two factors are of primary importance in addressing the interests of children in family breakdowns — the right of the child to have a meaningful relationship with both parents, and the protection of the child from harm.¹²

According to the rhetoric, focusing on the children in non-adversarial processes encourages cooperative parenting and enables parents to make better post-separation decisions and thus furthers the best interests of the children. This is the stated rationale behind the Family Relationship Centres where separating parents will participate in counselling and mediation without the purported adversarial baggage of lawyers, the court and the threat of litigation.

It is fair to say that the general opinion about the role of lawyers in family breakdown has not always been positive. Indeed, during the public hearings of the House of Representatives Standing Committee on Family and Community Affairs negative descriptions about family lawyers were common from members of the public.¹³

One common perception was that lawyers were self interested and motivated by financial gain:

It has come to my attention in a lot of the cases that I have seen over the years that lawyers do tend to address their own issues. They are there often not for the initial comfort and support of their client but more for financial gain, which is quite acceptable on the grounds that that is what they choose to do for a living, so I do not think they should be penalised for that.¹⁴

Not surprisingly, the lawyers were inherently adversarial:

a judge of the Family Court could not move away from the adversarial model allowing the judge a more interventionist role; 9 ALR 551.

11 Attorney-General, Phillip Ruddock, Media Release 'Bill Marks Cultural Shift in Dealing with Family Breakdown', 8 December 2005.

12 Attorney-General, Phillip Ruddock, Media Release 'Parliament Passes Historic Family Law Changes', 10 May 2006.

13 For some examples about negative perceptions see these oral submissions at *Every Picture Inquiry*, above n 5 — Private Witness, FCA 34 — Monday 1 September (PM) 2003; Witness 3 FCA 42 at [2] Monday 1 September (PM) 2003; Mr Price — Committee Member FCA 43 at [2], Monday 1 September (PM) 2003; FCA 12 at [8] Monday 1 September (AM) 2003; FCA 46 at [2] Monday 1 September (AM) 2003; Andrew secretary of the Non Custodial Parents Party, FCA 53 at [2], Monday 1 September (AM) 2003; Witness FCA 5 at [6].

14 Private Witness, FCA 34 — Monday 1 September (PM) 2003.

A lawyer does not feed his family by having two people sitting down and sorting it out. They are in the business to make money and, to make money, they need two parties to fight against each other. Therefore, the desire to have a couple sort this out in mediation is not there, right from the top end. I believe it should be in place. It is not being encouraged, and it is not working.¹⁵

During the course of the Inquiry, the Chair of the Committee declared her opinion about lawyers' roles when she said, 'The mere fact that lawyers, solicitors et cetera are involved makes it a win-lose situation'.¹⁶ In addition, a leading advocate of child focused and child inclusive practice also made his views clear:

Lawyers advise clients on the basis of what courts have done in the past and it could be argued that that is essentially what lawyers have to offer.¹⁷

According to these views lawyers must become less adversarial, more collaborative and more child focused in their practice if they are to remain a viable stakeholder in the family breakdown sector. Indeed, being child focused means that lawyers would need to understand the impact of separation and conflict on children and to seek to improve the quality of post-separation relationships between parents by attenuating conflict and, where necessary, referring clients to relevant family breakdown professionals. Being child focused means that lawyers would need to shift their gaze away from their clients and onto the child, and this may mean that lawyers would need to prioritise the child in their family dispute management practices. But, the idea of child focused practice derives from a therapeutic context, which is expressed in very discipline specific terms. As a result, prominence has been given in the discourse about the ways in which child focused practice works in a mediation or counselling style environment. However, it is not clear how these ideals should and do translate across the board.

Training lawyers — *Changing the Face of Practice*

While there has been significant discussion about the success of child focused practice within the disciplines of psychology, mediation and family therapy in family law disputes,¹⁸ there has been little socio-legal discussion that investigates what child focused practice may mean to family law practitioners. In 2003, the Commonwealth Attorney-General's Department initiated a national training program named *Changing the Face of Practice* which was

15 Private Witness 1 — Thursday, 4 September 2003 (Noon), FCA 5 at [6].

16 Mrs Kay Hull, *Every Picture Inquiry*, above n 5 — Wyong, Sunday 26 October 2003, FCA 57.

17 L Moloney, *Every Picture Inquiry*, above n 5 — Canberra, Monday, 20 October 2003, FCA 2.

18 J McIntosh, 'Enduring Conflict in Parental Separation: Pathways of Impact on Child Development' (2003) 9 *Jnl of Family Studies* 1 at 63; L Moloney and J McIntosh, 'Child-Responsive Practices in Australian Family Law: Past Problems and Future Directions' (2004) 10 *Jnl of Family Studies* 1 at 71; P Holmes, 'Mediating "In front of the Mirror": A Case Study in Child-Inclusive Practice' (2003) 9 *Journal of Family Studies* 267.

designed to provide some assistance for legal practitioners as the move to more child focused regime became a reality.¹⁹

During the program, family law practitioners with varying degrees of experience consistently queried their ability to focus on the interests of children whilst balancing their other duties in family law, in particular a duty to the client and a duty to the court.²⁰ They also expressed major difficulties in dealing with self-represented litigants whose interests in preparing for and proceeding to litigation may not be child focused. Their concerns reflected the difficulties involved in ensuring the best outcomes for children in family law.²¹

The government's support of the project, *Changing the Face of Practice*, appeared to show some commitment to providing skills and education for legal practitioners working within the adversarial framework of family law whilst acknowledging the dilemmas of best practice in supporting both the court and the parents in their respective roles. All stakeholders and participants noted an increasing awareness that outcomes for children in family law matters could be improved. A training manual and CD Rom were developed as part of the national training program to provide family law practitioners with information about the concept of child focused practice.

At the same time that *Changing the Face of Practice* was being delivered, the Attorney-General's Department also funded the *Children in Focus* program, which was aimed mainly at private and community-based mediators/conciliators and counsellors who were working in the area of family dispute resolution. This program was specifically targeted to assist professionals in addressing the needs of parents in high conflict after separation and focused on models of 'post separation education'.²²

In contrast to the *Changing the Face of Practice* program, the *Children in Focus* program was well attended and was given additional funding to continue the training.²³ While child focused practice research and education in mediation circles has continued to gain momentum and popularity, programs identifying and providing training in the professional strategies deemed necessary for lawyers have not fulfilled their early promise. An evaluation of the programs by the Institute of Arbitrators and Mediators suggested that little was known about child focused family law practice and that a more detailed understanding might explain the apparent lack of patronage by lawyers.²⁴

19 N Webb and L Moloney, 'Child focused Development Programs for Family Dispute Professionals: Recent Steps in the Evolution of Family Dispute Strategies in Australia' (2003) 9 *Jnl of Family Studies* 1 at 23. This program was run in conjunction with Griffith University Law School and Relationships Australia.

20 In Queensland, these can be found in more detail in 2004 Barristers Rule and the Solicitor's Handbook (QLS).

21 Personal Communication, January 2004, with a member of the training team.

22 Webb and Moloney, above n 19. This program was managed by the Australian Institute of Primary Care at Latrobe University, principal consultants were Jenn McIntosh, Lawrie Moloney and Tom Fisher

23 Webb and Moloney, above n 19.

24 Institute of Arbitrators and Mediators, *Professional and Development Programs for Private Legal Practitioners and Family Dispute Management Practitioners*, Synopsis, Final Evaluation Articles, June 2003, at <http://www.ag.gov.au/agd/WWW/familylaw/Home.nsf/Page/Family_Law_Branch_Publications_Family_Law_Publications_Synopsis_Final_Evaluation_Articles_June_2003>.

The *Changing the Face of Practice* program provided us with anecdotal evidence that family lawyers identified with the ideals of child focused practice, but also faced varying degrees of internal and professional conflict in what they believed to be a delicate balancing act between competing ethical interests. As the discourse has been somewhat dominated by practitioners from a therapeutic tradition and has been structured in a manner that relies on perceptions rather than empirical evidence about lawyers' role in the adversarial system, we embarked on this research in order to test those perceptions empirically.²⁵

Focus of study

The aim of this research was to understand how family lawyers address the best interest principle in their practice, the strategies and techniques they use in conducting matters involving children and whether these practices are situation dependent or relatively constant. The underlying goal was to build an understanding of what family lawyers think it means to be child focused. Given much of the literature is heavily normative and is predicated on an assumption that the meaning of child focused practice is shared between disciplines we did not ask lawyers to define the concept of child focused practice. Our aim was to get a natural and ordinary understanding of what being child focused might actually mean for practitioners in the family law system and their practice of law. We saw this process of elaboration as an important first step in gaining more insight into the role family lawyers take in the resolution of relationship breakdown.

Methodology

The project was limited to Queensland lawyers as it was the home state of the researchers and there were budgetary and time constraints. We did a random mail out to approximately 250 family lawyers, both accredited and non-accredited, inviting them to participate in the study. The response rate was 20.8%, which is slightly higher than other socio-legal research of this nature.²⁶ All the participants identified as family law lawyers and were selected from contact details supplied on the Queensland Law Society website and the Yellow Pages online. Practitioners practising in metropolitan, regional and rural centres were selected to ensure that there was a cross section of employment types and locations. Great effort was taken to get a representative sample of family lawyers, however it is acknowledged that there may have been some self-selection bias.

The interviews were semi-structured, thus allowing the practitioner sufficient scope to explore the issues in more detail.²⁷ Interviews were

²⁵ I use the term 'we' here as the research was originally started with Barbara Hook who was unable to continue onto the end of the project.

²⁶ Hunter et al, reported a response rate of 16.25%, see R Hunter, A Genovese, A Melville and A Chrzanowski, *Legal Aid Services in Family Law*, Justice Research Centre, December 2000, p 46.

²⁷ See App 2 of the report for more detail — C Banks with B Hook, *A Question of Priorities: How Family Lawyers Address the Best Interest of the Child*, SLRC Report, at <<http://www.griffith.edu.au/centre/slrc/>>.

conducted face to face or via telephone and then transcribed. An *abductive research strategy* was used meaning that data generation, theory and data analysis were developed dialectically.²⁸

Sources of Data

We interviewed 42 lawyers throughout Queensland. A slight majority of the participants were female ($n=23$); the majority worked in law firms ($n=35$) and the group was roughly representative of Australian population distribution.²⁹ All of the participants had spent relatively equal time in practice and a slight majority were accredited ($n=23$). Those lawyers engaged in a greater proportion of family law matters also worked predominantly on cases involving children.

In summary, we found that:

- Most lawyers consider themselves to be child focused;
- Many lawyers see their duty to the child as equal to their duty to the court and client;
- Most lawyers experience a conflict between those duties at some stage;
- Lawyers employ strategies to manage those conflicts; and
- Most lawyers change their practices when negotiating with a self represented litigant.

Lawyers identified as child focused, but they grappled with how to balance their ethical duties³⁰ with their determination to serve the best interests of the child.

A critical morality

During their interviews, all of the participating lawyers acknowledged that their judgement was constrained by applicable rules of professional responsibility, which most considered to be ethically obligatory. But rules of professional conduct do not define a moral approach, nor do they 'provide a basis for considering what values should motivate lawyer behaviour and

28 N Blaikie, *Designing Social Research*, Cambridge, Polity, 2000; J Mason, *Qualitative Researching*, Sage Publications, 1996.

29 In addition to asking participants what sort of organisation they worked in, we sought to understand the geographical distribution by asking them the postcode of their workplace. The participants categorised into four groups, based on the Australian Bureau of Statistics Views on Remoteness, major city ($n=26$); outer city ($n=5$), inner regional ($n=9$) and very remote ($n=2$). The participants were roughly representative of Australian population distribution, based on the Australian Bureau of Statistics, Outcomes of ABS Views on Remoteness Consultation, Australia, Catalogue No 1244.0.00.001, 2001, p 17.

30 See discussion of this in T Altobelli, 'Family Law Ethics and Values: Part I' (2002) 16(1) *Australian Family Lawyer* 8 and T Altobelli, 'Family Law Ethics and Values: Part II' (2002) 16(2) *Australian Family Lawyer* 8. See some discussion of duties in T Altobelli, 'Family Lawyers as Mediators' (1995) 9(3) *AJFL* 222 at 225. See interesting study conducted by Adrian Evans about lawyers values and ethics in A Evans, 'Lawyers' Perceptions of Their Values: An Empirical Assessment of Monash University Graduates in Law, 1980-1998' (1992) 12(1&2) *Legal Education Review* 209.

choices about what kind of lawyer to be'.³¹ Christine Parker provides a typology that suggests that the different ethical challenges faced by lawyers can be distilled into four questions:³²

- To what extent are a lawyer's ethics determined by any special social role they ought to fill?
- How do a lawyer and their client relate to each other over ethical issues?
- What is the lawyer's responsibility to law and justice?
- To what extent should a lawyer ensure they care for people and their relationships?³³

Her argument is that there are four approaches that can be taken to legal ethics. These include: the adversarial advocate, the responsible lawyer, the moral activist and the relational lawyer. Our data suggests that it is this fourth model of legal ethics, the relational lawyer, that best describes how family lawyers have been practising family law; it explains their commitment to being child focused and provides an understanding of the tensions inherent in the practice of family law. Before discussing this fourth model in depth, I will describe each approach briefly.

Both the adversarial advocate and the responsible lawyer accept that lawyer's ethics are 'special ethics' because they are defined by the role of the lawyer in the legal framework and in society.³⁴ The adversarial advocate, the most predominant and familiar of the ethical roles for lawyers, requires partisanship and neutrality. In other words, the role of the lawyer is to vigorously pursue the interest of their client within the boundaries of the law (partisanship), with no personal moral expectations about justice or public interest (neutrality).³⁵ This approach fits well with the reliance of the adversarial system on the advocates' skill in representing their party's positions within the boundaries of the law:

[Lawyers] are expected and even encouraged to exploit every loophole in the rules, take advantage of every one of their opponents' tactical mistakes or oversights, and stretch every legal or factual interpretation to favour their clients. The guiding premise of the entire system is that maintaining the integrity of rights-guarding procedures is more important than obtaining convictions or enforcing the substantive law against its violators.³⁶

The responsible lawyer, on the other hand defines the role of the lawyer somewhat differently, shifting the focus subtly away from the client and onto the lawyer's role as an officer of the court and upholder of the legal system. Responsible lawyers are independent to the extent that they moderate a client's desire to exact maximum benefit from the legal system with what they

31 C Parker, 'A Critical Morality for Lawyers: Four Approaches to Lawyers' Ethics' (2004) 30(1) *Mon LR* 49 at 53.

32 *Ibid.*, at 51–2.

33 *Ibid.*

34 *Ibid.*, at 60.

35 For an example of this perception in family law, see T Fisher, 'Family Mediators and Lawyers Communicating about children: PDR-Land and Lawyer-Land' (2003) 9(2) *Jnl of Family Studies* 201.

36 R Gordon, 'The Independence of Lawyers' (1988) 68 *Boston Uni L Rev* 1 at 10, cited in Parker, above n 31, at 60.

perceive as a responsibility to contribute to the effectiveness and enforcement of substantive law.³⁷ As Parker says it is a combination of creative technical skill with:

a sense of social and legal responsibility and the vigorous pursuit of clients' interests; lawyers who do not demand 'dumb, literal obedience to every rule but creative forms of compliance that, although aiming to minimize cost and disruption to the company, effectively still realize the regulation's basic purpose'.³⁸

As with the adversarial advocate, the responsible lawyer does not engage with personal moral beliefs. Once again, this is because both models look inwards for their ethical standards. The adversarial advocate looks towards her or his social role within the adversarial system and the responsible lawyer looks towards her or his role as a public officer of the court within the law itself. For these two models, it would not be appropriate to apply general standards of morality. The other two models, moral activist and relational lawyer, have very different foci and these will be discussed in turn.

Whereas the adversarial advocate and the responsible lawyer apply 'special ethics' defined by role, the moral activist and relational lawyer apply general ethics to their legal practice, albeit in different ways. Moral activism, a term coined by David Luban, often leads lawyers to engage in politicised law reform activities and into roles where the representation of people is instrumental in social and legal change.³⁹ It requires the lawyer to reveal their own convictions about justice in particular circumstances and assume moral responsibility for those decisions. The moral activist is obliged to 'do justice even if that involves changing or challenging the law'.⁴⁰ To that end, the moral activist may behave in a similar way to the responsible lawyer in those instances where the law and legal processes coincide with the lawyer's principles of justice.⁴¹ Similarly, where the moral activist believes in the justice of a particular client's cause, she or he may behave in a way that bears some resemblance to the adversarial advocate.⁴² But the moral activist always assumes a more proactive role in the pursuit of self-defined justice than either adversarial advocate and responsible lawyer,⁴³ and at the same time as this liberates the lawyer it also limits a comprehensive approach to legal practice because a commitment to justice is paramount. The final model, relational lawyering (or an ethics of care) proposed by Parker is much more comprehensive as it provides a greater focus on responsibility to client and relationship networks.

Relational lawyering, or an ethics of care, requires blending the practice of law with personal ethics.⁴⁴ Rather than the focus on justice that moral activism suggests, relational lawyering focuses on the lawyer's responsibility to people, their relationships and to the community. The ethics of care has been widely

37 Parker, above n 31, at 62.

38 Ibid, at 63.

39 D Luban, *Lawyers and Justice: An Ethical Study*, 1988, p 7, cited in Parker, above n 31, at 66.

40 Parker, above n 31, at 66.

41 Ibid, at 66.

42 Ibid.

43 Ibid, at 68.

44 Ibid.

argued by Carol Gilligan, who suggests that traditional ethical models have privileged masculine models of reasoning.⁴⁵ Gender debates aside, the ethics of care influences the practice of law in three main ways. First, it requires lawyers to assume a holistic approach to legal practice and to consider the interests of both the client and of others. In other words, it acknowledges the social, moral and emotional elements in legal problems and the impact that any solution may have on the individual's social network rather than focusing exclusively upon one individual.⁴⁶ Second, it requires a dialogue between lawyer and client and what Parker characterises as a participatory approach to lawyering.⁴⁷ This means that the lawyer-client relationship requires mutual trust and shared knowledge. Lawyers have a responsibility to ensure that clients understand 'the consequences, cost and uncertainties associated with alternative courses of action available to them so that the client can choose which option to pursue in an informed way'.⁴⁸ This means that lawyers need to devote sufficient time to listen to the contextual dimensions of the client's life. Parker describes the relationship between the two as a partnership in which both parties are responsible for the outcomes. The lawyer does not tell the client what to do and the lawyer does not have to take a course of action demanded by a client when she or he feels it is not the right thing to do.⁴⁹

As a result of this holistic partnership between client and lawyer, it is more likely that both will seek 'non-adversarial ways to resolve disputes and preserve relationships'.⁵⁰ This preventative and problem solving approach is the third dimension to the practice of law by the relational lawyer.

As I suggested earlier, the fourth approach to legal ethics best describes how family lawyers seek to practice family law, although elements of the other three models are also present. Relational lawyering will be discussed now in relation to the findings from the data.

Being child focused

When asked whether they identify as being child focused most lawyers said they did ($n=34$). Of the lawyers who did not identify as child focused ($n=8$), almost all said they tried to teach their client to be more child focused ($n=7$).

The comparisons between the length of practice, percentage of family law work, and percentage devoted to children's work was fairly consistent across the two groups (ie, child focused and not child focused), although practitioners who did not identify as child focused conducted slightly more work in children's matters than lawyers who did identify as child focused.⁵¹ There was an even split between accredited ($n=4$) and non accredited lawyers ($n=4$) in the non child focused group, and a relatively even split in child focused

45 C Gilligan, *In a Different Voice: Psychological Theory and Women's Development*, Harvard University Press, 1982. While Gilligan does characterise an abstract justice focus as a masculine model of reasoning she also makes the point that both men and women can and do shift between justice and care perspectives.

46 Parker, above n 31, at 70.

47 Ibid.

48 Ibid, at 70.

49 Ibid, at 71.

50 Ibid.

51 It will be interesting to see whether this is the case in a larger sample.

group.⁵² There was a relatively even gender mix, slightly more females ($n=5$) than men ($n=3$) were non child focused, although it is important to bear in mind, we interviewed slightly more women than men. Not surprisingly, all of the child representatives interviewed ($n=5$) identified as child focused.

Considering that so many lawyers identify as child focused, it came as no surprise that the majority of lawyers see their duty to the child is as important as the duty to the court and client. Just over half of the participants considered their duty to the child equal to their duties to the court and client. There was very little difference between accredited and non-accredited specialists. While many lawyers agree that their duties to the court, client and child were equal they appeared to grapple with the tension about what their ethical responsibilities really entailed. Some lawyers considered their duty to the child was secondary to their duty to the court and client, some were uncertain and a couple of lawyers made it clear that if a choice was essential, their duty to the child would trump all other duties.

According to Parker's typology, family lawyers in this study sought to fulfil all four models to differing degrees and this created a profound tension that they described as a conflict of interest. We asked lawyers how often they experienced a conflict between their duties. Half of the participants ($n=33$) said they experienced conflict occasionally ($n=21$), whereas one fifth experienced it often ($n=9$) and three stated that they experienced conflict all the time. All of the lawyers who said they experienced such conflicts described their practice of law in a way which was consistent with Parker's notion of relational lawyering. These lawyers assumed that their practice of law violated legal practice rules, which they believed demanded a delicate balance between the ethical approach of the adversarial advocate and the responsible lawyer. Despite this apparent conflict, the child focused lawyers in the study demonstrated a level of self reflection that, to a great extent, overrode convention of adversarial advocate and responsible lawyer in their pursuit of child focused outcomes. This intuition is what Parker describes as the ethics of care. Child focused lawyers took a holistic approach to lawyering, built a relationship with the client and were committed to a caring approach to the matrix of relationships associated with the family dynamic, always mindful that the child must remain the central point of decision making. How they went about it will be described below.

The relational lawyer

Most family lawyers demonstrated an innate ability to be self-reflexive about their practice of law, and particularly about the importance of keeping the child the focus of the negotiations and resolution. As a result, most lawyers have developed strategies over time to try and facilitate that type of practice. These included being self reflexive, using language which always puts the child at the centre of discussions, educating clients that the child should be the focus of their attention and explaining the best interest principle to the client. One lawyer said:

⁵² *Child focused* accredited specialists ($n=19$) and *Child focused* non-accredited specialists ($n=15$).

Yes, I consider myself to be very *child focused*. All advice given to clients regarding children's issues is influenced by what is in the best interests of the child.⁵³

Another lawyer said:

[I say to myself] What is the reality of this family, is it going to work?⁵⁴

Being self reflexive meant that rather than applying a 'one fits all' rule, lawyers assessed clients individually and then adapted their role as lawyer in light of the client's circumstances. This required working in a collaborative way with the client. For example, one lawyer said:

Instead of an 'I'm the expert and I will help you' kind of relationship . . . [this is] a sort of a more team approach where you really do set some mutual, kind of, goal posts.⁵⁵

Using language which always puts the child at the centre of discussions

Child focused lawyers were very clear that they framed all their discussions with their client with a focus on the child. For example, one lawyer said:

The first thing that I do is always ask if there are children involved, [as] *the first question* . . . [in the] *initial interview* but always after that I say *how are the children?* Are there any issues in relation to the children . . . I just care that my client's children are okay and I care that my clients are okay, so the first thing as a priority I ask them how are the children? Are you seeing the children? Are the children seeing you? Are there any issues in relation to the children? And then after I have dealt with that, in every interview, . . . *I deal with all the children first*, and then I deal with the property thing second.⁵⁶

Another lawyer said:

In relation to child matters the best interests of the child are the paramount concern of the court and therefore *they are the paramount concern of all parties* and if necessary you remind your client of that. Where necessary you advise your client of research regarding the impact on children of certain types of conduct by the parents and *focus them on protecting the children from the impact of court proceedings*.⁵⁷

In addition to keeping the child as the focus of the discussion, child focused lawyers also devote significant time educating their clients about being child focused themselves.

Educating clients that the child should be the focus of their attention

Most child focused lawyers said that while most parents really believe they are making decisions in the best interest of their children, in some cases they conflate the child's interest with their own desires. As a result, lawyers attempt to educate and refocus their clients on the child. Sometimes this is explicit, as one lawyer said:

53 Transcript 33.

54 Transcript 10.

55 Transcript 26.

56 Transcript 17 (emphasis added).

57 Transcript 9 (emphasis added).

Well, I guess the best interest principle is just a very general statement and it really depends on — it's not so much the best interest principle which I think needs elaboration, *it's how clients are educated on it*, because all too often they would sit across a table from you and vehemently state that what they are doing is in the best interest, but when you poke and you prod and you push and you dig, they generally — it's quite obvious that there's a lot of personal interest involved, and the trick then becomes exposing that to the client in a diplomatic and sensitive way so I don't think the principle needs elaboration much more than that, I think maybe how we, as practitioners, explain it to clients could be worked on.⁵⁸

Child focused lawyers also said that sometimes they needed to retrain their client to focus on the child. For example, one lawyer said:

It's more indirect. I think it's more about sifting through the child's routine, the sleeping arrangements, how many times the child has been separated from mum, for example, as a young child, whether the child has ever slept away from home. *So, it's much more about factual information, that I then sift through without necessarily . . . the client might know that's the broad framework . . .*⁵⁹

Another lawyer said:

This approach comes with the territory when dealing with child related matters but is still applied when considering ostensibly non-child related matters such as property . . . *the child deserves our best endeavours respect and attention.*⁶⁰

All but one of the lawyers interviewed said they always explained the best interest principle to their client.⁶¹

Explaining best interest principle to the client

Of the 41 lawyers who said they did explain the best interest principle, one did not explain the principle unless necessary, and one gave the client the legislation and explained the provisions, if necessary, 'I say to them, "look" . . . the section of the Act says that the interest of the child is paramount consideration and then we talk . . .'.⁶² Only one lawyer as a matter of practice did not explain the best interest principle, but did structure all discussions around the language of the principle.

The explanations provided by lawyers fell into three broad categories. These include:

- informal explanation of the principle in a face to face discussion;
- providing the client with the legislative provisions and some explanation of what they mean;
- sending the client to counselling.

The first two methods of explanation involve some active engagement with the client, however, the third needs some qualification. All of the lawyers who said they send their clients off to counselling also used another way of

58 Transcript 24 (emphasis added).

59 Transcript 10 (emphasis added).

60 Transcript 25 (emphasis added).

61 There was only one lawyer who did not explain the best interest principle as a matter of practice, however that lawyer did explain the principle 'if the circumstances of the case warranted it'.

62 Transcript 4.

explaining the best interest principle. The use of counselling will be discussed later in this section.

Many lawyers said they addressed the best interest principle at the first interview. Others did so in subsequent interviews. Some lawyers also explained the best interest principle by educating the client about the court's focus on the child. For example, one lawyer said:

I would, at some stage, usually very early in the proceedings . . . explain to them that if through discussions with their partner, they don't resolve matters *that a court will ultimately make a decision based on the best interest principles* . . . I say that the advice that I give them about what is going happen is based on what will happen if they go to court.⁶³

Another lawyer said, '[m]y advice to clients is always what a "responsible" parent should do in the best interests of the child'.⁶⁴

Another lawyer said:

*So the role of the lawyer at the outset is to set the scene of the conduct of future proceedings and conduct [the] relationship between the parents. And it is to identify the roles and responsibilities of the parents, to shield the children from the conflict that the parents have undergone and will continue to undergo whilst dealing with this process of separating.*⁶⁵

As mentioned, some lawyers preferred to provide an informal explanation of the principle by highlighting specific aspects of their client's case. For example, one lawyer said:

I don't show them the Act, but I just point out that the Act says this and that these are the factors that the court takes into account when considering the best interests of the child and *I explain to them the difference between their rights as a parent and their responsibility* and the rights of children to enjoy both parents, to enjoy contact with both parents knowing both parents. But 9 times out of 10 I will actually go through the 68F(2) factors and explain to them . . .⁶⁶

Half of the lawyers interviewed actually gave their client a copy of the legislation to highlight the specific facts in their client's matter. For example, one lawyer said:

I usually get the legislation out, put the legislation on the desk and we talk about it and put it into simple English and go through examples of thing . . . Most lawyers also provided an explanation of the relevant principles.⁶⁷

Another lawyer said:

Well, [more] often than not *I actually drag out the relevant sections of the Act* and also *make reference to the United Nations Convention* relating to children. It depends on the circumstances, if it's a relocation matter, I will go through the case law and explain what is the case law [sic] and why the courts have made their decision.⁶⁸

63 Transcript 22 (emphasis added).

64 Transcript 15 (emphasis added).

65 Transcript 6 (emphasis added).

66 Transcript 8 (emphasis added).

67 Transcript 23 (emphasis added).

68 Transcript 35 (emphasis added).

Some lawyers said they use the legislation as a way of empowering their clients to make their own decisions. For example, one lawyer said:

I certainly do explain the principle . . . *I often will show them* and/or give them section 68F and *walk them through the ingredients* that make up how the court makes that decision and *identify in their case what might be the relevant ones* and try to keep the discussion, not parent them, *but keep helping the parent become aware of what the impact on the child might have been of certain behaviours* or whatever they might have seen.[sic] And I ask them to give me examples, you know, that's often very hard, people will often say 'Well it's in the best interests for the child to be with me' so, helping them to sort of give me the evidence and the event that leads to that conclusion. *Don't tell me the conclusion, tell me the things that lead to that conclusion.*⁶⁹

The importance of providing clients with knowledge about the law is just one strategy adopted by lawyers to manage potential conflicts. In addition to this, most lawyers also ensure they develop a frank and open communication dialogue with their clients.

Ensuring frank and open communication with clients

While many lawyers think it is important to be frank and open with clients, once again the way they go about it is very different. Some lawyers, particularly experienced family lawyers, develop strategies around a client's idiosyncrasies. For example, one lawyer said:

If a client wasn't acting in the best interest of the child *I would spend a lot of time looking at what is the fear that's motivating the client.* Okay, at a fundamental operating basis we do things through two higher levels. One is we do things through fear and we do things through love. And is something in the best interest of the child or not in the best interest of the child. Is it coming from a love background or a fear background? Many instances following divorce, it's motivated be a fear: a loss, an anger, you know, sadness, madness is motivating some alternate agenda. So *it's really identifying those agendas to actually look at them changing that belief system.* Often children are used as pawns, unintentionally but often intentionally, *and it's attempting to refocus back from fear to you're ok and looking at the issues ahead.* So it's a refocusing back, at all times, to the long-term picture.⁷⁰

In the course of being open and frank with clients, lawyers also see themselves as having a role to educate their clients on how to be child focused.

Educating clients

Taking on an additional role as an educator on how to be more child focused is an effort made by many lawyers to maintain the fine balance between conflicting duties. For example, one lawyer said:

I spend a significant amount of time with my clients 'explaining' about how parents can be child focused, and also the effects of separation on children.⁷¹

Another lawyer said:

Another technique I would use then . . . the second category of *technique I would use would be to counsel* them about the likely impact on the child from this behaviour

69 Transcript 22 (emphasis added).

70 Transcript 33 (emphasis added).

71 Transcript 42 (emphasis added).

and in that area or that scenario *I would be referring them to proven research that I might be aware of about how this conduct usually plays out in the child's mind and in the child's future development.*⁷²

As well as assuming an educative role, lawyers are very proactive with referrals to counsellors and parenting course.

Referring clients to counselling and parenting courses

Many lawyers said referring clients to counselling and parenting courses was standard practice for all new clients, 'I always suggest that they seek counselling'. Another lawyer said:

It's just that the whole context of litigation is not in the best interest of the child. So for me personally and my firm, the children's issues are ones in which *we heavily utilise counselling services*, not go and have one appointment, *we talk to our clients and tell them to have substantial numbers of counselling appointments* and for significant periods of time on each occasion. We're of the view that a 2-3 hour appointment on each occasion is probably more beneficial than you know, an hour every third to fourth week. So around that *we believe that there is a far better alternative to litigation*, although, there are instances where there is no alternative but to litigate.⁷³

Another lawyer said:

We would be very [lost] if we didn't have access to counsellors and to other services, because *they're our biggest assistance* . . . It's the old, lead the horse to water thing . . . So you take them to [the counsellor] or send them to some other counsellor and hope that that might get some realisation about stuff that way.⁷⁴

Lawyers said they used counselling as a way of directing a parent to focus on the child's interests rather than his or her own. For example, one lawyer said:

I'll send them to counselling but without being directly critical of what they're doing *I'll suggest that I think the best thing for both parties to do is to go to counselling* to talk about what might be in the best interests of their child *because I'm not a social worker and I'm not qualified to assess or give them advice about what is in the best interests of their child in their family situation* I'd say that to them very clearly and *tell them that the court is going to want to know what is in their child's best interests and want to see that they've given adequate and proper consideration* to those issues. The best way to demonstrate that to the court and to consider those things themselves is to go to counselling and some guidance from people who are qualified.⁷⁵

Another lawyer said:

I usually refer them to counselling agencies and parenting courses . . . Often I face a lot of opposition with that and they obviously don't like it and as a practitioner you have to tread carefully, but *I certainly always emphasise the interest of the children*

72 Transcript 15 (emphasis added).

73 Transcript 32 (emphasis added).

74 Transcript 38 (emphasis added).

75 Transcript 11 (emphasis added).

*are the paramount consideration and that they might not like that that means a different outcome to what they might like.*⁷⁶

Child focused lawyers also used similar types of strategies when negotiating with a self represented litigant,⁷⁷ although our research clearly demonstrated that lawyers were more likely to be adversarial when negotiating with a self represented litigant rather than another colleague.⁷⁸

Balancing competing duties between court, client and child

Most lawyers who demonstrate a commitment to child focused practice believe that they must maintain a fine balance between their duties and that often this involved oscillating between competing ethical approaches, particularly the *adversarial advocate* and responsible lawyer on the one hand and the relational lawyer on the other. One lawyer said:

I definitely believe that legislatively and ethically we are all supposed to be working towards what is in the best interests of the child. I believe that all family law practitioners have to balance up the [sometimes] competing interests; that of *working under the instructions* of each individual client, of being an officer of the court and of *considering what is in the best interests of the child/children*. I try to be a self-reflective practitioner and to be aware of these different factors when acting in Family Law matters.⁷⁹

Another lawyer said:

Yes, I do consider myself to be child focused, but *the extent and relative importance of that focus will vary* from case to case according to the facts and issues in each particular case and the party for whom I am acting.⁸⁰

Some lawyers said that when a conflict arose they believed it was a matter of thinking about what their duties actually entailed and then making a decision. One lawyer said:

If I had to put them in an order, I would say that you have in children's matters you have an equal duty to all three because as an officer of the court, you have to *give the court accurate information* to enable them to do their job. You have *an obligation to your client*. That's very clear, but because of the nature of the legislation, if issues arise, or we become aware of issues in relation to the children you have an *ethical and a legal obligation* to advise certain departments and file relevant child abuse notices under the legislation in relation to the children.⁸¹

While some lawyers held more traditional views of a lawyer's duty to the court and client, they still made it clear that being child focused was utmost in their mind. For example, one lawyer said:

As a matter of law, I owe a duty to my client first, and then to the court. As a matter of law when I am an advocate in court, my first duty [is] to the court then the client. *As a matter of practice, I keep the interest of the child uppermost in my mind* and

76 Transcript 20 (emphasis added).

77 For a discussion on the production of the 'rational client' — see J Dewar and S Parker, 'The Impact of the New Part VII Family Law Act 1975' (1999) 13(2) *AJFL* 96 at 111.

78 For full discussion of this see Banks, above n 1.

79 Transcript 8 (emphasis added).

80 Transcript 17 (emphasis added).

81 Transcript 3 (emphasis added).

I engage with my client and actually explain to them how their actions impact on their child and what is best practice what is the standard sort of order that is made and I endeavour to get the clients to take a *child focused* approach in their dealing with the matter.⁸²

And another lawyer said:

Certainly the court and certainly the client and I think the child comes . . . *I don't know that I owe [a duty to the child] but I certainly try to think about the most child focused way of achieving that.* And the impact on children in various decisions . . . so, it's not an official duty but I factor that in . . .⁸³

As much as some lawyers considered *they* are child focused, and make all attempts to ensure their clients remain child focused, in the end they felt pressured to take the traditional path of court/client duty. One lawyer said:

I would *give them strong advice in relation* to their position and in relation to what I would expect the court would order but still accept their instructions as their instructions.⁸⁴

One lawyer did not take adversarial advocacy as a strict approach, but in the end believed it was the correct approach for them:

Yes, I do [consider myself to be *child focused*], but not at the expense of my client. I will 'reality test' with my client and endeavour to educate them, *but I act on their instructions after canvassing possible interpretations of their decisions* or conduct re child matters.⁸⁵

Some lawyers proactively seek to get a client to understand the dilemma by conflicting duties:

I would always reality test the clients' wishes, the clients' wish list to what might be a likely court order, and that's my point of reference. I would always say a court order is something that would be the yard stick of what might be in the best interest of the child. *So we're really comparing what the client wants versus what a court might be likely to order* and I'm always very keen to introduce that comparison at the first opportunity to interview with the client.⁸⁶

As the data suggests, practising an ethics of care means that family lawyers adopt an ethical approach that does not always sit comfortably with traditional approaches such as adversarial advocacy and responsible lawyering.

However there were also lawyers interviewed who expressed a greater desire to use their position in the legal system as an advocate for the child, this suggests that some of the lawyers were willing to adopt a moral activist approach to lawyering.

Moral activism

A couple of lawyers made it clear that in the event where a choice was necessary, their duty to the child would trump all others. For instance, one of those lawyers said:

82 Transcript 30 (emphasis added).

83 Transcript 14 (emphasis added).

84 Transcript 41 (emphasis added).

85 Transcript 5 (emphasis added).

86 Transcript 25 (emphasis added).

My feeling is, *my ultimate duty is to the child* . . . Obviously I don't take instructions from the child, I take instructions from the client, but you know, *I think ultimately you pay most attention to what is the best thing for the child.*⁸⁷

A few lawyers described their duty to the child as a moral duty which fits within the ethical approach of the moral activist. Like the relational lawyer, the moral activist reads ethical duties broadly, particularly when the lawyer believes strongly in a particular course of action. The moral activist will seek to counsel the client about these issues and if unable to reach some compromise will withdraw from acting for a party. A significant number of lawyers interviewed said they would not hesitate to withdraw from representing a parent who they perceived was acting in a way which would jeopardise the best interest of the child.⁸⁸ For example, one lawyer said:

I'd tell my client that they were not acting in the best interests of the child and I tell them why I don't think they're acting in the best interests of the child and *if necessary I stop acting for people who don't act in the best interests of their children.*⁸⁹

Another lawyer said:

Well the first step I would say, would be to tell them that I didn't think that what they were proposing was in the best interest of the child and recommend that they take another course. And if I felt that *there was a significant conflict* there or that *what they were proposing was quite improper* then I'd tell them that *I'd no longer be prepared to act for them.*⁹⁰

These lawyers made it clear that withdrawing from a case was not an easy decision. They were mindful of their duty to the client and the financial implications of withdrawing from a client and said that ceasing to act would be the last option. For example, one lawyer said:

I would have to point out to my client that the course they were proposing was not in the best interests of the child, that if they continued down that course, they were damaging their case and that they would have to reconsider their position. And *in an extreme case, I would have to point out to the client that they were not acting [in the best interest of the child] . . . I would have to terminate the retainer.*⁹¹

Focusing on the best interest of the child is paramount to most of these lawyers, for example, one lawyer said:

If I find that the actions of the client are not in the best interest of the child then I will be inclined to warn the client, as I have done [before], in recent times *I have ceased to act for two people because I felt their actions weren't appropriate* and the same thing would apply. I would say if you don't feel that we could deal with it in a more sensible manner or a manner that is consistent with paramount consideration given to the needs of the child, then I would consider no longer acting for you and give them an opportunity to seek other legal representation.⁹²

And another lawyer said:

87 Transcript 2 (emphasis added).

88 n=18.

89 Transcript 26 (emphasis added).

90 Transcript 11 (emphasis added).

91 Transcript 8 (emphasis added).

92 Transcript 9 (emphasis added).

I would advise them that if they didn't take my advice then I would have to *withdraw from the case* and I would have to advise them that I do have a statutory duty to document it if I think that they are in danger of hurting themselves or other people and it's a serious offence.⁹³

All of these moral activist lawyers engaged in an active counselling role with the client and said that they encouraged an open and frank communication style with clients. These lawyers said they are often very frank with clients when their instructions clash with the lawyer's perceived duty to the child. For example, one lawyer said:

*I tell my clients at the outset that it is all about the children and what is in their best interest.*⁹⁴

A second said:

In the course of that function [balancing conflicting duties] I see it as my role to *ensure the client is acting in the child's best interest and if they are not, telling them so . . .*⁹⁵

While a third stated that:

I would probably *tell them fairly bluntly* if they are proposing something we think is *unreasonable*.⁹⁶

In some instances, lawyers are so committed to being child focused that they put the obligation to the child above all other obligations. One lawyer said:

I don't take instructions from the child, *but in the end* I have to ensure that *my attention is directed to what is the best thing for the child*.⁹⁷

Conclusion

As stated earlier, a nuanced understanding of how family lawyers approach the legal and ethical tensions inherent in their work has been missing from the literature and from the public discourse. The aim of this research was to provide empirical evidence of how family lawyers practice law in children's matters and to build an understanding of what they think it means to be child focused. Because family law discourse has been dominated by discussions about the primacy of the child and the negative impact of an adversarial process on relationships, assumptions about what motivates lawyers in the family law system have permeated all levels of the discourse. This article has provided some empirical evidence that demonstrates that family lawyers who identify as child focused believe they are performing a delicate balancing act that challenges their ethical judgement and professional responsibilities.

As this research was conducted prior to the 2006 reforms it provides us with a valuable benchmark about how lawyers were actually engaging with the child focused agenda in their practice of law and gives impetus to pursue an

93 Transcript 22 (emphasis added).

94 Transcript 16 (emphasis added).

95 Transcript 28 (emphasis added).

96 Transcript 9 (emphasis added).

97 Transcript 22 (emphasis added).

understanding of what being child focused actually means to different stakeholders. Further research is currently being undertaken to gain a greater understanding of child focused practice in the broader family law paradigm.⁹⁸ For family lawyers this further investigation should provide more substantive evidence as to the types of assistance lawyers seek to assist them in their pursuit of child focused outcomes. This may be in the form of education and training or reviews of current regulatory regimes.

Despite the prominence given to the discourse of child focused and child inclusive practices, it is important to give equal attention to the impact that the changes have had on other stakeholders in the family breakdown sector. It is not yet clear whether the new reforms will increase or decrease the legal and ethical tensions experienced by family lawyers, but being armed with more knowledge about practical experiences provides a more balanced place to start that examination. It is hoped that these research findings will inform the ongoing debates and contribute to the development of practices which enhance outcomes for children.

⁹⁸ The author is currently undertaking postdoctoral research in this area. The research includes a study of understandings about the competing visions and constraints of *child focused* practice across the family law sector.