

The Domestic Violence Legislation and Child Access in New Zealand

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Te Manatū Ture

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Foreword

While it is important that children maintain a relationship with both parents after separation, they are entitled to be protected from direct physical harm and from the harm that results from witnessing violence within the family. Under legislation introduced in New Zealand in 1995 the Family Court was given new powers to order, where the non-custodial parent has been proven to be violent within the family, that access to the child must be under supervision.

This report is an evaluation of the operation and impact of the new supervised access provisions in the Guardianship Act and the Domestic Violence Act. It examines whether they promote the welfare of the child, and whether they are fulfilling the objective of protecting children from violent parents in cases where access has been applied for. Other consequences of the new policy change are also examined.

The report concludes that the supervised access provisions have led to safer access arrangements for children in families where there has been violence. Disturbingly, despite the new provisions, some children remain in situations of risk and exposure to violence.

Because the supervised access legislation represented a significant departure from the previous approaches taken by the Family Court when settling custody and access issues, it was important that its operation and effects were evaluated. This report is designed to provide policy makers with a comprehensive and balanced examination of issues relating to the supervised access provisions. It provides a sound empirical foundation to move forward to a consideration of policy advice and possible recommendations for improvement.

Colin Keating
Secretary for Justice

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Executive summary

New legislation in 1995 changed the approach taken by the Family Courts in relation to the children involved in domestic violence cases. Both the Domestic Violence Act 1995 and an amendment to the Guardianship Act 1968 included provisions to enhance the protection and safety of the children involved in family violence. This research study was designed to assess the implementation and impacts of these new provisions in relation to the arrangements made for access to children.

The Domestic Violence Act 1995 provides that, when there is a Protection Order in place, the respondent may not contact any child of the applicant's family, unless contact is permitted under any order or written agreement. Section 16B of the Guardianship Act 1968 presumes that children's access with a parent who has previously been violent within the family will be supervised unless the Court can be satisfied that the children will be safe.

In 1997, a study of 558 files from five Family Courts was completed. The cases selected were applications for Protection Orders in which children were involved and applications for custody in which there were allegations of violence. Fifty three key informants were interviewed, including providers of supervised access services, programme providers, court staff, lawyers, and judges. In 1998, interviews were conducted with 82 custodial and non-custodial parents and five people who had supervised access informally.

The key findings of the research are grouped under the following headings: the implementation of the legislation; the impacts of formal supervised access; the impacts of informal supervised access; the impacts of unsupervised access; the impacts of no access; perceptions of the legislation; and conclusions.

The implementation of the legislation

Information from the file study (1997)

- The Family Court makes access directions as special conditions of Protection Orders or Access Orders in conjunction with Custody Orders
- The Family Court had limited information in order to assess the risks to children. Although most affidavits referred to children being present during violence or abuse, only approximately a quarter of affidavits made further reference to the safety of the children. The court sought or received further information in relation to the children in relatively small proportions of custody cases in which there were allegations of violence (37% of cases had hearings; 23% were referred to counselling; 13% had Counsel for the Child appointed; 12% were resolved by Memorandum of Consent)

- 58 per cent of cases in which there were allegations of violence and children were involved contained no directions for access. Eighteen per cent of cases had directions for supervised access; 12 per cent had directions for access (presumably unsupervised); and 12 per cent had directions for no access. In only five per cent of cases was the type of supervision specified. The lack of directions reflects a lack of information available to the court to assess risk to children.

Information from parent interviews

- Parents found the court processes complex, costly, and lengthy and a substantial group made access decisions informally
- Parents in a substantial proportion (49%) of families stated that there were allegations that non-custodial parents had harmed or neglected children before the Protection Order was granted. In a substantial minority (40%) of families non-custodial parents were said to be safe with children
- Immediately after the Protection Order almost one half of families made no access arrangements; more than one quarter of families made supervised access arrangements (both formal and informal); and almost one quarter of families made unsupervised access arrangements
- Up to nine months after a Protection Order the proportion of families using formal supervised access slowly increased (from 6% to 19%) and the proportion of families using informal supervised access decreased (from 22% to 11%). Families with Māori children were somewhat less likely to use formal or informal supervised access
- Non-compliance with the directions of the court was evident but not widespread.

The impacts of formal supervised access

- Most custodial parents believed their children were physically safe with formal supervision, but some held fears for their children's emotional safety. Children were in the main reported to be happy with formal supervised access, although some were thought to be bored, hostile, or shy
- Custodial parents felt safer with supervised access than with other types of access. Nevertheless, custodial parents commonly reported that the non-custodial parent harassed them in the centre car park
- Most custodial and non-custodial parents merely tolerated formal supervised access, but for very different reasons
- Formal supervised access was found to be easy to organise, once the decision was made. Barriers to formal supervision were found to be inflexibility of time and place; cost; inability to comply with the conditions; and difficulty accessing the centre.

The impacts of informal supervised access

- Supervision by the custodial parent was the most common informal supervised access. However, custodial parents felt unsafe and were at risk when they supervised access themselves. Children were also found to be less safe and less happy with custodial parent supervision and often witnessed conflict and abuse
- When access was supervised by extended family, children benefited from these relationships. Despite this, children were not always emotionally safe when access was supervised by extended family. Most informal supervisors regarded their role as being a presence rather than providing active supervision. Few had received any instructions about their role
- A lack of formality and clarity left both custodial and non-custodial parents unhappy with informal supervised access. This type of access arrangement was less durable than other types of access arrangements.

The impacts of unsupervised access

- About half of the custodial parents whose children's access had been unsupervised believed unsupervised access was perfectly safe for their children. Children were reported to have a variety of responses to unsupervised access ranging from reluctance to confusion to delight
- About half of the custodial parents reported a range of physical and emotional abuse or neglect of their children during unsupervised access. Where this had happened they had taken steps to make safer arrangements
- Custodial and non-custodial parents reported a high level of conflict over making arrangements and at changeover times. Some custodial parents stated that they were abused during unsupervised access arrangements.

The impacts of no access

- A period of no access was usually interim to negotiating access arrangements
- Many custodial parents believed their children were happy with no access. By contrast some custodial and most non-custodial parents reported that their children grieved for their father when there was no access
- Custodial parents stated in the main that no access was very beneficial to them. Non-custodial parents in the main experienced strong feelings of loss when there was no access.

Perceptions of the legislation

- Parents stated they needed clear, accurate and accessible information. Māori parents in particular preferred to receive information in person
- Most (71%) parents received their main information from a lawyer
- There was a relatively high level of dissatisfaction with the information received (at least 39% were dissatisfied)
- Parents, particularly non-custodial parents, had a poor understanding of the legislation and the reasons for it
- Most key informants believed the legislation had enhanced the safety of children in violent families.

Conclusions

The provisions for access to children in the domestic violence legislation have led to a growing use of access arrangements which are safer for both children and custodial parents. Nevertheless, some children continue to be exposed to violence during access. The research has suggested that children's well-being would be further protected through improvements to: supervised access services for Māori children; access to information for parents; the quality of professional services to parents; access to appropriate support services for Māori parents; the courts' access to information about children's safety; the length of time taken to finalise court cases; guidance for informal supervisors; safety outside supervised access centres; and the funding of supervised access services.

1 Introduction

New legislation in 1995 changed the approach taken by the Family Courts in relation to the children involved in domestic violence cases. Both the Domestic Violence Act 1995 and an amendment to the Guardianship Act 1968 included provisions to enhance the protection and safety of the children involved in family violence. This report presents the results of a research study which was designed to assess the implementation and impacts of these new provisions, particularly in relation to the arrangements made for access to children.

Section 16B of the Guardianship Act 1968 spells out the essential elements of the new approach. This section provides that when a person has been shown to have used violence in a domestic situation, that person is not to have custody or unsupervised access to children until the court can be satisfied that the children will be safe with them. Sections 16A, 16B and 16C state:

Special Provisions Relating to Cases Involving Violence

16A. Interpretation-

In this section and sections 16B and 16C of this Act, unless the context otherwise requires,-

“Child of the family”, in relation to any proceedings, means-

- (a) A child of the applicant and the respondent, or of either of them; or*
- (b) Any child who was a member of the family of the applicant and the respondent, or either of them, immediately before the institution of the proceedings:*

“Supervised access” means face to face contact between a parent and a child, being access that occurs-

- (a) At any place approved by the Court where access can be appropriately supervised; or*
- (b) In the immediate presence of a person approved by the Court, who may be a relative, a friend of the family of the child, or such other person whom the Court considers suitable:*

“Violence” means physical abuse or sexual abuse.

16B. Allegations of violence made in custody or access proceedings-

- (1) This section applies to any proceedings relating to an application made under this Act for an order relating to the custody of, or access to, a child, (including, without limitation, an application for the variation or discharge of any order with respect to the custody of, or access to, a child, or for the variation or discharge of any condition of any such order), whether or not the proceedings also relate to any other matter (whether arising under this Act or any other enactment).*
- (2) Where, in any proceedings to which this section applies, it is alleged that a party to the proceedings has used violence against the child or a child of the family or against the other party to the proceedings, the Court shall, as soon as practicable, determine, on the basis of the evidence presented to it by or on behalf of the parties to the proceedings, whether the allegation of violence is proved.*
- (3) Nothing in subsection (2) of this section requires the Court to make any inquiries of its own motion in order to make a determination on the allegation.*
- (4) Where, in any proceedings to which this section applies, the Court is satisfied that a party to the proceedings (in this section referred to as the violent party) has used violence against the child or a child of the family or against the other party to the proceedings, the Court shall not-*

- (a) *Make any order giving the violent party custody of the child to whom the proceedings relate; or*
- (b) *Make any order allowing the violent party access (other than supervised access) to that child, -unless the Court is satisfied that the child will be safe while the violent party has custody of or, as the case may be, access to the child.*
- (5) *In considering, for the purposes of subsection (4) of this section, whether or not a child will be safe while a violent party has custody of, or access (other than supervised access) to, the child, the Court shall, so far as is practicable, have regard to the following matters:*
 - (a) *The nature and seriousness of the violence used:*
 - (b) *How recently the violence occurred:*
 - (c) *The frequency of the violence:*
 - (d) *The likelihood of further violence occurring:*
 - (e) *The physical or emotional harm caused to the child by the violence:*
 - (f) *Whether the other party to the proceedings-*
 - (i) *Considers that the child will be safe while the violent party has custody of, or access to, the child; and*
 - (ii) *Consents to the violent party having custody of, or access (other than supervised access) to, the child:*
 - (g) *The wishes of the child, if the child is able to express them, and having regard to the age and maturity of the child:*
 - (h) *Any steps taken by the violent party to prevent further violence occurring:*
 - (i) *Such other matters as the Court considers relevant.*
- (6) *Notwithstanding subsection (2) of this section, where, in any proceedings to which this section applies,-*
 - (a) *The Court is unable to determine, on the basis of the evidence presented to it by or on behalf of the parties to the proceedings, whether or not the allegation of violence is proved; but*
 - (b) *The Court is satisfied that there is a real risk to the safety of the child, -the Court may make such order under this Act as it thinks fit in order to protect the safety of the child.*
- (7) *The provisions of this section shall apply notwithstanding section 23(2) of this Act.*

16C. Payment of costs of supervised access-

Where, pursuant to an order made under this Act, a person (in this section referred to as the relevant person) who is entitled to have supervised access to a child wishes to exercise that right, any costs incurred by any other person in making any arrangements necessary to facilitate that access on any particular occasion (including, without limitation, the costs of the provision of any person to supervise that access) -

- (a) *Shall be met by the relevant person; and*
- (b) *Shall be recoverable accordingly in any court of competent jurisdiction.*

The legislation represents a significant departure from the approach previously taken by the Family Court in relation to settling matters of custody and access.¹ Previously in such matters the court took an approach which promoted conciliation and resolution by agreement between the parties. Agreement on access arrangements was generally promoted whether the non-custodial parent had previously been violent within the family or not. The change acknowledges that the dynamics of family violence are such that agreements reached by the parents may not in fact preserve the child's safety. Section 16B limits parents' rights to make arrangements for the care of children when violence has occurred and custody or access

¹ Davison, 1994; New Zealand Law Society, 1997

orders are sought. Orders which limit access to supervised access only are intended to protect children both from direct physical harm and from the harm that results from witnessing violence within the family.

The change in legislation was a response to the report of the inquiry into the Family Court proceedings involving the Bristol case.² In this tragic case, a father to whom the Family Court had granted custody killed his three children and himself. In examining the case the inquiry considered literature which demonstrated a direct link between spousal abuse and child abuse.³ The report acknowledged that there are strong views that a child should not be deprived of one parent. However, the report concluded that “where access to a child is granted to a person shown to have used violence in a domestic situation, it should initially be supervised access until such time as that person can show that it would be safe for the child to allow that access to be unsupervised”.⁴

The change in legislation accompanied the emerging findings from local and overseas research that witnessing family violence is detrimental to children. Services for the supervision of child access have developed throughout the western world in recent years.⁵ The demand for supervised access has in large part been a response to the emerging understanding that living with and witnessing family violence has long term negative impacts on children.⁶ The services aim to provide children with the opportunity to maintain a relationship with both parents, while at the same time ensuring the safety of the parent and children.

The (New Zealand) Domestic Violence Act 1995 also contains provisions to strengthen the protection of children involved in domestic violence. A Protection Order made under the Act automatically applies for the benefit of any child of the applicant’s family (Section 16 (1)). This means that the children of the family are protected persons for whom the ‘non contact’ condition applies. Section 19(2) forbids any contact by the respondent with the protected person, with some exceptions. These exceptions include contact permitted under any order or written agreement relating to custody or access, or contact permitted under a special condition of the Protection Order. Special conditions made with Protection Orders (S27) are “any conditions which are reasonably necessary, in the opinion of the Court to protect the protected person from further domestic violence by the respondent” and may relate to “the manner in which arrangements for access to a child are to be implemented”.

The provisions of the Domestic Violence Act 1995 and the Guardianship Act 1968 have been seen as interlocked to some extent. In *C v M* [1997] NZFLR 113, Judge Inglis QC points out that S12(1A) of the Guardianship Act provides that in any proceedings for a Protection Order under the Domestic Violence Act ‘*a Family Court may make such interim order or order with respect to the custody of or access to any child of the applicant’s family, or such interim order or orders varying any custody order or access order relating to such child as the Court considers necessary to protect the welfare of the*

² Davison, 1994.

³ Bowker, Arbitall and McFerron, 1988.

⁴ Davison, 1994 p. 43.

⁵ Straus and Alda, 1994; Australian and NZ Association of Children’s Contact Services, 1996.

⁶ For a review of the literature, see Busch and Robertson, 1994.

child. Judge Inglis states that ‘While S16B [of the Guardianship Act] has no direct application in such a case, it would undoubtedly be appropriate to have regard to the principles set out in S16B(4)’.

The Department for Courts has developed pamphlets which explain the legislation to clients of the Family Court. In relation to access arrangements, the information pamphlet sent to respondents with a Protection Order states “you cannot have contact with children covered by the Protection Order while the non-contact conditions are in place UNLESS the Court says otherwise”; and, “when there is proven violence, the Court may not allow the violent person to have unsupervised access to children unless that person is shown to be safe.”

1.1 Background to research study

The Ministry of Justice, which administers the Guardianship Act and the Domestic Violence Act, required a research study which would:

1. Assess an important policy change in this area of family law
2. Provide early warning of intended and unintended consequences of this policy change, which potentially carries some risk
3. Monitor the impact of the decision that the violent party is to be responsible for any costs of supervised access
4. Underline the emphasis which government has placed on policies which increase the personal safety of children, young people, and women, and break inter-generational cycles of offending and victimisation
5. Fulfil the undertaking of the Minister of Justice that the requirement for the violent party to pay for supervised access would be assessed.

1.2 Research objectives

The overall aim of the research is to assess the operation and impact of access decisions governed by the principles of the Guardianship Act 1968 and the Domestic Violence Act 1995. The specific objectives are:

1. To describe the operation of the supervised access amendments.
2. To assess whether the access provisions are fulfilling their objective of protecting children from violent parents when applications for access have been made.
3. To assess whether the operation and impact of the access provisions are promoting the welfare of the child.
4. To assess whether the operation and impact of the access provisions cause unintended consequences.

1.3 The report

As will be outlined in Chapter 2: Methodology and sample profiles, the study has been carried out in two stages. This report includes the findings and conclusions of both the first and second stage. The chapter following this introduction outlines the methodology used. Subsequent chapters cover the implementation of the provisions; the impacts of formal supervised access, informal supervised access, unsupervised access and no access; perceptions of the legislation and suggested improvements; and finally a summary of the findings and the conclusions of the study.

2 Methodology and sample profiles

The research was carried out in two stages. The first stage involved a file search and key informant interviews. The second stage included interviews with custodial and non-custodial parents, informal supervisors, as well as a follow up survey of the key informants who were interviewed in the first stage.

An Advisory Group was set up to provide advice on the proposal and other issues that arose during the course of the project. The group included a cultural adviser, representatives from the Department for Courts, the Family Violence Unit of the Department of Social Welfare, and the Ministry of Justice. Several in the group had considerable experience in working with survivors of domestic violence.

Qualitative and quantitative methods were used to collect and analyse the information. The reliability and validity of research is enhanced when information is gathered from different sources and by using different methods (triangulation). If diverse kinds of data lead to the same conclusions then more confidence can be placed in the validity of those conclusions.

Information was obtained from the Henderson, Otahuhu, Rotorua, Lower Hutt and Dunedin Family Court districts. These court districts were selected to represent as far as possible the range of responses to the legislation nationally. Selection criteria included geographical spread, ethnic mix, rural/urban mix and the extent to which the supervised access provision was being used at the time. (Indicative data was obtained from the Domestic Violence Database kept by the Department for Courts, in order to ascertain the extent of the use of the supervised access provision.)

2.1 First stage

Within each of the Family Court districts selected, information for the first stage was obtained from Family Court files and interviews with key informants.

Family Court files

Approval was sought from Department for Courts National Office and from each of the Court Managers to gain access to Family Court files. Files opened between 1 July 1996 and 30 June 1997 were searched and two types of files were included:

- Applications for Protection Orders where children were involved. (540 files, 309 of which included concurrent applications for custody)
- Applications for Custody or Access Orders where there were allegations of violence. (18 files).

In the larger courts, (Henderson and Otahuhu), a systematic sample of files was selected, based on every file for alternate months from July 1996 to June 1997. In the smaller courts, (Dunedin, Lower Hutt and Rotorua), all files were examined. A few files which could not be located during

searches on two separate occasions were not included. Table 1 gives the numbers of files examined for each court, out of a total of 558 files.

Table 1: Location of files studied

Family Court	Number of files
Henderson	103
Otahuhu	115
Rotorua	84
Lower Hutt	125
Dunedin	131

Data relating to the research objectives was transferred to data collection sheets and loaded into an excel spreadsheet. Frequency tables and cross tabulations were produced using the SAS package. The file search was completed in September 1997, so that all cases were followed up for periods ranging from two to fourteen months. The implications of a variable follow up period were explored in the analysis of the file data. Some of the key findings were tested by comparing cases opened during the first half year with cases opened during the full one year period.

Interviews with key informants

Family Court Co-ordinators assisted with compiling lists of key informants for the first stage. The researchers then asked these people whether they would participate in the project. An information sheet about the research was developed to assist potential participants.

A total of 53 interviews were undertaken in the five Family Court Districts. Table 2 gives the number of interviews with key informants.

Table 2: Key informant interviews

Key informants	Number
Family Court Judges	6
Family Court Co-ordinators	6
Providers of supervised access	7
Counsel for Child	5
Counsel for applicant	5
Counsel for respondent	5
Children, Young Persons and their Families Service ⁷	2
Māori and Pacific Peoples' family violence services	7
Providers of programmes for applicants and respondents	10

Interviews were semi-structured and were based on interview schedules developed from the research objectives. The data were analysed using qualitative techniques.

⁷ CYPFS became The Children, Young Persons and their Families Agency (CYPFA) in 1998.

2.2 Second stage

Within each of the Family Court districts selected, information for the second stage was obtained from interviews with custodial and non-custodial parents, informal supervisors and a follow-up survey with key informants.

Custodial and non-custodial parents

Between March and August 1998, face-to-face or phone interviews were conducted with custodial and non-custodial parents who were the recipients of Protection Orders. The process was piloted in Lower Hutt and the main study conducted in Henderson, Otahuhu, Rotorua and Dunedin. The interviews were semi-structured and analysed using qualitative and quantitative techniques.

We did not want participation in the research to precipitate further violence or abuse, and above all we wanted to avoid harm to the children who were the focus of this research. Because of these factors the researchers took particular care, given the vulnerability of the potential participants. For instance, protocols for the safety of the women and the children, as well as the researchers, were developed. The research team also considered carefully how many attempts would be made to contact women who had been granted Protection Orders. In addition potential participants were offered a choice of where and when the interview might take place, and whether it was face-to-face or over the phone. Before each interview, the participants were informed of the purpose of the research, how the information would be used, their rights to withdraw, and opportunities for asking questions were provided.⁸

Two methods of collecting the names of potential participants were used, as the pilot had revealed that one method alone would not provide sufficient numbers of custodial and non-custodial parents. One of the methods involved approaching the community organisations and supervised access providers, who we had interviewed during the first stage, to ask whether they would be willing to approach their clients on our behalf. Their clients consisted of parents using the supervised access centres, those who were attending programmes for respondents, or people who were attending programmes for applicants for Protection Orders. These organisations agreed to consider safety issues before they approached any of their clients on our behalf. A koha (donation) was given to these organisations to acknowledge the time they gave to this task.

Secondly we recorded the names of potential participants from Family Court files. The selection of clients from these files was based on the following criteria:

- the couple were not reconciled
- there were children under the age of 16
- the respondent was the father of the children
- the Protection Order was applied for between July 1997 and December 1997
- the Protection Order remained in force.

The use of such information for statistical or research purposes is in accordance with New Zealand's Privacy Act 1993. The Family Court Co-ordinators agreed to look through the names

⁸ A fuller discussion of the ethical and safety issues considered when conducting this research can be found in Knaggs, 1998, pp. 592-600.

of potential participants which we had compiled from the files. This check was designed to go some way toward ensuring that our approach would not be putting potential participants at risk.

When designing this second stage of the study we were aware that the ethical and safety issues inherent in this type of research meant that the methods we would usually employ to achieve a representative sample would not be possible. The sensitive nature of the research and the possible risks to those taking part meant that we made a trade-off between maintaining a safe process and achieving the highest possible response rate. The interview team encountered considerable difficulties in making contact with the majority of parents whose names we recorded from the Family Court files. An explanatory letter was sent out to parents inviting them to respond on an enclosed form, but no further contact was made with the majority of these. Significant numbers of parents did not have a phone, the phone had been disconnected, no phone contact was possible with those that did have a phone, or our letters were returned 'Gone – No Address'. Some parents also declined to be interviewed, and there were instances when interview appointments had been made and the parent was not at home when we called. In addition, we were unable to contact some of the parents who indicated to programme providers that they were willing to hear more about the research.

Because of a high level of mobility among people subject to Protection Orders, and the need to invite participation without increasing risk, it is probably true that women and children in the most dangerous situations have not taken part in this research. The people we interviewed therefore cannot be considered a representative sample of parents and children who are subject to Protection Orders. Some caution should therefore be exercised in generalising from this sample.

The source of the interviewees and the numbers are shown in the following table.

Table 3: How interviewed parents were contacted

Source	Number of parents	Percentage of parents
Family Court	47	55
Supervised access provider	22	27
Programme provider	12	16
Other	1	1
Total	82	

The majority of the interviewees (47) were located from Family Court files. A considerable number of names were also provided by supervised access providers (22) and programme providers (12).

Table 4: Number of parents interviewed in each district

District	Number of parents	Percentage of parents
Henderson	23	29
Dunedin	18	23
Lower Hutt	14	16
Rotorua	14	16
Otahuhu	13	15
Total	82	

All of the custodial parents we approached to participate had been granted Protection Orders. Although all of the non-custodial parents we invited to participate had had Protection Orders served against them, the number of interviews which eventuated with both of the parents who had previously been paired was very small. Most of the interviews were with either the custodial parent or the non-custodial parent, not both.

Forty five individual interviews were conducted with custodial parents and 37 interviews were conducted with non-custodial parents. The 82 parents represent 73 families. Apart from 18 parents who had previously been paired, the remainder of the parents we interviewed were not related to each other.

All of the custodial parents (45) were women and the non-custodial parents (37) were all men.

Table 5: Time between date of Protection Order and date of interview

Time	Number of families	Percentage of families
up to 6 months	15	21
6 to 12 months	37	51
more than 12 months	21	29
Total	73	

Interviewees who were contacted through Family Court files had had a Protection Order granted between July 1997 and December 1997. Those who were contacted through programme providers varied in the date that their Protection Order was granted.

Half of the interviews (37) were conducted within six to twelve months of the Protection Orders being granted. A considerable number of parents however (21) had had Protection Orders for longer than 12 months before the date of the interview. In some cases, non-violence and/or non-molestation orders were already in place when the Domestic Violence Act came into operation in July 1996.

- ***Children***

Most of the families included either one (35 families) or two (25 families) children. Nine families had three children, two had four and there was one family with six children. The following table shows the ages of the children.

Table 6: Ages of children of parents interviewed

Age of children	Number of children	Percentage of children
Babies (0 – 2 years)	26	25
Toddlers (3 – 5 years)	38	36
Children (6 – 10 years)	28	27
Teenagers (11 – 17 years)	13	12
Total	105	

Some of the advisory group for this project expressed strong preference that the children who were involved in domestic violence access arrangements should also be interviewed. The research team decided that the potential benefits to policy were not sufficient to warrant the intrusion into the lives of children who had been through considerable upheaval. The research team decided therefore to ask parents, rather than the children themselves, how they thought the legislation has impacted on their children. If it became necessary to seek information from the children themselves for any policy development to proceed once the second stage was complete, the researchers considered that this could be the focus of a small specialised study contracted to a group with the appropriate systems and processes in place to meet the children’s follow-up needs.⁹

- ***Cultural sensitivity***

We took two approaches to enhance the cultural sensitivity of the project for Māori and Pacific Peoples. Both groups are over-represented in the numbers applying for Protection Orders.

First, two contracted researchers provided advice on the appropriateness of the project in relation to Māori and Pacific Peoples, and were responsible for interviewing custodial and non-custodial parents from these ethnic groups.

Second, details about the ethnicity of custodial and non-custodial parents were recorded from the court files. Special ethical issues arise when conducting research with different ethnic groups. In recent years Māori and Pacific Peoples’ communities have indicated that many of their people feel more comfortable when they are interviewed by people from the same ethnic group, and in familiar environments. Because of issues like this potential participants from these groups were contacted and interviewed by the two contracted researchers. These researchers were involved with the project until completion to ensure that the interpretation of the data from these interviews was accurate and reflected in the conclusions and recommendations.

⁹ A fuller rationale for this decision can be found in Knaggs, 1998, pp. 592-600.

Table 7: Ethnicity of parents

Ethnicity	Number of parents	Percentage of parents
Pakeha/NZ European	48	59
NZ Māori	21	26
Samoan	3	4
Other European	3	4
Other	5	6
Not known	2	2
Total	82	

Most of the custodial and non-custodial parents identified themselves as Pakeha/New Zealand European. A little over a quarter of the parents were New Zealand Māori and three were Samoan. Those identified as ‘other’ included Chinese and Indian.

Table 8: Ethnicity of children

Ethnicity	Number of families	Percentage of families
Pakeha/NZ European	40	55
NZ Māori	25	34
Samoan	4	5
Other	4	5
Total	73	

Children in more than half of the families in the study were identified by their parents as Pakeha/New Zealand European. Children in more than one third of families were identified as New Zealand Māori. Children in the ‘other’ category included Chinese, Indian and Cook Island Māori.

Informal supervisors

The term ‘informal supervised access’ has been used to describe access arrangements in which members of the family or friends supervised the access between the non-custodial parent and the children.

When the interviews revealed that informal supervised access was taking place the researchers sought permission to interview the informal supervisors. These interviews were semi-structured and were based on interview schedules developed from the project’s objectives. The information from these interviews was analysed using qualitative techniques.

The interviews revealed that sixteen families (22%) were using informal supervised access after the Protection Order was made, and eight families (11%) were using informal supervised access at the time of interview. Of these eight, we were able to interview five people who were informally supervising access. The relationship of the informal supervisor to the custodial or non-custodial parent, and the number of interviews conducted, is shown below.

Table 9: Relationship of informal supervisors to parents

Relationship	Number of interviews
Friend of family	1
Custodial parent's mother	2
Non-custodial parent's mother	2

Key informants' follow-up survey

The key informants who were interviewed during the project's first stage were sent a short postal questionnaire so that they could contribute to updating the summary and conclusions from the first stage. The questions related to any changes the key informants had observed in the operation and impact of the supervised access provisions since the earlier interview.

The following table shows the groups the questionnaires were sent out to and how many were returned. One reminder was posted out. The questionnaire data was analysed using qualitative techniques.

Table 10: Key informants' responses to follow-up survey

Key informants	Surveys mailed	Surveys returned
Judges	6	5
Lawyers	13	5
Family Court Co-ordinators	6	5
Supervised access centres	6	5
Programme providers	13	8
Total	44	28

Findings from both the first and second stages of the research are presented in this report.

3 The implementation of the provisions for child access in the domestic violence legislation

The Domestic Violence Act 1995 and the amended Guardianship Act 1968 have required Family Courts to change the way in which they consider access to children in cases where violence is alleged and children are involved. This section of the report will examine how the court has made access decisions since the introduction of the legislation. The information is taken from a study of 558 cases opened over one year and from interviews and a follow-up study of key informants, including Family Court judges, Family Court Co-ordinators, counsel, supervised access providers and programme providers. The section concludes with information from interviews with 82 custodial and non-custodial parents about their experiences of the court process.¹⁰

3.1 Routes to decisions about access

When implementing the domestic violence legislation, there are two routes to court directions relating to access. One route begins with an application for a Protection Order. Children of an applicant are included as protected persons under a Protection Order and are subject to the non-contact conditions of the order. The court may, when considering the safety of the children, impose further special conditions which stipulate that the respondent may or may not have access to the children and the conditions under which access may occur. In the file study, 16 per cent of Protection Orders made had special conditions of this nature.

The second route to court directions for supervised access begins with an application for a Custody Order (which, in cases involving violence, is usually accompanied by a Protection Order application). Although formal applications for access are rare, access issues can be considered as the custody case proceeds. Orders may be made for access, no access or supervised access in conjunction with Custody Orders. In the file study, of all the custody orders made, 59 per cent included access orders of this nature.

In cases where violence has been alleged, the legislation guides the court to consider access decisions in several stages. First, the applicant seeks protection and/or custody of the children. Secondly, the court establishes whether violence has occurred. Thirdly, the court establishes the level of risk during access. And last, if the court makes directions for supervised access, the court establishes the suitability of the supervisor.

(i) The applicant seeks protection and/or custody

The process of seeking protection commonly begins with an application for a Protection Order, usually made once the applicant has consulted a solicitor. When an applicant for a Protection Order has children, the applicant may apply simultaneously for custody of the

¹⁰ For further profiles of these samples, see Chapter 2 :Methodology and sample profiles.

children. In a few cases involving violence, a parent may apply for a Custody Order alone (three per cent of cases in the file study).

At this stage in the court process, the court depends on the information included in the initial affidavit concerning the well being of the children involved. When they were asked in 1997 and again in the follow-up survey in 1998, some of the judges were concerned about a lack of information relating to the safety of the children at the application stage. While most of the affidavits examined in the file study referred to the children having been present during, or having witnessed violence or abuse, relatively few affidavits (24 per cent of all cases) referred to other concerns for the safety of the children. Where other factors relating to harm to the children were mentioned, the most common factors were that the respondent:

- had been violent toward the child
- had abducted the child, or there was a risk that the respondent would abduct the child
- had sexually abused a child
- had psychologically abused the child
- had drug or alcohol problems or a mental illness
- had neglected the child.

Further information about allegations of harm arising out of the interviews with parents will be given in Section 3.4: Allegations of harm.

A number of counsel and providers of programmes for applicants were concerned that some applicants sought to withdraw their application or have their Protection Order discharged when they understood the full implications of the Order for their children. They described cases in which respondents would use a threat of abandoning access altogether as a means of pressuring applicants to withdraw their application. It was thought that applicants would feel responsible for severing their children's relationship with the respondent, or need occasional relief care, and would see the withdrawal of the application as the only means of resolving these issues. Those who counselled applicants were concerned that women would relinquish the legal protection for themselves provided by the Protection Order in order to meet their own or their children's needs for access to continue. The impact on custodial parents of restrictions on access is described later in the report in Chapter 7: The impacts of no access and Section 8.1: Parents' understanding of the legislation.

In practice, 22 per cent of applicants in the file study sought withdrawal of the application or discharge of the Protection Order. Withdrawal or discharge could be sought for a number of reasons, including reconciliation, and it was not clear from the files whether the restrictions on access were a factor. In the Auckland region, to assess an application to withdraw or discharge a Protection Order, the courts sought further information about the safety of the children, usually from a Counsel for the Child, and held a hearing.

(ii) Establishing whether violence has occurred

Again, the court relied on the initial affidavit when considering applications for Protection Orders, particularly when applications were made without notice. A high proportion of the orders applied for were granted. The file study revealed that 92 per cent of Protection Order applicants were granted a Temporary Protection Order and 82 per cent of applicants for custody were granted an Interim Custody Order.

Few respondents defended the orders. In only 22 per cent of all cases respondents gave notice of their intention to defend the order. Similarly, relatively few (23 per cent) applications for Protection Orders were heard in court¹¹. A high proportion of cases were decided and orders made final on the papers alone.

(iii) Establishing the level of risk during access

Judges used the list of factors in Section 16B(5) to establish the level of risk during access. Again, unless the court actively sought reports, there was frequently little information from which to make this assessment. Only 35 per cent of applicants outlined their wishes in relation to access in their affidavits. To seek further information in relation to the well being of the children involved, the court:

- held a hearing (37 per cent of custody applications)
- referred the parties to (separate) counselling (23 per cent of custody applications)
- appointed Counsel for the Child (13 per cent)
- considered a Memorandum of Consent (12 per cent)
- sought a further affidavit (seven per cent)
- sought reports from the Children, Young Persons and their Families Service¹² (CYPFS) (five per cent)
- appointed Counsel to Assist (two per cent)
- sought reports from psychologists (two per cent)
- held a mediation conference (two per cent).

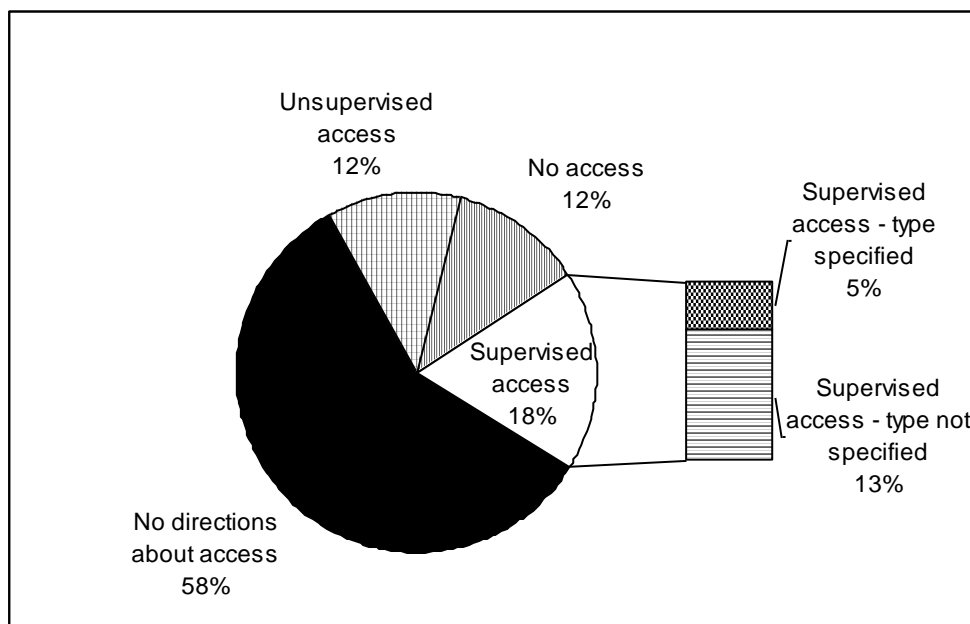
There are also risks related to delays in making orders, so the available information or information that was speedily obtainable tended to be preferred. Key informants stated there were often delays in obtaining psychologists' reports and that referrals to CYPFS were given low priority by that service. Although judges preferred to refer to psychologists and social workers to assess the risk to children, few of the cases studied had reports from these sources (five per cent of the cases had CYPFS reports and two per cent had psychologists' reports). Some key informants thought that the Family Court should also have available to it the criminal histories of the respondents to assist its assessment.

The following chart gives the decisions made by the court about access. The 'pie' represents the sample of cases in the study, which came before the Family Court over a one year period, and in which there were allegations of violence and the respondent's children were involved.

¹¹ The term 'hearing' has been interpreted loosely in this report largely because it is difficult to distinguish between different types of hearing from court files. A hearing was defined as any meeting within the court between the judge, the applicant and/or respondent and/or their legal representatives and includes pre-trial conferences, defended hearings and formal proof hearings.

¹² CYPFS became The Children, Young Persons and their Families Agency (CYPFA) in 1998.

Figure 1: Directions about access in cases of domestic violence involving children



The file study found that only 42 per cent of the orders made (in which access was likely to be an issue) contained directions from the court in relation to access: 18 per cent contained directions for supervised access; 12 per cent contained directions for access (presumably unsupervised); and access was denied in 12 per cent of cases. In 58 per cent of cases there were no directions about access.

In their responses to the 1998 follow-up survey, key informants stated that the absence of directions in a substantial proportion of cases reflected a lack of information upon which to base a decision regarding the level of risk to the children involved. The follow-up survey also indicated that in some districts, there may have been a moderate increase in orders which contained directions about access.

(iv) Establishing the suitability of supervision

Supervised access was ordered in only 18 per cent of all cases in the file study in which access was likely to be an issue. Cases in the file study were dealt with by the Family Court in 1997. Some key informants believed that by 1998 there may have been an increase in the ordering of supervised access.

Although the type and appropriateness of supervision may have been discussed orally during a hearing, in the file study the type of supervision ordered was documented in only 24 of the 86 cases in which directions were made for supervised access. In 14 cases the court approved supervision by family and in eight cases the court approved supervision at an established centre¹³. In cases in which the type of supervision was specified, the court sought information about the suitability of the supervision from counsel, a Counsel for Child, a counsellor, or through an affidavit.

¹³ In two cases the court ordered supervision elsewhere.

The fact that the type of supervision was not recorded in most of the cases in which supervised access was ordered would suggest that the court had little information with which to assess the proposed supervision.

Key informants when asked in 1997, and again in 1998, stated this task would ideally be carried out by social workers, but the services of CYPFS were not seen as accessible by the Family Court for this purpose. Key informants also expressed concerns about a lack of assessment and monitoring of the supervision carried out by family members, and a need for standards and protocols to be in place for formalised centres for supervised access.

3.2 Types of access

Information on court files gave little information on the types of access arrangements that were made subsequent to the granting of a Protection Order. This information was obtained from the interviews with 82 custodial and non-custodial parents, representing a total of 73 families.

Access directions with the Protection Order and/or Custody Order

Participants were asked whether, at the time the Protection Order was made, they could recall whether their Protection Order and/or Custody Order had included any directions relating to the children's access with the non-custodial parent. The parents' recollections were confirmed with information on the Protection Orders or Custody Orders where possible. The following table gives the number of families with directions for access at the time the Protection Order was made. As cases proceeded directions could change or new directions could be made.

Table 11: Access directions with Protection Order and/or Custody Order

Directions	Number of families	Percentage of families
No access directions	25	34
Don't know	25	34
No access	10	14
Supervised access	10	14
Access (presumably unsupervised)	3	4
Total	73	100

Approximately one third of the parents interviewed were not clear whether their Protection Order or Custody Order had included any specific directions about access when the order was first granted. This may indicate that a significant number of parents were not aware whether the respondent's access to the children had been restricted in any way by the legislation.

Types of access arrangements over time

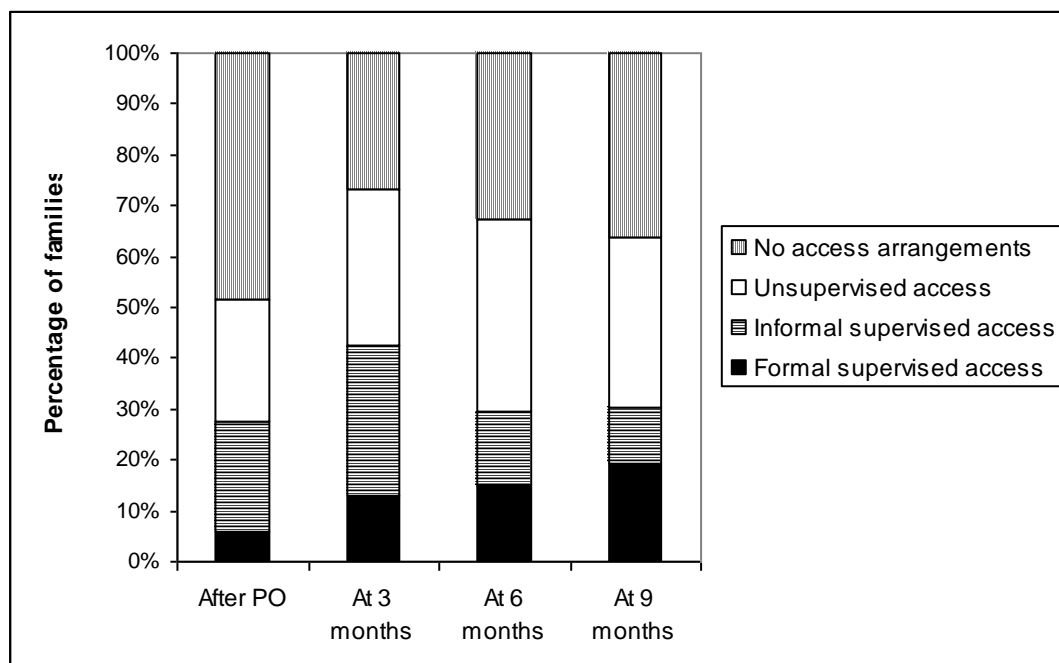
Parents were asked about any access arrangements that had been made from the time immediately after the Protection Order until the time of the interview. Table 12 shows the range of access arrangements described by the parents who were interviewed. Each type of access arrangement, the safety of each arrangement, and the other impacts of each arrangement will be described fully in later sections.

Table 12: Types of access arrangements described by parents

Formal supervised access	Centre based supervision
	Individual supervision
Informal supervised access	Supervision by non-custodial parent family
	Supervision by custodial parent family/friend
	Supervision by custodial parent
Unsupervised access	Supervised changeover with unsupervised access
	Unsupervised changeover and with unsupervised access
No access arrangements	

Most parents described several changes in access arrangements since the Protection Order had been made. The following chart shows the percentage of families who used each type of access immediately after the Protection Order was made, and three months, six months and nine months after the Protection Order¹⁴.

Figure 2: Types of access arrangements over time



¹⁴ Because the time period between the date of the Protection Order and the date of the interview varied for each family, the number of families remaining at each period reduced. After PO N=72; at three months N=62; at six months N=55; at nine months N=36.

The chart shows that almost half of the 73 families had no access arrangements immediately after the Protection Order. More than one quarter (21) of the families made supervised access arrangements at this stage (either formally or informally supervised), while almost one quarter of the families had unsupervised access arrangements.

Three months after the Protection Order was granted, there was a marked drop in the proportion of families with no access arrangements and an increase in use of formal and informal supervised access. The use of formal supervised access gradually increased to 19 per cent of families by nine months after the Protection Order. Only three families had no access arrangements for the entire period.

The use of informal supervision arrangements declined over the same period to 11 per cent of families at nine months. The proportion of families with no access arrangements gradually increased after the initial decrease at three months, to 36 per cent at nine months.

The use of unsupervised access fluctuated between 24 and 38 per cent of families over the nine month period.

Types of access and ethnicity

The following table shows the number of families reporting each type of access arrangement by the ethnicity of the children in the family at six months after the Protection Order.

Table 13: Type of access at six months by ethnicity of children

	NZ European	Māori	Other	Total
No access arrangements	6	8	4	18
Formal supervised access	7	0	1	8
Informal supervised access	5	2	1	8
Unsupervised access	9	11	1	21
Total	27	21	7	55

The table shows that, in our sample, at the six month period, families with Māori children were less likely than families with NZ European children to have supervised access arrangements, either formal or informal (10 per cent of families with Māori children and 44 per cent of families with NZ European children), and somewhat more likely to have unsupervised access arrangements at the time of interview (52 per cent of families with Māori children and 33 per cent of families with NZ European children). Families with Māori children were also slightly more likely to have no access arrangements. This pattern of ethnic difference is similar immediately after the Protection Order and at the three and nine month intervals. The numbers of families with children of 'other' ethnicity are too small to be able to make comparisons.

Response to directions¹⁵ for access

The following table compares the access directions of the Court with the types of access that actually occurred immediately after the Protection Order.

Table 14: Access directions by types of access after the Protection Order

		Types of access after Protection Order			
		Formal supervised access	Informal supervised access	No arrangements made for access	Unsupervised access
Access directions with Protection Order / Custody Order	No directions / don't know	4	9	23	13
	No access	0	2	7	1
	Supervised access	0	5	4	1
	Access (presumably unsupervised)	0	0	1	2

The table indicates that non-compliance with the court's directions is evident, but not widespread. More than two thirds of families stated either that there were no directions for access, or they didn't know about any access directions at the time the Protection Order was made. Of this group, about a quarter made unsupervised access arrangements, about a quarter made supervised access arrangements, while almost one half had no access immediately. Of those families who had directions for no access, most made no access arrangements, although two families made informal supervision arrangements and one family made unsupervised access arrangements. Of those who had directions for supervised access, half made informal supervision arrangements and almost one half had no access. One family made unsupervised arrangements.

3.3 Parents' experience of access decisions

Parents' experience of the process of arriving at a decision about access was covered in interviews with a sample of 82 custodial and non-custodial parents, representing 73 families. The responses represent their recollections at the time of interview, which took place at periods ranging from two months to two years after the Protection Order was made.

¹⁵ Directions for access were made by the Family Court either as a special condition on a Protection Order or as an Access Order accompanying a Custody Order.

Custodial Parents' experience of the process

Custodial parents had experienced a variety of methods to arrive at decisions about access. For most of the custodial parents the process of deciding access was often complex and in some instances very lengthy. Counsel for Child was appointed frequently and counselling reports, mediation conferences, psychologists' reports, six monthly reviews of access arrangements, and custodial and non-custodial parents seeking to change access arrangements were often part of the process of deciding on access.

The following comment is typical.

I have my lawyer, and he's got his, and the court gave us a child's lawyer, a lawyer that supposedly acts for the children, and she was in the middle of it really and we had to meet. We had to arrange it through her, and she put to the court about going to access centres for him because it has to be supervised. So that was arranged. Then there was the psychological report, which he's just had, he's got to have access centre for another six months, until another review is made on him. It's very messy. (NZE)¹⁶

When asked was it easy or difficult to get an agreement about access, custodial parents replied:

I said through my lawyer to [ex-partner]... I want it to go to court. I want someone else to decide what should happen with [my child] ... and then they could determine how they wanted it to go on... [Ex-partner] did suggest that [a family member] was with him when he had [child]... but she's a bit like me, very submissive, so that wasn't going to work. [Ex-partner] did come back with a counter offer saying what if he paid a babysitter .. to stay with him while he visited [child]. (M)

It wasn't easy at first but I think I just got sick of going to the lawyer all the time. I was in the lawyers at least once a week. I was sick of conflict. Him saying things about me and me saying things about him. I was just sick of it. That's when I thought that adults shouldn't be fighting like kids. (NZE)

[The court said] 'no access until they go through counselling' and the government is paying for it and that is another \$1600 cost for us to get counselled into changing the [children's] minds to go and see their dad. (M)

I said to my lawyer that I need [a decision] you know, immediately and she makes me understand that it doesn't go that way. She has to write to the court and then we wait for his lawyer and wait for the court to send us a notice to give us a date for the hearing. I only attend the court once. I wasn't scared because the lady told me everything that I should do and shouldn't do. His lawyer and my lawyer were discussing things applicable to the access in front of me because he doesn't agree with me... They agree and he finally agree. (PP)

In some cases there had been little or no involvement of courts or lawyers, and the parents had agreed between themselves about access arrangements. This occurred mostly in situations where there were no directions for access, or parents were not aware of any

¹⁶

In order to ensure that the ethnic backgrounds of the parents who were interviewed are visible, ethnicity is recorded at the conclusion of each quotation. (NZE) denotes New Zealand European; (M) denotes Māori; (PP) denotes Pacific Person; and (O) denotes other ethnicity.

directions. However, as outlined in the Section 3.2: Responses to directions for access, four families made access arrangements in contravention of the directions made. This comment is typical of cases which were decided informally.

I have not gone through the Family Court, my [ex]-partner and I have worked it out between us. (M)

I told him that I had a Custody Order, a 'no trespass' Order and a Protection Order and that if he was at all violent there was no way I would put up with it and [access] would end. I indicated all the rules and he just accepted them. (M)

In one case where the children were visiting their non-custodial parent, the custodial parent acknowledged that her lawyer did not know about these access arrangements. Another custodial parent said she and the non-custodial parent had made the initial access decision themselves and then gone to a lawyer to formalise the agreement. This is how the custodial parent described the process.

Well, we chose to do it that way because our lawyers were butting heads a bit and we decided that rather than go through the rigmarole of having them argue it about, we'd just sort out what we wanted and just go to both of our lawyers and just tell them the same thing so that there was no argument. (NZE)

One custodial parent said *I made my own access arrangements. Like I said I had nobody to help me through this and I had these orders but didn't actually know what they were all about, and was going blind, if you like. We ended up at a counsellors to talk about access and that sort of thing' (NZE)*

Non-Custodial Parents' experience of the process

Like the custodial parents, non-custodial parents frequently described how they had decided on access arrangements between themselves without the involvement of lawyers.

This non-custodial parent explained why lawyers had not been involved. He said *'The lawyers seem to want to drag it out and so does the court and the only people that do win are basically the lawyers. It (the access arrangement) is just between the two of us'. (NZE)*

Other non-custodial parents said *'We've actually sorted out more access amongst ourselves than what the court has done.' (M)*

It was just arranged between my ex partner and myself that we weren't going to quarrel over the children, and they can come and go whenever they feel like it. (M)

A number had agreed on access between themselves, but that this had been at the instigation of the Family Court. One non-custodial parent said:

[The judge] said that we'd have to sort it out between ourselves, talk to each other. She wasn't talking to me at all. We had to sort it out and arrange something decent for the children. Never mind about us, how we felt. And we done that and that was going good. (M)

On the other hand, some non-custodial parents acknowledged that the two parties would not be able to agree to any access arrangements without the help of the courts. One parent said

'Obviously there's no hope of me and my ex-partner having an amicable agreement on this, so it's going to have to be done through the courts.' (NZE)

Another who felt the same way said *'I'm pretty sure that it will be impossible to find a friendly arrangement, so I would certainly have to go back to court to do that. I would be surprised if it could be arranged without going back to court.'* (O)

Generally, non-custodial parents agreed to a particular access arrangement, because they saw it as a stepping stone to more frequent, or unsupervised, visits with their children. These comments were typical of non-custodial parents who felt this way.

She wasn't prepared to let me have unsupervised, free access. It had to be supervised so I thought well at least I'm seeing my children. (NZE)

I don't want to keep having supervised access and I'm hopeful for a hearing about this before Christmas. (M)

There was no access, then it changed from no access to supervised access and the kids missed me and they had to open up the access... We had to go to court again and the judge made access available for me... I had to get a lawyer for my kids... so my children know their rights. (M)

Others indicated that a deal had been made in regard to access to the children. One non-custodial parent said *'I will agree to you [custodial parent] to have the child on the condition that I get 50 per cent access and she's agreed to that and that's the best I can do.'* (NZE)

The considerable amount of time that the process of arranging access had taken was a concern to some non-custodial parents. These two comments are typical of those who had mentioned this.

Now I don't know if that means there's going to be another hearing, so there'll be another delay, and then if there's any objections raised then, there'll be another hearing, and another delay. It takes at least two weeks to arrange supervised access once access is granted, so I mean I could be looking at anything between now and Christmas before I see my daughter. (NZE)

Twenty months later I finally managed to get a formal agreement to access my child. It has been made after hearings and hearings and delays and reports. (O)

Some non-custodial parents believed they did not have any control over the process and they frequently described how they thought the whole procedure was unfair or unnecessary.

We hadn't communicated with one another for .. weeks and when we got to court by the time we had left that court house you hated one another without even uttering a word to one another because the system makes you hate one another. I was not allowed to go near the mother, talk to her or my children... I was not allowed to try some sort of compromising approach. (M)

I think that if they would have let her withdraw the Protection Order and just let us forget about it, we would probably still be a family. (O)

I'm supposed to be given the time to defend it and they haven't given me that time. It seems that the Family Court doesn't operate on laws, they just make up their own rules to suit. (NZE)

I had to go to the Family Court to put both stories on the table to reach a compromise. I was absolutely sure it was not necessary. (PP)

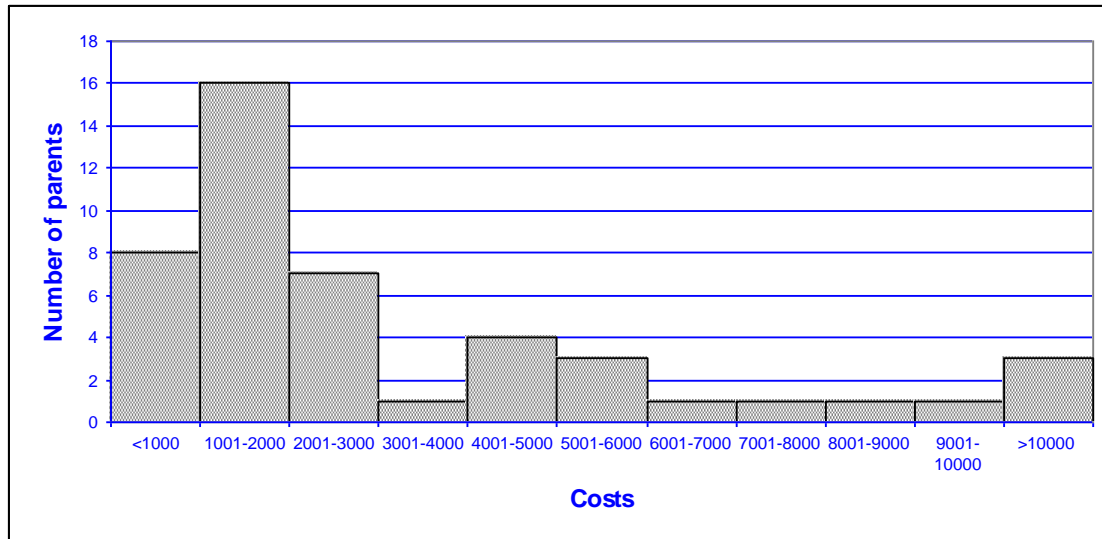
Another non-custodial parent however had decided that he would not seek access to his children. He said *'Well at that point in time in reading the papers that were served.. I found that at that time the kids mightn't want to see me again. So I sort of said to myself, oh well if you're not wanted you may as well just carry on with your life and let them get on with their lives.'* (M)

Legal costs

There are specific provisions in the Legal Services Act 1991 which apply to the granting of civil legal aid in relation to applications made under the Domestic Violence Act 1995. In these cases applicants are exempt from any requirement to pay a contribution towards the cost of legal aid. Where applications made under both the Domestic Violence Act 1995 and other legislation (for example, for custody and/or access under the Guardianship Act 1968), then any requirement to pay a contribution, both an initial \$50 and any means tested further contribution, is applied on a pro-rata basis, to allow a partial exemption. New charging instructions which take effect on 1 May 1999 make it clear that charges should be considered for most civil legal aid grants except in a number of cases, one of these being Domestic Violence Act applications. The statutory exemption only exists for those who are plaintiffs in domestic violence proceedings. Contributions and charges may be required of a person who applies for legal aid to defend proceedings under the Domestic Violence Act 1995.

Parents were asked about their legal expenses in relation to access applications. It was not possible for parents to separate expenses relating to access from expenses relating to other aspects of the Protection Order application, or separation. In most cases, access decisions were believed to be the most costly component of parents' legal costs. Forty six parents, including those who had received legal aid, knew the amount of their costs in relation to the Protection Order, separation, and custody and access decisions. The chart below shows the reported legal costs of these parents.

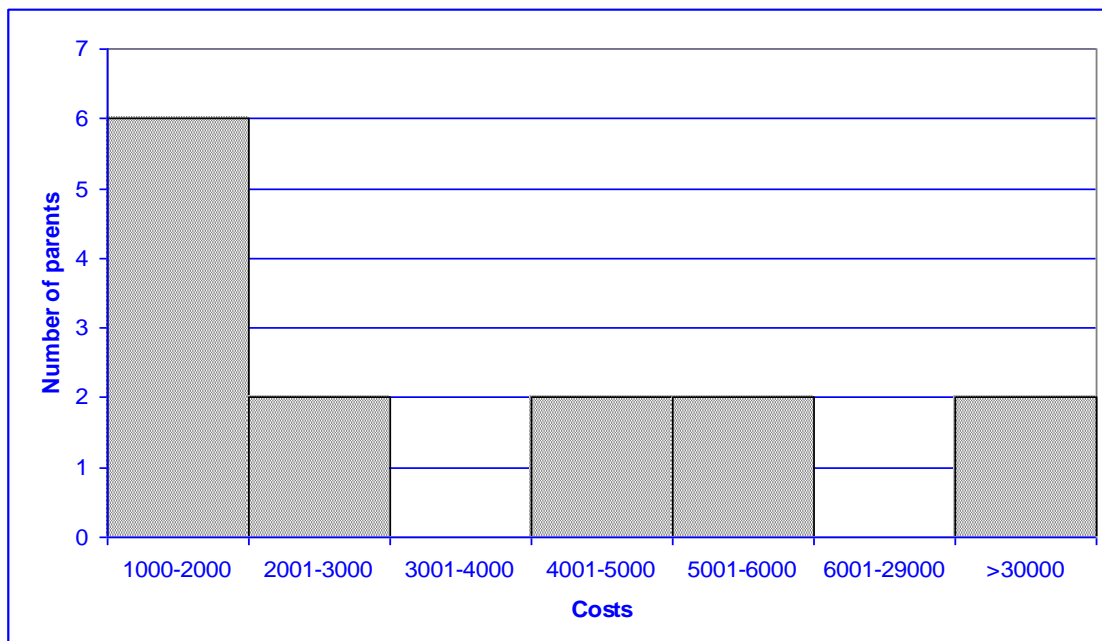
Figure 3: Legal costs



The average legal cost incurred was \$6186. The lowest cost was \$375 and \$35,000 was the most that any parent had spent. Three parents had incurred legal expenses of more than \$10,000.

The majority (65 per cent) of the parents that we interviewed had been granted legal aid. Fifteen per cent of custodial parents and 61 per cent of non-custodial parents did not receive legal aid. The following chart gives the legal costs of the parents who had not received legal aid.

Figure 4: Legal costs for parents who did not receive legal aid



The average legal cost for parents who had not received legal aid was \$8382 and the range of costs was \$1,000 to \$35,000.

Custodial parents' comments on costs

Custodial parents generally indicated that they had been greatly assisted by legal aid, as these two comments show.

It's very lucky that I was eligible for legal aid. I don't think I would have stood a chance otherwise.....I'm aware that maybe I'll end up paying something back but it's well worth it for her safety and my sanity. (O)

Costs have been nothing as I am a beneficiary under legal aid. It has been really really good – I don't have to hesitate when I need to talk to my lawyer or get anything done. It's just all taken care of. (NZE)

Some custodial parents however were concerned that their legal costs, in spite of legal aid, had been considerable and were likely to keep rising. One mother said *'It's like he can just like, for instance, take it in his mind to drive past my house you know, wave out to the kids playing in the driveway. I then have to ring up my solicitor and say he's just driven past my house you know. Bang there's another x amount of dollars right, to write to his solicitor and say he's driven past her house at such and such a time, don't do it again. It costs my money, just because he got it in his mind that he could drive past my house and have a nosey, you know'. (NZE)*

One custodial parent said her legal costs had been *'\$2600 or something like but. But I had to obtain lawyers in between time, because the first lawyer wasn't very helpful at all. He took a fair chunk of the money left and I've got about \$900 left.'* (M)

Another expressed surprise at the amount of her legal bill and said *'when I got the bill I just thought oh god, and she had really not done anything for me really. (M)*

Others mentioned that caveats had been placed on their houses. While it was generally accepted that some money would have to be repaid one custodial parent commented *'A caveat thing has been put on my property which I think sucks.... Because when you defend what you think is right and you win the court case at the end of the day, I think that it shouldn't cost you anything.'* (NZE)

Non-custodial parents' comments on costs

Some of the non-custodial parents were concerned about their considerable legal costs. While for some this was covered by legal aid one parent commented *'I stopped my last application because I spent about four and a half thousand dollars and got absolutely nowhere. This time I'm doing it without a lawyer. I can't afford to.'* (NZE)

Several non-custodial parents believed that it was unfair that their ex-partners were receiving legal aid. One of these said *'It's going to work out pretty costly. My lawyer looked through the files and said I'm basically fighting an unlimited budget because she's on legal aid and it doesn't cost her more than the \$50.00 each time.'* (O)

3.4 Allegations of harm

Under the legislation, decisions about access would ideally be based on an assessment of the children's safety and well-being. The previous sections indicate that this was not always the case. Physical or emotional harm to children prior to the granting of a Protection Order are listed as important factors to be considered in Section 16B(5) of the Guardianship Act.

Both custodial and non-custodial parents were asked whether, during the Protection Order process or during access discussions, any allegations had been made about the children being harmed. The parents were also asked what specifically these allegations were.

Forty nine percent of parents stated there had been allegations of harm to the children prior to the Protection Order. Forty per cent of parents stated there were no allegations of harm.

Custodial parents' comments on allegations of harm

A majority of custodial parents reported that their children had been unsafe prior to their application for a Protection Order. A considerable number of the allegations related to their ex-partner's violent physical behaviour both to themselves and to their children. Several custodial parents described instances of direct abuse of the children by the non-custodial parent.

He was doing things like from the time she was two weeks old, hitting the cot, screaming at her. He threw her at me once. (O)

He started hitting her really hard or screaming at her and damaging things like her toys in front of her. (O)

...(my son) went on and talked about how his dad had broken a broom on his back. He had had bruises on him but I had thought that was him playing. I had been unaware of what had been happening. (M)

She was on the bar stool and he slapped her across the face so hard that she fell off. (NZE)

Other custodial parents said that their children had not been directly involved in the physical violence and their concerns were more for the children's emotional wellbeing. This is how two of the custodial parents described this.

He hadn't really harmed them a lot, as in like physically he'd done a couple of things, but it was more the mental. You know the kids came home and said one day that they'd been noisy while he was trying to watch TV and he'd made them go and stand outside in the rain and things like that. He was taking (daughter's) pocket money off her for gambling and making her pay for dinner, like fish and chips, and sort of saying to her well it's only fair that we all pay the bill. (NZE)

There was an occasion when he gave me a hard time....picking up my son's bike to put it in the car, and then like raising the bike up over his head, and saying what the f... are you going to do about [it]? You know giving me a hard time in front of [son]. That to me is harming my son. (NZE)

He threw me down the stairs, punched me and strangled me..he ran after us and he was saying to the girls oh don't take any notice of that....It's just very confusing for the kids to see that violence. (M)

Other concerns expressed by the custodial parents related to the non-custodial partner's use of drugs and alcohol or mental illness. For instance, two custodial parents said

My ex-husband is actually a manic depressive as well as having a drink and drug problem. So I wanted sole custody because he's not really capable of making decisions for the children. (NZE)

One time they were left on their own all night, he was flaked out on the lounge floor. The stereo was blasting apparently. (Older daughter) told me that (younger daughter) cried half the night. To me that's just not on. (NZE)

Several of the custodial parents described their doubts about their ex-partner's ability to care for the children. Two custodial parents said:

The psychologist did her report and she said that [ex-partner] was not a good person to be around [child] by himself... He was neglectful. (M)

Then it was whether [ex-partner] could be able to cope with [son], 'cos I've seen him, he used to get bored playing with him after ten minutes. He used to say oh here have him back, or what do I do, you know. (NZE)

Some of the custodial parents believed that their ex-partner would not hurt their children. They felt that the conflicts related to difficulties in the adult's relationship, and was unlikely to result in any of the children being harmed.

Non-custodial parents' comments on allegations of harm

Some non-custodial parents said that there were never any allegations about them harming their children and that this had never been an issue between them and their ex-partner.

Others however described what these allegations were. These comments are typical of those that were made.

She accused me of rape, of molesting the children, and violence and abuse. That's the thing that I have a problem with. I'm having to prove it's not true. (NZE)

She said I had picked up my daughter and thrown her against the fence. She had a bruise on one of her arms. It was probably from school because I never touched her and they used that as that I had picked her up and thrown her against the fence. (M)

I can't remember exactly but something in her affidavit was saying that I'm suicidal, I'm going to kill my children. (NZE)

She accused me of a lot of things, quite heavy type of accusations and she said that.....eventually I would have left the country with my daughter. (O)

If I was drunk I would go and pick them up and I could kidnap them. I wouldn't know what I'd do, you know. Like when I was drunk I would do anything. I wouldn't know what the hell I'd do.

Key points: The implementation of the provisions for child access in the domestic violence legislation

- The Family Court makes access directions as special conditions of Protection Orders or Access Orders in conjunction with Custody Orders
- Although most affidavits referred to children being present during violence or abuse, only approximately a quarter of affidavits made further reference to the safety of the children
- The court sought or received further information in relation to the children in relatively small proportions of custody cases in which there were allegations of violence (37% of cases had hearings; 23% were referred to counselling; 13% had Counsel for the Child; 12% were resolved by Memorandum of Consent)
- 58 per cent of cases in which there were allegations of violence and children were involved contained no directions for access. 18 per cent of cases had directions for supervised access; 12 per cent had directions for access (presumably unsupervised); and 12 per cent had directions for no access. In only five per cent of cases was the type of supervision specified. The lack of directions reflects a lack of information available to the court to assess risk to children
- Parents found the court processes complex, costly, and lengthy and a substantial group made access decisions informally
- Approximately half of parents interviewed stated that there were allegations that non-custodial parents had harmed or neglected children before the Protection Order was granted. In a substantial minority of cases non-custodial parents were said to be safe with children
- Immediately after the Protection Order approximately one quarter of families made unsupervised access arrangements; one quarter of families made supervised access arrangements (both formal and informal); and one half of families made no access arrangements
- Up to nine months after a Protection Order the proportion of families using formal supervised access increased (from 6% to 19%) and the proportion of families using informal supervised access decreased (from 22% to 11%).
- Families with Māori children were less likely to use supervised access
- Non-compliance with directions of the court was evident but not widespread.

4 The impacts of formal supervised access

4.1 The service provided by supervised access centres

Seven providers of supervised access services were interviewed in the five districts covered by the research. They gave information on aspects of their service, including referral, intake, the structure of the service, and funding.

Referral

Initial enquiries to a supervised access centre came from a range of sources, including either the custodial or non-custodial parent, the counsel involved with either parent, or Counsel for the Child. Parents could come to the centre as a result of a court order, before or after court proceedings, after counselling, or as a result of a voluntary agreement made between the parties.

Intake

The usual intake process involved separate interviews with the non-custodial and custodial parents, interviews with the children, and a familiarisation visit to the centre. Some centres would also make contact with both counsel for the applicant and respondent, and with the Counsel for the Child if one was in place. At the intake interview, some centres asked the non-custodial parent to explain why access was being supervised, and to tell centre staff of any court orders in place, in order to ensure that the non-custodial parent acknowledged their abuse.

The intake interview was also the opportunity to explain the centre's contract and to seek compliance with the rules it contained. The contracts generally contained clauses relating to the primacy of the safety of the children; types of behaviour that would not be acceptable within the sessions; policies relating to gifts, physical contact, alcohol and drugs, photographs, visits by other family members; and the conditions under which access would be terminated. Policies for the recording of information about the visit, and conditions under which this would be provided to counsel or the court would also be spelt out in the contract.

Structure of the sessions

Timing: sessions ranged from one two hour session a fortnight to four two hour sessions a week. One centre held a session incorporating an evening meal. Another centre provided individual supervision outside of the centre at any time.

Arrivals/departures: all centres staggered arrivals and departures, so that the children arrived 15 minutes before and left 15 minutes after the non-custodial parent.

Length of supervised access period: the length of time during which access was supervised for any one respondent ranged from three months to two years.

Staff ratios: staff ratios ranged from one-to-one, to one supervisor to three parents.

Age range: some centres stipulated an age range, such as four to eight years, and others considered age on a case by case basis. One centre had children ranging from 15 months to 17 years.

Caseloads: caseloads at the time of interview ranged from one family to 21 families.

Funding

At the time of interview in 1997, none of the centres received government funding for their supervised access services. By the follow-up survey in 1998 some centres were receiving a small amount of funding from the Community Funding Agency.¹⁷ All centres either charged a fee or suggested a donation. In most cases these were graded at \$10 per session for Community Services Card holders, or beneficiaries, and \$20 per session for others. Most centres found it difficult to obtain this money from the non-custodial parent, and at least one centre would reluctantly terminate the service to a family if payment was not made. All centres stated they were subsidising the service from elsewhere in the organisation, or from fundraising. The centres saw funding as a major issue to be resolved with government, particularly as benevolence could not be maintained in the face of expanding demand for the services.

Relationships with courts

In the follow-up survey in 1998, supervised access providers reported that the Family Court was developing a protocol with service providers and in some areas regular meetings were taking place between the centres and the local Family Court Co-ordinators.

4.2 Parents' use of formal supervised access

The parents interviewed who had experienced formal supervised access described regular sessions at a formal supervised access centre. For one family access was supervised in the non-custodial parent's home by a professional supervisor from a local service. In this case the custodial parent brought the children to the gate where they were met by the supervisor. The following table gives the proportion of families using formal supervised access over time.

Table 15: Use of formal supervised access over time

Time period	Percentage of families
After Protection Order	6
At 3 months	13
At 6 months	15
At 9 months	19

¹⁷ In 1998 CFA joined with CYPFS to become The Children, Young Persons and their Families Agency.

Length/time/frequency of formal supervised access

Formal supervised access tended to persist for longer periods than other types of access, with an average period of 20 weeks. In some cases the court or the centre required that formal supervised access was limited to a set number of sessions or amount of time, typically six months, when it was expected that the arrangements would be reviewed. Formal supervised access was likely to occur regularly in weekly or fortnightly sessions and was most likely to last for two hours.

4.3 Safety of the children in formal supervised access

Custodial and non-custodial parents were asked whether the children were safe in formal supervised access, whether there were any other problems for the children, and whether they thought that having access supervised was safer for the children than it would be if access was unsupervised.

Most custodial parents were sure that having access supervised meant that their children were safer from physical harm or abduction than if access had been unsupervised. Some spoke of the risk of harm during routine care.

Apparently there is a lady per father per child who sits right next to them and watches them and [non-custodial parent] doesn't get to change her nappies or do anything to hurt her. (O)¹⁸

A few custodial parents felt that their children would only be safe with no access. These parents were concerned about the potential for physical harm even with the supervision at a centre. One parent believed that the non-custodial parent could potentially carry a gun into the centre. Another was concerned that the non-custodial parent could pass on his contagious disease to the child. Another was not convinced the centre staff could always protect her child.

I still don't understand what would happen though if he did decide to get angry; I don't know how four women are going to protect [child]. (NZE)

Despite general confidence in the ability of the formal supervision to preserve physical safety of the children, a number of custodial parents were fearful for their children's emotional safety. Several problems for children during formal supervised access were identified. For example the non-custodial parent:

- asking the children if they had moved house
- using an abusive name for the custodial parent, which the child then used at home
- asking the children for information about the custodial parent
- getting angry and arguing with the supervisor
- talking about access proceedings with the children

¹⁸ In order to ensure that the ethnic backgrounds of the parents who were interviewed are visible, ethnicity is recorded at the conclusion of each quotation. (NZE) denotes New Zealand European; (M) denotes Māori; (PP) denotes Pacific Person; and (O) denotes other ethnicity.

- sometimes bringing presents, leading to children's disappointment when none were brought
- eliciting information about the family's whereabouts during the following week – this custodial parent said:

I was always frightened that he might find out where they were going to be or something, and turn up, and then there'd be a scene. (NZE)

Most non-custodial parents who used formal supervised access stated that the children would be just as safe with them if access were unsupervised. Some felt that the instability of some other parents in the centre placed their children at risk. A few did accept that supervised access was necessary for the children's safety.

The only reason it is supervised is... to make sure that I don't do anything to her – you know, hurt her or get annoyed with her or anything like that I suppose. (O)

It probably gives the children a lot more security and also at [ex-partner's] end there is more security – knowing that the children will be looked after in that environment. (M)

4.4 Children's feelings about formal supervised access

Parents were asked how they thought their children felt about formal supervised access. The majority of custodial parents who used formal supervised access believed it had been a positive experience for their children. They spoke of their children looking forward to seeing their father and enjoying the visits to the centre. One custodial parent related this to her children's feeling of security at the centre.

... [the children are] quite happy to go down to [the supervised access centre] because they know that they're secure and they know that they're being looked after.... They know that daddy isn't allowed to turn up drunk, so he's got to turn up sober; so they're really safe.. (NZE)

I think [my son] has adjusted really well to the supervised access. He comes back and he's in a good mood and when I tell him on the day... he gets really excited and it's like every ten seconds 'see Daddy'. (M)

Another custodial parent felt it was important to her child to be with his father who was of a different ethnicity to herself.

It's like looking in a mirror at each. My baby is half Māori and his father is full Māori... I think [baby's] recognising [his father] but I mean because of the age of the contact he probably can't see that 'this is my father'. (NZE)

Other things children enjoyed about formal supervised access were the attachments they made to the staff, the company of the other children, and the range of activities available to them. Some custodial parents observed that keeping children happy and occupied during access contributed to their safety, as their enjoyment helped to elicit positive responses from the non-custodial parent.

The kids can basically do anything as in painting, playing, they can make themselves their own Milo, there's felt tips, there's glitter, all the paints, paper and everything. They can play board games, play dough.... I think that's why she likes it.... It's quite neat for them. (NZE)

A few custodial parents stated that formal supervised access had not been a good experience for their children. Reasons given were that the children did not trust their father, that children had felt let down when the father had not turned up as arranged, and in the case of a young child, the child felt upset when leaving his mother. Some custodial parents had seen signs of disturbance in their children following access, such as aggression, psychosomatic illness, bad behaviour, and bed wetting. These parents generally observed that it was difficult to determine when these behaviours were part of normal development and when they were a response to access.

Non-custodial parents were more likely to report that their children were not happy with the formal supervised access arrangements, or that they did not know how their children felt. A number spoke of the children seeing their father as a stranger, the children being distressed on arriving or leaving, and older children getting bored and wanting to be able to do things away from the centre.

Occasionally I'll go there and it's like I'm a stranger.... And it'll take an hour before she really feels that she can relax with me and often it's the last half hour that she wants to play borsy ride on Dad's back or, you know really settle down and suddenly you've got this stop-go and that's not good. (O)

They were not themselves. They were not my children any more. That's how I felt because of the way they acted in every way. (O)

He is distressed when I leave him... when it comes time to leave I deliberately put him to sleep. He doesn't understand what's going on. (M)

One non-custodial parent recognised that the children were reacting to his own negativity about the arrangement.

I was going along with quite a negative attitude about it and the kids picked up on that and it was just not going well at all and my youngest, my wee son, he was literally crapping his pants, he was so nervous. (NZE)

Other non-custodial parents stated their children had been very happy with the access visits.

[Child] recognised me and jumped into my arms and had a big love.... [He] was sitting on my knee being like we always did when me and [child] were together.... He made me a pretend cup of coffee.... And he was just being his normal wee self. (NZE)

4.5 Safety of the custodial parent during formal supervised access

Custodial and non-custodial parents were asked whether the custodial parent had been safe during formal supervised access, whether there had been any abuse or conflict, and whether

they thought that having access supervised was safer for the custodial parent than having access unsupervised.

Most custodial parents who used formal supervised access stated that they felt safer and that there were fewer opportunities for abuse or conflict than with unsupervised access. One parent felt the period of supervised access had helped the non-custodial parent to accept their separation.

He always used to use [child] as an excuse to get to me... and I think now he's got over me. I'm hoping that it's just [child] he wants to see now. (NZE)

Despite feeling safer with supervised access, the majority of custodial parents who had used supervised access centres spoke of incidents in which the non-custodial parent had been waiting outside the centre either when they arrived with the children or when they returned to collect them. In most cases this was experienced as abuse and harassment and left the custodial parent feeling unsafe.

He's been breaking everything by being there early to see me. In the morning when I drop [child] off he's always there on the section. He's sort of like stalking me. It's driving me nuts.... He was in the car park or driving around, or driving past me, timing it perfectly so he'd be as close as possible. (O)

Two custodial parents stated that any possibility that the non-custodial parent knew of their whereabouts left them unsafe. One said:

Every time I go there I think that [ex-partner] is going to jump out of the car and you know, hurt me or say something... As time has gone on I'm not as scared as I was, but... every time I go there my arm hairs stand on end and I'm like 'where is he?'. (M)

Most non-custodial parents stated that formal supervised access had stopped or had the potential to stop any conflict or contact with the custodial parent. One said:

If we were to use the [supervised access centre] as a point where the access was supervised there wouldn't be a problem, but if I had to go to my ex wife's home and pick up my child there would be problems. (O)

Another non-custodial parent felt the supervised access had helped the parents move on.

On the last two lots of visits when I was there with the children she would come and pick them up and we'd walk them out to the car; we put them in ; we spoke respectfully to each other... and left it at that. (NZE)

4.6 Parents' feelings about formal supervised access

Parents were asked how they felt about formal supervised access, what had worked well and what had not worked well (in addition to concerns about safety discussed earlier).

The most common response from custodial parents was that they were merely complying with the law or the court in using supervised access, and that they would prefer no access.

I'm complying with the courts. Don't you worry, I'd quite easily not be taking him, but I mean... then I get into trouble. So no... it's something that I'm doing but I still totally believe that it's better off to not know him. (NZE)

However, since they were required to co-operate with access arrangements, the formal supervision generally provided them with reassurance that the children would be safe and receive the care they needed. A few custodial parents expressed a fear that supervised access would not be seen as necessary in the future.

I'm terrified of the day, if it ever happens, that he's allowed to have them at his home or something. Because they'll be in huge danger, I know that. (NZE)

What worked well about formal supervised access – custodial parents

- Child had safe contact with their father
- The contact was regular and consistent
- The custodial parent did not have to have contact with the non-custodial parent
- The custodial parent got a break from the children
- Centre staff were helpful
- The centre had one session which included an evening meal
- The centre gave the custodial parent a written report after every session

What didn't work well about formal supervised access – custodial parents

- Children being left at the centre and the non-custodial parent not showing up
- Non-custodial parent not staying for the full session
- Centre a distance from home – costs of getting there
- Inflexibility of time – juggling breast feeds and sleeps for babies
- Custodial parent having to fill in two hours in an unfamiliar location
- Custodial parent feeling 'rushed out the door' when leaving the children
- Non-custodial parent bringing the children toy guns
- Non-custodial parent bringing sweets when it was agreed not to
- Difficulty of changing the arrangement e.g. for sickness or family occasions

Non-custodial parents had more negative than positive comments about supervised access, although most appreciated that it made it possible for them to see their children and was 'better than nothing'.

What didn't work well about formal supervised access – non-custodial parents

- Feeling locked in, watched, like a criminal
- Child becoming estranged from the whānau
- Grandparents, step siblings, new partner could not attend
- Children hostile, non communicative, inconsistent in behaviour
- Children related more to the supervisor than to their parent
- An artificial environment – relationships within it are not natural
- Forbidden to hug child
- Sessions not long or frequent enough to form a relationship
- Contract very restrictive – where access takes place, what can be talked about

- Older children getting bored

It's kind of like being in prison because you've got four walls around you, you've got the same people there every week, you can't move out of the place, you've got to play with the same toys, you've got to play in the same back yard. Even the kids start to get a bit bored.... It's like a prison. (NZE)

The only problem is none of my family have gotten to see her. And she's got a great grandmother and a great grandfather and if I would like my parents to see my daughter then I have to get permission.... (O)

I didn't agree with me going to see my children there. The environment was alright but my children see their father as being alienated from the environment where he would feel comfortable. (PP)

What worked well about formal supervised access – non-custodial parents

- Staff very helpful and dedicated to the children
- A good facility to take children to – no need to find entertainment
- Easy to celebrate birthdays ('rent a crowd')
- An opportunity for non-custodial parent to have his ability to care for children assessed

The facilities and the support of the people who run [centre] are really good... the kids couldn't ask for more. I don't have to try and entertain them; it's all there. (M)

Getting to see them has worked well, obviously - having some contact with them. We do have fun. We have as much fun as we can within the place. That is the idea of going there. (NZE)

4.7 Why access was supervised

Parents who had used both formal and informal supervised access were asked the reasons why access was supervised. The most common reason given by custodial parents was the protection of children from the risk of direct physical harm. Most non-custodial parents, on the other hand believed access was supervised because the law required it when there were past allegations of violence. Below, in order of frequency are the list of reasons given by custodial and non-custodial parents

Why access was supervised – custodial parents

- Protect children from risk of physical harm
- Non-custodial parent has previously sexually abused child or children
- The law requires supervised access
- Protect custodial parent from further violence
- Protect children from exposure to violence
- Protect children from risk of abduction
- Risk that non-custodial parent will fail to care for the child
- Risk of emotional harm to child or children

Custodial parents said:

If there was unsupervised access... they would not be safe. He used to say he would kill them. He overreacts to any mistake. I fear for them. (NZE)

I've got the permanent Protection Order and that lists me and [child] on there. So, from what I understand, therefore that meant that he's got to have supervised access because [child] is under the Protection Order too. (M)

He had hurt me when [child] was there. They felt that he was a danger to [child] too. (NZE)

That's the safest way of him not hassling her for information about where we live, our phone number, which he's done in the past. (NZE)

Why access was supervised – non-custodial parents

- Past allegations of violence – the law requires supervised access
- Assurance of physical safety of children
- Assurance of emotional safety of children
- A way of re-establishing a relationship with the children
- Don't know
- Punishment of the non-custodial parent
- Fear of abduction of child or children

Non-custodial parents said:

I guess my partner is trying to think that I'd be causing the same grief to my children, causing them emotional violence, which is certainly not the case. Any disagreement my partner and I have ends there. It doesn't bother my children. (NZE)

The court has to establish the level of violence with regard to access to my [child] and it has taken this period of time to do that. My former partner is opposing unsupervised access. (M)

4.8 How easy or difficult it was to arrange supervised access

Most custodial and non-custodial parents found formal supervised access easy to arrange, once the decision had been made. Often lawyers, particularly Counsel for the Child, and occasionally court staff had put parents in touch with centres. A custodial parent said:

[My child's] lawyer organised it... I had to go along for an interview without [my child], then I just took [child], just me and him one day and we showed [child] around. [My child's] known exactly what's going on from day one. (NZE)

Some of the difficulties raised with arranging formal supervised access included having to wait on a waiting list, general tension during the negotiation of the contract, feeling that the staff had taken one side or the other at the induction stage, a lack of centres locally, and needing to change work rosters to fit in with the session. Two non-custodial parents stated they did not go on with access after making the initial enquiries because they would not agree with the centre's requirements.

The reported costs of formal supervised access ranged from \$5 to \$35 (for professionally supervised access in the non-custodial parent's home) per session. Costs varied according to the provider, the length of the session and the number of children. One centre asked the custodial and non-custodial parent to each make a suggested donation. Custodial parents also stated it cost them time, effort and transport costs to get their children to the access centre. In two cases, the non-custodial parent paid a contribution to the custodial parent's transport costs. Two non-custodial parents who were using higher cost individual supervisors stated they stopped supervised access because they could not afford the costs. Three non-custodial parents stated they had not paid the requested fee to the supervised access centre. Some non-custodial parents resented the fee they paid for supervised access.

Every time I see [child] I've got to pay \$20. And that is a very sore point that I have to pay to see my own [child], considering I pay child support every month. (O)

Key points: The impacts of formal supervised access

- Most custodial parents believed their children were physically safe with formal supervision, but some held fears for their children's emotional safety
- Children were reported as happy with formal supervised access, although some were thought to be bored, hostile, or shy
- Custodial parents felt safer with supervised access than with other types of access
- A high proportion of custodial parents reported the non-custodial parent harassed them in the centre carpark
- Most parents merely tolerated formal supervised access, but for very different reasons
- Formal supervised access was found to be easy to organise, once the decision was made
- Barriers to formal supervision were found to be inflexibility of time and place, cost, inability to comply with the conditions, and difficulty accessing the centre.

5 The impacts of informal supervised access

The term ‘informal supervised access’ has been used to describe access arrangements in which members of the family or friends had the role of supervising access between the non-custodial parent and children. The following table shows the proportion of families using informal supervised access over time.

Table 16: Use of informal supervised access over time

Time period	Percentage of families
After Protection Order	22
At 3 months	30
At 6 months	15
At 9 months	11

Informal supervised access took a number of forms. The most common informal arrangement was supervision by the custodial parent (nine families immediately after the Protection Order and four families at the time of interview). With this type of arrangement the non-custodial parent usually visited the custodial home either intermittently or prearranged by phone. These arrangements were sometimes accompanied by short periods of unsupervised access, where the non-custodial parent would take the children out alone, or be left with the children while the custodial parent went out. In some cases the custodial parent would try to make sure that someone else such as a member of the family, a new partner, or a flatmate was also present in the home. In other families, the custodial and non-custodial parent would take the children out to a public place. In three cases the custodial parent took the children to visit the non-custodial parent, at his home, in prison, and in a drug rehabilitation centre.

[I take the children to see their father] where he's staying or otherwise in town shopping or something like that. It's the only places where he'd be able to see the children... It's not from the courts or anything, but because there's nothing out on where he's living, he's allowed access to the children there. (M)¹⁹

Supervision by the non-custodial parent's family was the next most common type of informal supervision. Supervision by grandparents could be regarded as access to the children by the grandparents, with the non-custodial parent being present for some of the time. These arrangements were more likely to be over weekends. Members of the custodial parent family,

¹⁹ In order to ensure that the ethnic backgrounds of the parents who were interviewed are visible, ethnicity is recorded at the conclusion of each quotation. (NZE) denotes New Zealand European; (M) denotes Māori; (PP) denotes Pacific Person; and (O) denotes other ethnicity.

usually the custodial parent's mother, supervised visits in a few cases, particularly when the custodial parent was living with her family.

Interviews took place with five informal supervisors and their information is presented at the conclusion of this chapter. As the information from informal supervisors will show, the role of supervisor ranged from being a presence in the house, to actively observing every interaction between the non-custodial parent and children.

5.1 Length/time/frequency of informal supervised access

Informal supervised access tended to be less durable than other types of access, with an average period of nine weeks. Informal supervised access was likely to occur either weekly or intermittently, and was most likely to take less than half a day at a time. In a few cases the visit lasted two or three days.

5.2 Safety of the children in informal supervised access

Custodial and non-custodial parents and informal supervisors were asked whether the children were safe during informal supervised access, whether there were any other problems for the children, and whether they thought that having access supervised was safer for the children than it would be if access was unsupervised.

Most of the parents and informal supervisors were sure the children were safe with informal supervision arrangements. One custodial parent said:

[It depended] on his mood... whether he could visit or not.... And [grandmother] would leave if things turned nasty; she would take [child] and leave. I had great trust in her on that... But it was still a good visit because [grandmother] would carry on with it somewhere without [non-custodial parent], so that [child] didn't really have any idea... that this was strange. It was always good for her anyway. (NZE)

Where access was being supervised by family members, a few custodial parents stated that they could not be sure that the child was safe. In one case the custodial parent saw the non-custodial parent drive away alone with the child from the grandparents' home soon after the child had been left there. In other cases custodial parents were aware that other family members were present in the house but not actively supervising the access. For example in some of these situations it was reported that the non-custodial parent had used the child to pass on abusive messages to the custodial parent.

While most custodial parents who supervised access were sure their children were safe with their supervision, some still felt uneasy during the access time. Two custodial parents said:

I encourage him to have a wander with [child] and time on their own, so long as I can see him – and he walked for ages and ages and ages... There I am sitting watching him and thinking 'what do I do; will I get the Police; is he going to turn round'. I always feel quite on edge. (NZE)

I thought if [the children] say yes [to the visits] then go with it. I told him to think of their interests and go with it or the visits are wiped.... It's working OK. I set the rules; there are boundaries. (M)

One parent was concerned that her baby was not getting adequate care from the non-custodial parent's family. Two custodial parents believed their children had been emotionally unsafe because of conflict between the parents (discussed below) and three referred to direct abuse of the children by the non-custodial parent during access they supervised themselves. Two of these parents stated:

Once he flipped out and he just started trying to fight me for [child] and pulling him into his arms and just running.... If he slipped he could have hurt him. (NZE)

It's getting to the stage where he's starting to abuse [child] because she's getting a mind of her own. One day she wouldn't give him a kiss and he literally slammed the car door.... He [abused her verbally]. (NZE)

These children were reported to be showing behavioural responses such as excessive anger and fear of separation from the mother.

5.3 Children's feelings about informal supervised access

Custodial and non-custodial parents and informal supervisors spoke of informally supervised access being a happy experience for children. This was particularly so when children had a good relationship with grandparents or other members of the non-custodial parent's family who were supervising the access and children were 'spoiled' during the visits. One custodial parent said:

They were easier to handle when they were going out with their dad for those visits. Their dad is Māori and I have no access to that. They are missing out on that part of their lives. It is really sad for [children] not to know that side of their lives. I don't know it. (NZE)

Two non-custodial parents believed the children were nervous or resentful of the supervision. One said:

They were unsure of me. They were unsure of what was going on, that other people had to be there and they couldn't be there by themselves with me. (NZE)

It was my oldest child... She said to her mother 'Look, we don't need people spying on us. We love our father.' (M)

Children who experienced access supervised by the custodial parent were less likely to be reported to be happy with the visits. In some cases the intermittent nature of the access was thought to be confusing to the children and in two cases children were reported to be afraid during the visit. Non-custodial parents stated that it took time to build up trust, especially if there had been a period of no access.

5.4 Safety of the custodial parent during informal supervised access

Custodial and non-custodial parents were asked whether the custodial parent had been safe during informal supervised access, whether there had been any abuse or conflict, and whether they thought that having access supervised was safer than unsupervised.

Almost all of the custodial parents who supervised access themselves felt personally unsafe. In some cases this was a feeling of being unsafe because of the past history of abuse. Non-custodial parents tended to believe they could arrive at the house and demand access at any time when it was supervised by the custodial parent. Having to communicate over each arrangement often led to harassment over the phone and verbal abuse if arrangements changed for any reason. Children were often present during this conflict. Several custodial parents felt that non-custodial parents were using access to 'get at' them. Custodial parents who felt unsafe when they supervised access said:

For three weeks he saw them about three times a week; he took them out... places. I had to go too to watch out for the younger [child] because [child] is really hard to handle. But I realised that [non-custodial parent] was only doing it [having access visits] to get back into the house. (NZE)

No I never felt safe – I was mostly apprehensive.... But I did it because I thought that I had to.... That I had to be strong. (NZE)

In other cases there were direct incidents of abuse of the custodial parent during access times. Custodial parents who were abused when they supervised access said:

There was only one [access visit] and he wanted it to be around me. We had a bad split up and if he didn't get what he wanted he would beat me and I didn't want the kids to see that. He was hostile to me and was just trying to get back into the home. It was easier for me to put up with his aggression at the time than not. I didn't want the kids to see any violence. (NZE)

I did have problems with his family. I had to ring him at his family home and they would give me a really hard time. Now there is no need for me to ring them. I have cut myself off from his family and it is OK now. (M)

He started threatening so I have stopped it [access] all together.... He was threatening me with a knife and stuff. (NZE)

Custodial parents who used access supervised by family or friends were as likely to feel safe as unsafe, but that on the whole having access supervised was safer than allowing unsupervised access. One custodial parent said:

I was determined not to leave [child] by himself with his father and... I ended up having to go with him, which endangered my life. We went to his parents' house 'cos I got on all right with his parents... but I still felt very insecure about that because of all the situations that have happened. I knew what he was like and I didn't want to have all that emotional stuff 'cos it would affect [child] too. (NZE)

Informal supervisors (all grandparents) said:

The [access visit] they set up for us at [public place]; he made a threat at the end of it. We sat a little way away. He was constantly harassing [custodial parent] about various things then. But when he got to actually walk out and leave he said 'well you had better have your car parked in a safe place'.... It was a threat.

Sometimes... there will be a bit of aggro on the phone.... But we try not to let [child] hear.... On the odd occasion she has heard.

I have come to an arrangement where there will be no arguing in my house. I understand this precedes violence.

5.5 Parents' feelings about informal supervised access

Custodial parents tended to feel happy about informal supervision arrangements when their children were happy and when they knew that both they and their children were secure.

We both want what is best for the children. We have come to understand that they are better off that way. We are good friends but not good partners. (M)

A number of custodial parents felt insecure because the informal arrangements were not regular or formalised and they felt obliged to allow contact from the non-custodial parents over arrangements. They felt controlled when the non-custodial parent dropped in at any time.

I think I would feel better if I had a definite thing about access especially if he knew that he couldn't contact me over it. If he knew that it was the third of every month and it was at this childcare place and at 10 o'clock. (NZE)

I feel it has been a big burden, especially considering that he has to go through me and like, when things are strained between us and I have to talk on the phone to him about arranging it, and he's being difficult and I'm being stubborn. (NZE)

He turned up on my doorstep at seven in the morning. We had agreed on the afternoon. I told him to leave and he said he would get me and get his son. (NZE)

Custodial parents who supervised access themselves felt highly protective towards their children and tended to believe that they were the only ones capable of protecting their child.

I felt it was taking away my power if someone else was there during access. I knew that [formal supervision] was available if my way of supervision didn't work. I felt that I would be inadequate as a mother if I could not supervise access visits. (M)

Sometimes he want to take my [baby] and I say there is no way he is going to take her alone. I got to go with her but I take that risk to go with her on account of the kids. (PP)

What worked well about informal supervised access – custodial parents

- Provided a break from the children
- Custodial parent sets the boundaries
- Non-custodial parent very polite in presence of supervisor
- Trust in grandparents

A custodial parent said: *His parents have them. If he's there that's OK but the arrangement is mainly for the grandparents' sake. I have always gotten on OK with them. They asked for every second weekend. It's good for the children to know all their grandparents. (M)*

What didn't work well about informal supervised access – custodial parents

- Hard to make sure family supervisors understood their role
- No hard and fast arrangements
- Led to strained relationships within the family
- Differences in childcare meant child put out of routine
- Being harassed by the non-custodial parent's family

Some non-custodial parents who had experienced informally supervised access also disliked the lack of formality in arrangements.

My ex-wife could ring up my mum and say 'I'm going away this weekend', and that weekend was usually my visiting weekend. (NZE)

Some non-custodial parents felt they were not trusted and others refused to agree to any supervision other than by the custodial parent. One parent was aware this arrangement was stretching the intention of the law.

I'm quite happy with the way things are going. I know we're going against the court's decision and I know that if [custodial parent's] inclined to 'spit the dummy' I know that I could be in a lot of trouble. (M)

What worked well about informal supervised access – non-custodial parents

- An opportunity to spend time with the children

What didn't work well about informal supervised access – non-custodial parents

- Can't take the children out
- Not seeing children frequently enough
- Inconvenience for family

5.6 How easy or difficult it was to arrange informal supervised access

Difficulties encountered in arranging informal supervised access generally revolved around agreeing on the person to be appointed as supervisor. Each parent had difficulty in trusting the other parent's family or friends. Parents often did not feel it was appropriate to ask friends to take on this role. Custodial parents said:

I just didn't feel comfortable about his parents because his mother had sided with him and blamed it on me or didn't believe me. And I asked friends if they would feel comfortable about it and they didn't; and I rang up lots of play groups and play centres and creches... and they just didn't have those facilities. And they only had weekday ones and they weren't that happy to have a violent person there. (NZE)

It was difficult. We had to come to an agreement about who was to be a supervisor. It was one more agreement amongst many that we had to strike. (PP)

5.7 Information from informal supervisors

Five people who had supervised access informally were interviewed. Two were mothers of the non-custodial parent, two were mothers of the custodial parent and one was a friend of the family.

How the arrangement was made

In two cases the arrangement was made at the request of the custodial parent, in one case at the request of the non-custodial parent acting on directions from the court. In one case the arrangement was a result of a letter from the custodial parent's lawyer. One case was arranged at the initiative of the informal supervisor, who was a friend of the family.

How supervisor found out what was expected of them

The supervisor whose son received a lawyer's letter said it stated that access and the changeover had to be supervised at their home and the frequency, day and time of the access visits. In the case where there was a direction from the court, the supervisor only knew that it stated that one of the grandparents had to be present. One custodial parent had thoroughly briefed her parents after discussions with her lawyer. Two other supervisors had no instructions about their role, but had formed a clear view of what it entailed. One had been in a similar position to the custodial parent herself in the past. Two supervisors said:

[Custodial parent] was quite open about what arrangements she had discussed with the lawyer and we went through the Protection Order when it came into her hands. We were kept informed all the time of what her rights were and what his rights were and where we fitted in.

Because I have been the mediator I have slipped into the role. I had no other information about what the role entailed.

How access was supervised

Four of the informal supervisors regarded themselves as a presence in the house, rather than actively supervising the interaction between the non-custodial parent and children. One supervisor allowed unsupervised outings. They said:

Just by virtue of my being here and making my presence felt and making him aware that I was close by. I didn't actually say anything to him to indicate that I was being watchful or anything, I just made it obvious that my daughter and the baby weren't alone.

We mainly leave them with their father because it is the only time that he gets to see them. We just let him read them stories and play games with them and that.

I have looked on [non-custodial parent] as my son-in-law. We are family. He could be in the other room. He would do most care for [child], feeding etc.... I see that [child's] emotional and physical needs are met. He is happy. Otherwise I would stop [non-custodial parent].

He's always honest where he's taking her. I just like to know where they're going and when he gives a time when they're going to be back, he's always back, if not before.

In the fifth family, where it was suspected that the non-custodial parent had previously sexually abused one of the children, the supervisor was very vigilant in providing back-up for the custodial parent. The supervisor said:

If [custodial parent] went away.... I'd go and move over by the kids and start yacking away to the kids and him and making it not too obvious. You've got to play it by ear, every moment, rely on your instincts.... Do I move in here?.... He didn't get any moment alone.... If he got out of hand.. I [planned to] turn around and say 'look, leave the property; that's enough; we won't take any more; stay any longer and I'll call the police'....

How the supervisor felt about their role

Supervisors, particularly parents of the non-custodial parent, expressed pleasure at being able to spend time with the children and all expressed enjoyment at seeing the non-custodial parent and children together. One supervisor felt embarrassed initially, especially as the non-custodial parent was not aware she was supervising the visits. However, most stated they became more relaxed as the access period went on. One grandparent was pleased with the way her family had helped make the arrangement work, by transporting the child to and fro.

It's really opened my eyes just how well our family have all clubbed in and really helped him and been there for him.... If it's a tie, too bad. While [non-custodial parent] is here, it's the way it's going to be.

Key points: The impacts of informal supervised access

- Supervision by the custodial parent was the most common informal supervised access
- Children were found to be less safe and less happy with custodial parent supervision and often witnessed conflict and abuse
- Custodial parents felt unsafe and were at risk when they supervised access themselves
- Informal supervised access was less durable than other access arrangements
- When access was supervised by extended family, children benefited from these relationships
- A lack of formality and clarity left both custodial and non-custodial parents unhappy with informal supervised access
- Most informal supervisors regarded their role as being a presence rather than providing active supervision. Few had had any instructions about their role.

6 The impacts of unsupervised access

Custodial and non-custodial parents were asked about their experiences with unsupervised access. This type of access, during which the non-custodial parent sees the children without the custodial parent or another supervisor being present, can take a variety of forms. The more common arrangements involved the non-custodial parent taking the children out for a few hours or the children staying overnight or longer in the non-custodial parent's house. Unsupervised access might also include the non-custodial parent visiting the children in their own home without the custodial parent being present.

Table 17: Use of unsupervised access over time

Time period	Percentage of families
After Protection Order	24
At 3 months	31
At 6 months	38
At 9 months	33

6.1 Length/time/frequency of unsupervised access

The average length for unsupervised access was 18 weeks, a slightly shorter period than the average for formal supervised access (20 weeks). For fifty seven percent (31) of families the unsupervised access visit would be for a period of two days or more. The unsupervised access would be weekly for thirty six percent (19) of families and for thirty percent of families (16) the access would be intermittent.

6.2 Safety of the children in unsupervised access

Custodial and non-custodial parents were asked whether the children were safe during unsupervised access, and whether there were any other problems for the children.

About half of the custodial parents whose children had had unsupervised access believed that their children had been safe, and that this type of access had caused no problems for their children. These comments are typical of custodial parents who felt this way.

I know that [son's] fine with him. I rang up my lawyer and told him that I am going to let him have unsupervised visits because I feel there is no problem. (NZE)²⁰

I've been pretty easy about it. He can have them whenever he wants to see them, or if they want to see him. (M)

²⁰ In order to ensure that the ethnic backgrounds of the parents who were interviewed are visible, ethnicity is recorded at the conclusion of each quotation. (NZE) denotes New Zealand European; (M) denotes Māori; (PP) denotes Pacific Person; and (O) denotes other ethnicity.

About half of the custodial parents whose children had had unsupervised access believed that their children were not safe during access. In one case a non-custodial parent was believed to have sexually abused his child during unsupervised access. Other evidence of risk to children included the non-custodial parent's use of alcohol during access visits, mood changes, an inability to care for the children, the children being asked questions about the custodial parent, and concerns about abduction. These comments are typical of some of those made by custodial parents who expressed these concerns.

The day that I went to pick them up when they told me he was drunk, they were shut in a bedroom in the house with him. He was comatose on the bed....outside in the garage there was about half a dozen [gang members] sitting there drinking....I went in and got them.....he didn't even wake up when I took the children. (NZE)

There was a problem at the beginning....with him asking questions about what I was doing. I just got around that one by saying to the children that while it was OK for them to say what we've been doing, that if he asked any direct questions about what I've been up to and who I've been seeing, to tell him to come and ask me. And that's exactly what they do. (NZE)

He wasn't good at seeing when they needed to be fed....I always had a fear that he might take them. (NZE)

When non-custodial parents were asked whether they thought their children were safe with unsupervised access, most said that the children were safe.

I don't take my eyes off him. I'm too scared of something going wrong. (M)

He was just as safe with me at home as at [centre], if not safer because there wasn't the swings and slides and the other kids running around. There weren't any other distractions so I could focus solely on him and what he needed. (NZE)

There was no animosity on who was capable of looking after the children and supporting them. (NZE)

None of the non-custodial parents said that they had experienced any significant problems looking after their children during the unsupervised visits.

...and then we have the 'what are we going to do, dad? Go fishing, go for a walk, or do their sport...' We went camping... for a whole week.... (M)

I pick him up and I pick up my other sons and we go to McDonalds or for a drive with the family... It is important for him to be familiar with the people he can trust. (PP)

One parent however said 'It was just getting back into that routine. When children are in a new house they test limits. No, I haven't had any problems at all.' (NZE)

Another said that he had the custodial parent's confidential phone number in case of emergencies. His ex-partner had refused to give it to him, but the children had given him the number – 'My kids told me but I don't ring it. I just got it for emergencies like if the kids get hurt.' (M)

Several referred to occasions when they had to discipline their children.

Once I disciplined one. Well you don't go throwing sticks.....and saying you don't tell me what to do. (M)

The only time I discipline is to give them a wee tap on the backside with my hand....just to say that that is not the right thing to do....I would never harm them in any other way whatsoever. (NZE)

6.3 Children's feelings about unsupervised access

Children, according to custodial parents, appeared to react to unsupervised visits in a variety of ways. Some children had no problems. Custodial parents said:

He just adores his Dad. He's quite happy to go. In fact I think he would live with Dad if he had his way. He's a good Dad. (NZE)

I didn't have support but I had no fears that he'd do something. (M)

My daughter is very happy to see her dad. I felt OK about the access. (PP)

Another custodial parent however said *'She would come home funny, acting a bit strange. She loves her father, she loves going there but it was like she came home with extra weight on her shoulders of him asking for phone numbers, 'cos he doesn't know where we live and he doesn't know our phone number.....'* (NZE)

A further custodial parent said

[The children] didn't think about it. The [older child] didn't care whether he went out or not. The [younger child] just wanted him to come home. He asked me about this every day. On Sundays he didn't want to go because he couldn't ask his friends around. (NZE)

Others reported that their children seemed to be confused at first, and had other problems, but that they now appeared to have no concerns about unsupervised access.

If I prepare him he's OK. Sometimes if [non-custodial parent] just pops around....I get it afterwards. I've had some violent, violent behaviour out of [my child]. (NZE)

They were a bit concerned at first. We had been together for a while and then with all this [separation] going on... (M)

One custodial parent described how her daughter had felt when her father did not turn up for the access visit. She said *'[Daughter] was very angry at Dad. But he's not here to take the brunt of it, but I am and I don't think that is fair. I have already explained that to him, that if he's not going to do what he says, then he must ring her and let her know. It is common courtesy.'* (NZE)

Another custodial parent commented

He comes over on payday and drops things off for the children. He's building a relationship with the children.... The.. [children] aren't as close to him as they used to be, it's not there any more, they don't trust him. (M)

When non-custodial parents were asked how they thought their children felt about the access being unsupervised most recognised that there had been some difficulties with the access.

He's got two parents that love him and he thinks it's quite good, but he can abuse it as well. He can have an argument with his mother and all of a sudden he'll ring me up. I talk to him and find out what's going on, and quite often he'll be in the wrong as most four year olds are. (NZE)

The middle one doesn't want to come at all because of his friends. Like he's got better things to do. He's getting close to being a teenager. (M)

Well, they don't really say much anyhow. I think they're still going through the fact that it's over sort of thing. You know, Dad's not there any more. They look forward to being here all the same.....Once they started seeing me regularly again it was alright. (NZE)

Well last year she was obviously not seeing me enough and sometimes she was reacting in a strange way when I picked her up. She was sort of ignoring me for the first fifteen minutes, and after she was settling down and she was happy. (O)

He doesn't like me going and he'll say 'stay Daddy' and I just say 'I can't'. He tests his mother quite a lot. I've seen how he reacts to her at home, which he never does to me. I wonder whether that's a good thing or a bad thing. (M)

Some non-custodial parents on the other hand did not mention that their children had any problems with unsupervised access, and described how their children looked forward to seeing them.

It's not long enough for them, they want to stay longer. (M)

They loved it because we had Christmas together. They had a ball. (M)

He loves it, he's into it. He gets the best of both worlds. He's only three but he knows which side his breads buttered on. He's happy to go to both places. (NZE)

Every time I see her she just runs to me, just jumps straight into my arms. We have a fantastic relationship. (NZE)

6.4 Safety of the custodial parent during unsupervised access

The custodial parents spoke frequently about how they feared for their safety during unsupervised access visits. These safety concerns often arose because of incidents which had occurred when the custodial parent was dropping off the children for a visit, picking them up after a visit, or when this was being done by the non-custodial parent. Often nobody else, apart from the children, was present on these occasions.

It was terrible. It was either not speaking a word to each other, I mean nothing, absolutely nothing apart from me telling him I would be back to pick her up at this time.....or other times he'd just go right off, just abuse. (NZE)

I've never felt safe. [Non-custodial parent] always kept a constant eye on [son] as he rang him every night.....At first I thought it was a bit extreme and I thought it was just to see what I was doing, and I'm sure it probably in a way still is. (NZE)

He was supposed to take [daughter] out but instead he ran right into the house and talked to me. He was very nice so I talked to him too and it was very good and all of a sudden he started to change his talking. (O)

Some custodial parents were concerned about their safety in spite of others being present during the changeover period and access visit.

And so we had another access just after that at [a public place] again, and him and his mother were aggro. He told me to f... off, they were rude, they were cruel to me. I sat in the carpark the whole time in tears and pregnant as well. I went in, he abused me all the way out to my car and putting her away. So I drove off and said that's the last time, I can't deal with this any more. (NZE)

Because of these fears, some custodial parents ensured that other people were present during changeovers.

A lot of times when I actually went down there I ended up taking my brother's girlfriend or someone with me to pick her up, because I got sick of the abuse and he doesn't do it in front of anyone else. (NZE)

One custodial parent spoke of safety concerns during the access visit itself, rather than during the changeover times.

While [daughter] was having access was one of the lowest moments of my life because he was in my face all the time. If you can imagine 20, 30, 40 phone calls in one day. Every single time was a different reason and he wants to talk and he accuses you of things and you feel like you've done something wrong and he gets into you and messes around with you and you just can't get away. (O)

Non-custodial parents were also asked whether there had been any conflicts during changeover arrangements, and about the safety of the custodial parent at these times. These comments are typical of those made by non-custodial parents who described these conflicts.

She was there and I said to her oh thanks for letting me come along to her birthday and she started on me. You know, I don't need this shit, I don't need this shit. So that's the only problem I've had, there's been no abuse or anything. (NZE)

Probably three times or four times she's been there waiting to hurtle some abuse at me 'cos I've lost their socks or forgotten their jerseys or something like that. I think that's about it. Any other time she stays inside the house and the kids come down. (M)

I was going to her place to pick the children up which contravened the Domestic Violence Act, but every time I'd go there, if she didn't want me there she'd say I'm calling the police now, even though I was only going there to pick up the children. (NZE)

None of the non-custodial parents spoke of the custodial parent being in danger during the changeovers or the actual unsupervised visit itself. Several non-custodial parents however

acknowledged that they were having contact with their children when they were not supposed to and these are the comments they made.

Even though there was supposed to be no contact, we would still contact each other and that. I was pretty much allowed to see him when the time suited my partner. (M)

I didn't really take her out much at all. I've been out twice. I'm not really supposed to. (NZE)

If she was so inclined and I was around there and she wanted to get me into trouble, she could just ring up and say I'm round there without permission and I'm at risk doing that, but I don't think she would. That's why I don't mind going round there. (M)

Some non-custodial parents realised that their children were being adversely affected by witnessing the conflict between their parents and they had tried to deal with issues in other ways.

Oh yeah some arguments, not hell raising like they used to be, because [programme] has helped a lot.....just coming here to calm down, identifying what's happening.....I'm learning how to control it. (M)

Seeing us arguing and seeing things like that was not good for them. Actual physical fighting, we didn't used to do that, it's just that her tongue's real sharp. (M)

I just drive in, I don't cause any....like if she doesn't.....if they don't want to go out....I just turn around and drive out. (M)

You've got to be aware if the phone goes....and you're thinking oh that bloody cow, but you've gotta just walk away to the bedroom and it's quite good, and you don't say anything in front of the children. And to try to keep everything positive and it is bloody hard. (NZE)

6.5 Parents' feelings about unsupervised access

Parents were asked how they felt about unsupervised access, what had worked well and what had not worked well. This was in addition to the safety issues discussed earlier.

What worked well about unsupervised access – custodial parents

- time out for custodial parent

I appreciated the rest. (M)

I relished these times. It was time out for me. I was emotionally drained. It was good to have the day to myself. (NZE)

He's taking them for days and nights.....which is good, otherwise I'd probably be insane now with the four of them. (NZE)

- father plays with children and children are more secure

He's a very good Dad and spends a lot of time with (son), playing with him and doing all the things with him that [son] loves to do. (NZE)

With [son] seeing his father when he sort of can and when he wants tothat it's you know making him feel a bit more secure. (NZE)

What didn't work well about unsupervised access – custodial parents

- behavioural difficulties

I would love the break because I get really tired bringing up the whole three of them on my own....but I wouldn't like my children around that environment....they come home like little animals, running around in their pyjamas. (M)

They come back more spoilt....the longer they stay with him the worse they get. I ask him not to give them what ever they ask for...I just want them to be satisfied with what they have. (PP)

- problems with access arrangements, times inconvenient

He didn't even stick the full month....I was finding that I was having to drop them off 'cos he was giving excuses about a licence...but it was alright for him to drive himself to work and everywhere....but not pick his children up and drop them off. (M)

The thing was I suppose I had to go with what he wanted. The few times he had them like he would say it that morning. There was nothing ever planned and he would never be tied down to a plan. (NZE)

[The access] was always at his convenience. He purposefully would not have them at the weekends so I wouldn't go out. (NZE)

- unsuitable environment for children

They're only really still quite young and they don't know any better. They just say oh so and so visited, Daddy slept with so and so.....just seeing their father with different partners all the time....it's just not good for their young minds. (M)

He was heavily involved in the drug scene and so I just stopped all access. (NZE)

What didn't work well about unsupervised access – non-custodial parents

- no monetary assistance

I have him two to three nights every week. I don't get compensation at all for it. She can all of a sudden dump him on me and shoot off over to Aussie for a month. (NZE)

She'd like me to have him till Monday but she gets paid to look after him. I don't get a cent for him. I've actually got to pay maintenance. (NZE)

- would like to see children more often

She's at the pre-school from 8 o'clock till 4.30 four days a week – I am available at the moment to care for my daughter for that time. (O)

Within that three hour period the two youngest children need to have a sleep. Now how ludicrous is that. What time am I going to spend with [youngest child] if he's asleep and I've got to travel from there to here, get him to sleep and then get back. (NZE)

Every time I try to make arrangements she just says no they don't want to go out tonight, you have to try again tomorrow. (M)

[Judge] gave me back the access which I had before...so I was very pleased about that...What I wasn't happy with was that he wouldn't let me see my daughter at kindy. I would like to have seen her and popped in. (NZE)

What worked well about unsupervised access – non-custodial parents

- being able to have contact with their children

It was good 'cos I had more time with the children. I could watch them grow up. (M)

What worked well is that we can see each other a bit more. So it's better than it was in the past. Ideally I would like to have her half the time but compared to last year it's better. (O)

...at least I'm getting to see him and it's not costing a great amount and I suppose I believed it would. (M)

Key points: The impacts of unsupervised access

- About half of the custodial parents whose children's access had been unsupervised believed unsupervised access was perfectly safe for their children
- About half of the custodial parents reported a range of physical and emotional abuse or neglect of their children during unsupervised access. Where this had happened they had taken steps to make safer arrangements
- Children had a variety of responses to unsupervised access ranging through reluctance to confusion to delight
- Custodial and non-custodial parents reported a high level of conflict over making arrangements and at changeover times. Some custodial parents stated that they were abused during unsupervised access arrangements.

7 The impacts of no access

A period of no access was common immediately after a Protection Order was made. Almost half (35) of the families reported there had not been any access arrangements immediately after the Protection Order. A period of no access tended to be temporary rather than permanent, and only three families reported no access had been arranged at any time since the Protection Order. The average period of time in which there were no access arrangements was 15 weeks, ranging from one to 130 weeks. The following table gives the proportions of families for whom there were no access arrangements over time.

Table 18: No access arrangements over time

Time period	Percentage of families
After Protection Order	49
At 3 months	27
At 6 months	33
At 9 months	36

Comparative data from the period before the domestic violence legislation came into operation is limited. One study of parents who obtained a dissolution of marriage in 1988²¹ found that 17.6 per cent of children in the custody of female parents had no access to their father six months after separation. The higher proportion (33 per cent) of families interviewed for the current study with no access arrangements at six months would be expected among families in which there has been violence or abuse. This indicates that a cessation of access is being used as a means of protecting children in some families where there has been violence or abuse. Nevertheless, the 1988 study shows that a cessation of access was also evident in families where abuse was less common.

7.1 Why there was no access

In cases where there was a period of no access, custodial and non-custodial parents were asked why there was no access. A number of custodial and non-custodial parents explained that a period of no access was an interim measure, usually while court cases were proceeding and the court waited for information from psychologist reports, criminal trials, counselling and paternity investigations. One non-custodial parent said:

*[There is no access] because of the Domestic Violence Act. Well, how all this came about was I had assaulted my ex-partner and then it went through the legal system and I got imprisoned for it. Now we're going through this conversation. (M)*²²

²¹ Lee, 1990.

²² In order to ensure that the ethnic backgrounds of the parents who were interviewed are visible, ethnicity is recorded at the conclusion of each quotation. (NZE) denotes New Zealand European; (M) denotes Māori; (PP) denotes Pacific Person; and (O) denotes other ethnicity.

Two custodial and two non-custodial parents stated that no access had been arranged because the non-custodial parent refused to agree to supervised access. One non-custodial parent said:

I refused to go to [supervised access centre]. This supervised access thing was not needed; it was all a load of crock. I didn't need it done against me because I'd never done anything to hurt the children. By doing this, by having a Protection Order against me, my lawyer was telling me I had to have supervised access. Well, I was going 'this is ludicrous. I'm not doing that.' That's why I've had a seven month period without seeing my kids. (NZE)

The remainder of the custodial parents tended to state that they or the court had decided there would be no access because the children would be at risk. This was either because of the extent of previous abuse, because of a history of drug taking or alcohol abuse, or because there had been abuse or neglect of the children or custodial parent during previous access. One custodial parent stopped negotiations about access when she was warned by someone who knew the non-custodial parent that the children would not be safe during access. In two cases access was stopped when non-custodial parents breached the rules of the supervised access centre and in one case access stopped because the supervised access centre offered the service for six weeks only.

By contrast non-custodial parents tended to attribute a denial of access to the custodial parent and to state that the custodial parent was denying access out of spite. They tended to believe the custodial parents' concerns about safety were excuses to deny access.

Like she's using the [children] as pawns, which is not fair on them.... It's bluntly what she said when we had fights that she'd stop me from seeing [my children] and that's what she's done.... She's made up excuses he's having nightmares about daddy coming home. (NZE)

Two non-custodial parents acknowledged that their past violence had precluded contact with their children until the court was satisfied they would be safe.

The bottom line [access was denied] because of what I did. Male assaults female. Yes, I know that's the reason why. I can also understand the Family Court finding it very hard to judge the situation.... (NZE)

When they sent the papers to me and I was reading them, I was thinking 'gee, this is what the children sort of said about me'. So I thought if that's the way they feel then maybe it'll be better if they stayed with their mother... I didn't want to drag them through any more sort of hurt. I actually sought legal advice and he.. said 'we can go for access'... But as he explained they'd appoint a lawyer to the children and this and that. I said 'oh no, they don't need to go through any more of that sort of carry on', so I just... dropped it. (M)

One non-custodial parent stated he had not pursued an application for access because of the high costs involved in court proceedings.

7.2 Children's feelings about no access

Custodial and non-custodial parents were asked how they thought their children felt when there was no access in place.

The majority of custodial parents described their children as being happy and relieved when there was no access. The household was more relaxed and free of tension and the children were more settled and manageable.

The day I finally got him thrown out the kids just changed. They just became so happy.... All [one child] has ever seen is me getting abused... The younger child was very depressed, withdrawn, wouldn't eat, she was really quite a mess. But now these kids are so happy. (NZE)

Custodial parents with babies or toddlers observed that their children did not recognise their father and a lack of contact had little impact on them. Two custodial parents believed that their children had not noticed that contact with their father had stopped because they had never seen much of him.

They didn't actively miss him as such because he wasn't around a lot anyway and I was the main caregiver. But I wonder what's going to come out later on.... Rejection and their own relationships, because they haven't really got a male role model. (NZE)

Two other custodial parents thought their children were resigned to not having contact with their father because they understood the reasons why.

They felt that it was the best thing.... Even now they are uncertain. (M)

Five custodial parents described their children's feelings as upset, angry and missing their father. In one case the children were acting aggressively and having problems at school.

They ask for him but it's not my fault that he's gone. I think they're really upset. (PP)

[She felt] unloved by him.... In general she was a lot happier at school, a lot more settled. As all kids, they need a routine and that routine was there for her. She still had males around to interact with. But basically, she was disappointed, let down. (NZE)

More non-custodial parents were likely to think that their children were unhappy with a lack of contact. They described their children as confused, heartbroken and missing their father, and some non-custodial parents stated that their children's behaviour and school work were suffering. One non-custodial parent said:

[They were] upset, like they'd [do] sneaky things like they'd ring [me on the telephone].... It was my eldest [child] that stirred up the most. The little boy was a bit of a handful; he was hyped up; he's the man, and the little one – he's just a baby – he just wants his daddy. (M)

The remainder of the non-custodial parents stated they did not know how their children felt, because they were unable to contact them. One said:

No, I'm not sure how they felt, whether they wanted to see me or not, I had no idea – still don't. (NZE)

Two non-custodial parents had experienced rejection by their children after a period of no contact, and both felt that the children had been influenced in their feelings by the custodial parent.

7.3 Parents' feelings about no access

Custodial parents in the main expressed positive feelings about the effect on them of no access. A few were ambivalent, stating that no access had both positive and negative impacts on them, especially in situations in which the non-custodial parent had chosen not to take steps towards access. Those who were positive spoke of the benefits to them of a complete absence of contact with the non-custodial parent. This gave them space to sort out their lives and meant an end of fear for themselves and their children. Custodial parents said:

[There was no access] for one year and that was good because it gave me time to come to my senses. I could think about things and sort a lot out.... It was good; it was a real healing time for me. (M)

I felt good. I could get on with my life and raise [my child] and it took a lot of pressure off me... because I put my foot down and said no.. Even though he tracked me down and [was] abusing me on the phone and things like that, but I just knew that he wasn't going to be there. (NZE)

I think it's a good thing for me, him not being here to see the kids... I feel more happy than when he used to take them. (PP)

Custodial parents who felt more ambivalent about no access spoke of their anger at being left with full responsibility for the children, their need for a break, and their feeling that the non-custodial parent was refusing access as a lever to persuade the custodial parent to reconcile. They said:

At times I would have liked a break. I would have liked for her to be able to go off and spend the night and be in responsible hands.... I've sort of come to grips with that now; I just don't get a break. (NZE)

He'd see them if it meant us getting back together again or not at all. I was really torn between getting back together for the kids or my safety. He can't be forced to see the [children]. I just have to wait until he calms right down again, but I don't believe that he is going to this time. (NZE)

It makes me wild that he can just run away from all responsibility and leave me to take care of it all on my own. I hurt too for the children's sake that their father doesn't want to be there for them and that he doesn't help and that he doesn't care about what they're doing. (M)

He said he couldn't have any access because of the Protection Order.... It's really hurting me because he doesn't think of them at all. He's only thinking of himself really and getting at me. (NZE)

I think it's despicable that he's just run away like that.... But it goes two ways there because on the one hand in a way it's not too bad because he's a bad influence on them as well – he drinks and smokes pot. He's not very responsible, but he's still their father, regardless of what he's like. (NZE)

If he wants to do drugs then that's fine, but he can stay away from us.... I have mixed feelings. I do feel mean that I didn't let him see her and I feel sad that she missed out on that bonding time with him. But I also think I did the right thing because he would never have got help otherwise. (NZE)

Non-custodial parents expressed strong feelings of loss when asked about how no access affected them. They also described feelings of anger, frustration, powerlessness, and depression at being cut off from their children. Some spoke in terms of a loss of their rights as a parent, and two non-custodial parents spoke of a sense of loss felt by their extended family at losing touch with the children. Non-custodial parents said:

I feel I have absolutely no rights as a legal guardian. I don't know where they live, which school they go to.... I cannot go and see the teachers. I don't know if they have an accident whether anybody has my emergency numbers.... Some of the basic parental rights that I should have irrespective of the reasons for the separation are not there. (NZE)

I was upset, I was hurt. I tried lots of different things... just to make contact... I adopted other kids and they weren't enough... It was hard. I suppose it's probably been the longest time away from them. (M)

I know the times I've sat there for a whole week pining for the kids, just a phone call or a letter. (M)

One non-custodial parent who abducted his child after a period of no access said:

It was extremely hard because I had been a major part of her life or she had been a major part of my life. It made me really anxious, frustrated and it made me step over the line in the bounds of the law. In a nutshell, I was extreme and it was only brought on because I wasn't allowed access to my daughter. (NZE)

Five non-custodial parents spoke of having reached acceptance that there would be no access. One parent felt a non-violence course had helped him deal with his feelings. Some of these parents said:

I have been very angry for a long time, but it is a matter of having to work through the process. I have spoken to my lawyer and he told me the only thing to do is to wait. It is going on to a year since I have seen the [children]. (M)

I fought for access, which I got and then ballsed it up. Then it was suspended. It's been a bit of my fault and her as well. (M)

I took it all right.... If I hadn't have done this course I probably would have thrown up the handle and gone up to her place and grabbed [my children] and said 'look, I want to see them'. That would have been the old me. But now, since I've been doing this course and learning a lot from it, I'd tell any male if they've ever struck their wife or done anything like that to go and do a course, because you get a lot out of it. (NZE)

Key points: The impacts of no access

- A period of no access was usually interim to negotiating access arrangements
- Many custodial parents believed their children were happy with no access. Some custodial parents and non-custodial parents reported their children grieved for their father when there was no access
- Custodial parents in the main stated that no access was extremely beneficial to them
- Non-custodial parents in the main experienced strong feelings of loss when there was no access.

8 Perceptions of the legislation and informants' suggested improvements

Parents and key informants gave their perceptions and understanding of the legislation and made a number of suggestions for improvements to the operation of the provisions. The information in this section is taken from interviews with parents, interviews with key informants in 1997 and the follow-up survey of key informants in 1998.

8.1 Parents' understanding of the legislation

Custodial and non-custodial parents were asked how they found out what was allowed under the law in relation to access, how satisfied they were with the information they received, and why they thought there were restrictions on access when a Protection Order was in place.

Parents' sources of information

The following table outlines parents' main source of information about the legislation.

Table 19: Main source of information about access provisions

Source of information	Number of parents	Percentage of parents
Lawyer	58	71
Court papers	8	10
Counselling / course	5	6
Other	4	5
Friends / family	1	1
Supervised access centre	1	1
None	4	5
No response	1	1

The majority of parents (71%) received their main information from a lawyer. Custodial parents were somewhat more likely (80%) than non-custodial parents (61%) to have received information from a lawyer, and non-custodial parents were somewhat more likely to have received information from other sources, such as the legal papers, or a non violence course.

Parents' satisfaction with information

The following table indicates parents' rates of satisfaction with the information obtained.

Table 20: Parents' satisfaction with information about access provisions

Satisfaction	Number of Parents	Percentage of parents
Not satisfied	32	39
Satisfied	30	36
No response	20	24

Approximately equal proportions of parents were satisfied as dissatisfied with the information they received. Although the proportions are similar, the level of parents' dissatisfaction with the information received could be regarded as high, with at least 39 per cent of parents expressing dissatisfaction. Māori parents were as likely to express dissatisfaction as NZ European parents. Non-custodial parents were more likely to be dissatisfied with the information received (47%) than custodial parents (33%). To some extent, non-custodial parents' dissatisfaction with the information received was related to their opposition to the legislation itself. The following discussion explores parents' reasons for satisfaction or dissatisfaction.

Information received from lawyers: Forty per cent of parents expressed dissatisfaction with the information they received from their lawyers and 38 per cent were satisfied (22 per cent did not respond.) Although the proportions are similar, the relatively high level of dissatisfaction is a concern.

In expressing satisfaction with lawyers, custodial parents spoke of the importance of receiving clear, accurate and accessible information. They said:

Once I met the lawyer, she was very wonderful. She was very brisk, bright, she got the idea very quickly; she told me things; she didn't build up my hopes but she didn't make it seem ten times more difficult than I would have imagined it to be..... She explains everything from A to Z – I mean she even faxed me a copy from her law book about Protection Orders.... I didn't understand a word....but it did help me. I could read through it again and again because somebody had already explained it to me in English. I could think it was up to me to decide whether I am going to go and fight him in court face to face. There is no question in my mind now. (O)

He's a good lawyer. When I first of all needed him I just rang around the local area where I was living and he was the most local and of course I went straight down there and he's been great ever since. He's up with the play, you know. But I mean he knows too, how much I strongly believe in certain things too... He knew access would be supervised... He was quite happy for me when the judge made it every six weeks. (NZE)

Actually I've had two lawyers... but I've found that part of the system really good and never hesitate to ring him up and say 'what does this mean', or 'what are my rights here or there?' (NZE)

She asked me questions like how often would he come around. She let me know the things that could happen and what to do if he became violent. She thought it was not appropriate for him to visit... She gave me good information. (M)

Custodial parents were dissatisfied with information from lawyers when it was confusing or insufficient. Individual custodial parents stated their lawyers neglected to tell them about the access implications of the Protection Order, the availability of counselling, and the availability of supervised access services. The following comments are typical of those made by dissatisfied custodial parents:

I was saying to [the lawyer] that I don't want to have any contact with [the respondent]. I don't need it. I'm stressed out. When it came to the time for supervised visitation, [the lawyer] says to me 'You're going to have to sort something out with [the respondent]. You're going to have to ring him up and hopefully he won't lose it.' I was totally confused. (NZE)

I'm not sure I was really clear about it at the time. I just wanted to get my children and have them safe. (M)

I didn't like what I heard and that's why I changed [my lawyer].... All [the lawyer] said was basically 'you're going to have to give the children over to him, so that's it.' (M)

My lawyer sometimes doesn't have all the information that I want when I ask her things. I don't think she knows the information as well as she should. (NZE)

When I got the Protection Order it was for myself and I wasn't aware that my kids would be included in it like they were – no one told me that. (NZE)

The following comment illustrates the importance of receiving good information to counter the misinformation in domestic violence cases.

I didn't really listen to my first lawyer because he was just trying to follow me.... I listened to [the respondents'] threats of having me institutionalised and having [my child] taken away from me completely and things like that. (O)

Comments from non-custodial parents about the information received from their lawyers reflected a general dissatisfaction with the message. Those who expressed satisfaction distinguished between the message and the quality of service given by the lawyer. Nevertheless, non-custodial parents' comments suggest that advice given by some lawyers may have fuelled their clients' anger. Non-custodial parents said:

The only information he's told me so far was that in any case they will give preference to the mother regardless of anything. (O)

I think I should have been told what could happen if I didn't attend the custodial hearing. (M)

I wasn't at all satisfied. I had to outlay thousands of dollars to start to get the ball rolling to see my son. I was disgusted.... I think probably my state of mind had a lot to do with it at that time.. With the Protection Order, I was very one sided, very narrow minded. I was very bitter, very twisted, extremely so.... My lawyer basically said to me 'look, you've got no rights. Your son's got rights. You haven't.' (NZE)

I don't have a good understanding of Protection Orders. (M)

There doesn't seem to be a lot of information that you can have. The way it was explained to me was that you do the counselling, you see if you can negotiate; if you can't then the advice I was given was to finish the domestic violence course and then re-apply. Up until then, if you had supervised access, then that was the best you were going to get... If that's all that can be done, then it was sufficient information. (NZE)

I said to my lawyer 'what rights do I have now?' And he said 'you've got none.' (M)

[I was] fairly satisfied. She made it quite clear... what I could and couldn't do. (NZE)

Information received from counselling or programmes: The five parents who relied on counselling as their source of information were in general satisfied with it. Non-custodial parents indicated that some information had been obtained from the non-violence courses they had attended. Custodial parents received information from individual or group counselling, Women's Refuge, a psychiatric outpatient nurse (in a rural area), and a court victim adviser. The following comment from a non-custodial parent illustrates the importance of receiving good information.

That 'Harness Your Anger' course I did – at one stage there they had a lawyer come so he could answer some of our questions, so that was pretty helpful. That settled the whole group quite a bit actually. It was about access issues with a Protection Order in place. The lawyer really defused the group on that particular day – they all settled down, they all paid attention and listened, whereas before they were all narrow minded, one track... (NZE)

Custodial parents said:

The two ladies from the Refuge, they told me about [the law in relation to children]. They took me to see a lawyer. One of them sat in too.... I trust her completely. (M)

I think if I hadn't done the course I really think I wouldn't have been able to leave him. It just showed me what effect it had on the kids. (NZE)

Information received from legal papers: More non-custodial than custodial parents relied for information on the papers that were served on them. Although some found the written detail helpful, in general parents were dissatisfied with obtaining information in this form. The following comments from non-custodial parents indicate the confusion that can arise from conveying legal information in written form.

There was some attached paperwork from the court that said.. the conditions of the order. It said what a Protection Order meant and it said that one of the reasons I was allowed to contact them was for access. (NZE)

You got told nothing. You just got the papers dumped on you. You just had to read to fight bro. You really didn't know your rights, you know? If you wanted to see them you just can't see them so you just kept away. (M)

I was given the papers and I didn't even know what they were. I read them over and over again. I read them every night for a week. I didn't really know what to do. (NZE)

Three non-custodial parents and one custodial parent received their main information from other sources, such as the Counsel for the Child, the Family Court Co-ordinator, the judge, and one non-custodial parent read the legislation in a library.

Parents' understanding of the reasons for the law

Custodial and non-custodial parents were asked why they thought having a Protection Order in place meant that there were restrictions on access to children.

Most custodial parents believed the law was in place to protect children from direct physical harm during access. About a third of custodial parents referred to a need to protect children from emotional harm as a result of witnessing abuse, or from being used indirectly to harm the other parent. About a quarter of custodial parents believed the law protected both themselves and their children from harm. Three custodial parents said they didn't know why the law was in place and one custodial parent was not aware that the Protection Order meant any restrictions on access. Custodial parents said:

[The law is in place] because children are innocent and need to be looked after and cared for. They do not need to be subjected to violence that affects them for the rest of their life. (M)

To have a Protection Order, there would have to have been some violence in the home, and whether or not the child was affected personally by that violence, they still either witness it or would know about it. So [the law] is to protect them. (NZE)

I suppose they can get at you through the kids... (M)

If he touches you and threatens you it is a concern to the children. The Protection Order is for you and the children so they don't get to see. (M)

[The law is there] probably because of the problems that the parents have because like in my situation there is no way of agreeing on an arrangement. There was nowhere where it could have taken place other than in a supervised environment. (NZE)

I guess [the law is in place] to give everyone time to settle down a bit, cool down and I would imagine to prepare the kids for what might happen next.... And your emotions can be really high at that time, and simmer down, think things through a bit more and for the other party as well. (NZE)

If [respondents] have got the kids they could hurt the kids to hurt the person. They use the kids to get back at the person. (NZE)

About a third of non-custodial parents stated they did not know why the law was in place. Several of these parents also stated the law was quite unnecessary in their case. Other non-custodial parents understood only that the non contact conditions of the Protection Order meant that access was ruled out. Some non-custodial parents referred to a need to protect children from physical or emotional harm and three parents acknowledged a need to protect the custodial parent in addition to the children. A few non-custodial parents stated that the law was in place to give the custodial parent power, and two parents believed the law gave the courts time to assess the safety of the children. Four non-custodial parents stated that there had been no restriction on access in their case. Non-custodial parents said:

Obviously – I'm talking physical violence now – [the law is in place] to protect them, regardless of whether it's on the children or the mother, just the psychological damage has been done and children shouldn't be living in fear and intimidation.... In hindsight, I can see that it was the best thing that could have happened. (NZE)

It's for their own safety I suppose. That's what I.. figured it was for. (M)

So that kids could not be used as a leverage, or that an irate father or mother for that matter doesn't go clomping round to the house and grabbing them. (NZE)

[Children's] names are put on the Protection Order and from there you have to ask permission from the aggrieved person who has problems with you and it's like a bargaining tool.... I wouldn't have a clue [why children are named]. To me it's just a lawyer's thing. (NZE)

I don't know why they involve children in differences between the two adults. (O)

Someone with a wig on that doesn't know the full story decides that you may be a threat to the child, even though the relationship between the father and child is completely different to the relationship between the father and mother. (M)

[The applicant] did make some quite nasty accusations against me so I suppose the judge sort of really had to look into them. (NZE)

It takes my rights away to see her. If I approach her or approach my daughter, [the applicant] sends the police around... I've had a warning and they've said they will arrest me. With a job like mine I can't afford to be arrested. (NZE)

I'm not too sure [that the law does restrict access], if you're like how we sorted it out it doesn't... I'm not too sure how it works. (M)

8.2 Key informants' perceptions of the legislation

The majority of key informants believed that the new legislation had enhanced the safety of the children involved in domestic violence. The legislation gave a clear message that children in violent family situations were at risk and their safety was a high priority. It had improved awareness and knowledge of domestic violence and as a consequence, children's safety had been enhanced. Key informants said:

I think the new legislation has increased public awareness of the issue of domestic violence, [and] provided a measure of protection that wasn't there before.... (Judge)

It is a new concept that children are damaged by witnessing violence. The concept is just taking hold. Our interpretations of violence are being refined rather than violence being normalised. (Programme provider)

In some cases key informants were qualified in their support for the legislation. Some informants, particularly judges, were of the view that, to protect children in the long term, safe access arrangements needed to be combined with programmes to change the attitudes and behaviour of respondents. Some key informants believed that the intention of the legislation had been weakened by vagueness of orders, families' non-compliance with orders, and a lack of monitoring of the directions given by the court. Some thought that the legislation was too restrictive in terms of access and others thought that the legislation was not being used to restrict access enough. Key informants said:

Unless the underlying issues of violence, domination and control are addressed, children will continue to suffer from the effects of domestic violence... Putting in place carefully contrived access arrangements is like putting an ambulance at the bottom of the cliff. (Judge)

The child's right to a relationship with the other [non-custodial] parent seems to outweigh other considerations. There seems to be a reluctance to prohibit access at all. (Lawyer)

At times (the legislation) may hinder the ability of the children to have regular access with the respondent. For some children this can be traumatic where there's a strong bond. (Family Court Co-ordinator)

8.3 Informants' suggested improvements to the operation of the legislation

Parents and key informants made a number of suggestions for improvements to the operation of the legislation. Areas covered included: supervised access for Māori children; the information available to parents; the information available to the court; court processes; professional services; supervised access centres; the fairness of decisions; costs and legal aid; and funding of supervised access services.

Supervised access for Māori children

Providers of programmes for Māori clients of the Family Court thought that the court should extend concepts of access to the wider family. This included making it possible for family groups to attend and contribute to hearings. Some thought that supervised access centres should be set up in more culturally appropriate environments. Others thought that supervision by family members was the only appropriate supervision for Māori parents and children. An example was given of a service in one rural area which supported Māori families to arrange safe access for their children. One Māori programme provider also observed that there was a need to ensure children were protected within extended families.

When asked in the follow-up survey how these concerns should be addressed a Māori programme provider said the following:

Negotiation with whānau and iwi for the provision of suitable supervised access within the guidelines of the Act. Clear definitions of 'abuse' and 'abusive behaviour' are needed in order to honour Māori cultural beliefs while maintaining real safety for children.

The bitterness created in custody going to one parent for Māori often means that the 'Respondent's' whānau are all excluded from access to the mokopuna. The child is then denied access to grandparents who often have closer relationships with the children than either parent. Access for children to their Māori extended whānau needs to be carefully negotiated by Māori providers or Māori community agencies who can facilitate a meeting between the parties and report to the Family Court prior to the final orders being made. Current legal processes have created many despondent Grandparents and Whānau members as well as deprived children of their rights to significant people in their lives.

1. *Listen and implement what several programme providers, family court co-ordinators and counsel have already identified.*
 2. *The implementation of appropriateness for formalised supervised access for Māori example Tikanga and Kawa as being [paramount] ..*
 3. *Māori to be involved in all decision making levels – where “our” children’s past, present and future is concerned .. “Whanaungatanga.” Family group conference including early assessments.*
 4. *Appropriateness of where children were referred. If they are identified as being Māori – then Māori organisations who demonstrate how they work with their Tikanga and Kawa are the appropriate groups to refer to “as a parallel”.*
- If you are genuine in asking how to address these concerns then help us help you in not repeating a past history that has failed our ‘people’ but to share our vision ‘not yours’ in how to keep our children – culturally mind, body and spirit ‘safe’.*

Improvements to the information available to parents

A large number of custodial parents would have liked access to good information about the legal process and how this could be used to protect their children. The following are typical of these comments.

When Protection Orders are made, maybe there should be something extra that is part of the Protection Order if there are children involved, because it’s quite important what happens to the children...maybe they could have an extra page saying what options or entitlements there are for the person that the Protection Order is against....also what the protected person is entitled to. (NZE)

The person who has the Protection Order should have more information and guidelines about what should be in the access contract...they could have separate criteria or guidelines for physical abuse, emotional abuse and sexual abuse....what the supervisors need to be watching out for. (NZE)

Some pamphlets....yeah definitely. Right there in your face, not all closed behind one another...a big stand on its own. It’s really important. (M)

One custodial parent also commented about the language level of the papers. She said ‘*They should put it in English, instead of this clause, that clause, the next clause...it should be written out easier so you can understand.*’ (NZE)

A Samoan custodial parent commented ‘*I would like all the materials to be in Samoan. I would like language help when I am talking with my lawyer and my counsellor.*’ (PP)

A non-custodial parent said that the Protection Order should also have included ‘*some sort of clear order and direction about what happens with access.*’ (NZE)

A number of parents, particularly Māori parents would have liked information to be conveyed in person. A custodial parent who appeared to understand very little about the Protection Order said ‘*If somebody comes and had a discussion about these things [that] would be a good start.*’ (M)

Non custodial parents said:

It is a hard, delicate situation really. Every person is different... but I’d rather have been told, not through letters and .. lawyers. I’d rather have been told face to face. (M)

The people who want access are the ones that... need to be educated in ways and means of dealing with different issues.... Like having people to talk with... I didn't understand the Protection Order. I just stumbled through it. (M)

Another non-custodial parent said it would be useful to have 'some sort of formal or informal time with a court member, with your lawyer explaining rights of access and that, so you get it from them. 'Cause I'm a bit iffy about lawyers too, whether they know sometimes, especially in the Family Court.' (M)

Some key informants also believed that a number of Family Court clients did not understand the legislation, and that more effort needed to be given to explaining the purposes and implications of Protection Orders. Respondents who may have difficulty with reading, or for whom English was a second language were especially in need of assistance with interpreting the mass of papers in legal language delivered to them when a Protection Order was served.

Improvements to information available to the court

In response to the problems identified in Chapter 3: The implementation of the provisions for access to children in the domestic violence legislation, key informants made a number of suggestions for improving the information available to the court. Lawyers representing custodial parents could be encouraged to include information relating to the safety of the children in initial affidavits, using the list of factors in S16B(5) of the Guardianship Act (1968). Guidelines or a practice note could be issued for this purpose.

Key informants also thought that the courts should be better resourced to be able to engage professional social workers, social service agencies or to establish a referral relationship with CYPFA. These services were thought to be essential for carrying out risk assessments, establishing the suitability of informal supervisors, and monitoring supervision by family members.

Improvements to court process and procedures

- Delays

A number of custodial and non-custodial parents would have liked to have had their cases settled more quickly. They suggested that courts should take action to reduce the backlog, possibly by appointing more judges.

- A review of supervised access

Some key informants thought there was a need for a process to help some families move on from supervised access and that a review could be instituted when supervised access is ordered. Supervised access providers pointed out that some parents had attended their centres for two years. This put pressure on centre waiting lists.

One non-custodial parent was unhappy with the length of time his access had been supervised and suggested *'There should be a date stipulated for the length of supervised access. At present, it just goes on and on. There is no other way forward.'* (NZE)

- Compliance with access orders

A number of custodial and non-custodial parents were also concerned about occasions on which access visits had been delayed or cancelled. These were some of the suggestions these parents made.

A custodial parent suggested that access arrangements *'should be as specific as possible so that there's no way that the other partner can get the upper hand. I mean if there's a specific arrangement for access...then neither party can argue, so that there's no room for debate over it.'* (NZE)

This point was also raised by a non-custodial parent who said *'Make sure that the mother can't cancel because it's not very fair to get excited on the Saturday thinking I can't wait until Sunday to see my children, and then find out on the Friday it's cancelled.'* (NZE)

- Safety at court

The following suggestions were made by custodial parents as ways in which they might feel more comfortable and safe when they attended hearings.

Sometimes I think it would be quite good in the Family Court that you don't have to look at them. Like there could be a wall, so that the judge can see you, can see all the parties concerned....I mean some of those rooms, especially the ones in [city] are very small, and you might only be four feet away from them and it's too close for me, still too close. (NZE)

Maybe they should have some sort of arrangement for when the people leave afterwards, some sort of guard, or something, because at the last time I went to court and the judge said he couldn't have access.....[the respondent] was really mad and he was quite unpleasant to me. (NZE)

- Support

A greater level of support was suggested by a number of custodial parents as a way in which their experience of the Family Court might be improved. The following comments are typical of parents who felt this way.

I'd hate to see a person that was a weaker person try to do this, because I'm sure that there would have been a lot of people that would have given up....because I've stood my ground I feel as though I'm just a pain to the court system. Like I've been given this attitude from the court system, don't you think you could give him supervised visits for a bit longer, can't you sort of work something out, sort of get on with it sort of thing...that's the attitude that I've basically been given. It's been really tough. (NZE)

A custodial parent who lived in a rural area said *'I wonder whether for smaller rural areas, if somebody could offer counselling...for somebody to say you're doing the right thing....because I do think it is important to have some support...it has been easy for me, but then I'm quite a strong person. When you think of the average woman who needs a Protection Order it must be just about impossible for them.'* (NZE)

Some non-custodial parents also expressed a need for support.

Just to have a counselling service come in and say... whether you're a good dad or not, like really screen the person... [The respondents' programme provider] would be the one to do it.. I actually said to them 'I wish you were there when I went to court.' (M)

A number of parents, particularly Māori parents, lacked information about the support services that were available to them. They lacked knowledge about the applicant and children's programmes provided under the Act, the existence of supervised access services, and that Family Court Co-ordinators were available to provide information.

Improvements in professional services

Parents' comments about improvements needed in the service provided by lawyers are documented earlier in this chapter in Section 8.1: Parents' satisfaction with information.

A number of custodial parents suggested that the performance of the Counsel for the Child could also be improved. This is how one parent described her experiences.

I felt that she hasn't been representing my kids. I don't know how much training they actually have, but I've sort of said a couple of things to her and she's been like you know, I don't know about that. I sort of felt that you should know about that because you're representing two small children. It is your business to know that. (NZE)

Suggestions about the Counsel for the Child were also made by non-custodial parents. One parent thought that there should be '*an easier way of accessing the Counsel for the Child*' in cases where the parent might be having problems with any of the children. Another non-custodial parent was unhappy that it was nearly two months before a Counsel for the Child was appointed, and thought that this should have happened more quickly.

A non-custodial parent felt like this about the process.

I envisage it as a production line. The judge sitting there 'next case...oh yeah OK he's obviously abused her and can only see his kids under supervision. Next.' Just like that, it's so cold. (M)

Improvements to supervised access services

Parents' experience of supervised access centres is documented in Chapter 4: The impacts of formal supervised access. Several of these parents thought that the service could be improved if there were more supervised access centres to choose from and if the access times were more flexible.

Maybe they could make it so that when you've got things planned they could maybe be a bit more flexible. Say instead of every two weeks, if you want to change it then say two weeks in a row. (M)

I would be happier if [the centre] was closer. If there were more of them, not just one away out there....maybe the access time could be a bit longer. That puts the non-custodian off because they're only seeing their kid for an hour and a half....it is probably more realistic that it is longer than an hour and a half. (NZE)

One custodial parent and a number of key informants also felt that the centres could do more to cater for the interests of older children by, for instance, providing a wider selection of board games.

Inflexible access times and the lack of centres were also concerns of non-custodial parents. One non-custodial parent also thought that the hours of access should be extended as the children got older.

Making the process fairer

Several custodial parents thought it was unfair that the access process had, in their opinion, been considerably lengthened because of the actions of the non-custodial parent. These comments would appear to suggest that these custodial parents would be more satisfied if some sort of cut-off point was implemented. Three of these parents said

As a family we're going through all this process, through all these people and costs, to actually end up doing what the father wanted anyway, right from the beginning. We're just going to be brainwashed into thinking oh yes, it is the right thing to do. I know this person... (M)

...with all of these problems in the community some preventative things need to be put in place. If guys really think about their children then fine, but if not then goodbye. Why wait for a crime to be done before anything is done. (M)

I think even on the day when I got my Protection Order, he said oh I want to go through it again in six months. You know I can't deal with this again....will the court allow him to keep on and on and on? This is what I don't think is fair. Move on, yeah right. That's impossible. (NZE)

Some non-custodial parents also thought that the court had made unfair decisions, but for very different reasons. Several thought that these decisions had been based only on the word of the custodial parent, and that no form of proof was required. These parents said:

The problem I have with the Family Court and the Protection Order is there are no safeguards and there are no penalties for someone who is prepared to lie to get what they want.....I think there should be a \$2000 fine or something like that, if it can be proved that they're wrong. (NZE)

There has to be proof – I thought it would be like a court of law, but obviously it's not. (NZE)

A considerable number of non-custodial parents also thought that the system favoured women. This is how some described their feelings.

Everything has been biased towards the woman's viewpoint and not taken the man's feelings into consideration. (M)

I still feel as if I'm being punished and that I've got to be the aggressive person all the time. Not in a physical sense but in the sense of getting lawyers involved, getting the court involved, initiating everything...once you've finished the domestic violence course why doesn't it go into some kind of process that forces the other party...to move forward...without me having to go a barrister to get it done. (NZE)

Three non-custodial parents thought that their particular situations could have been improved if both parties had been interviewed prior to any decisions being made. This comment is typical of these suggestions.

It could be made better....if she makes a complaint against her husband, they should interview the husband as well and just not make up an order without the husband knowing any flipping thing at all and have no rights at all to say anything. (O)

Costs and legal aid

Parents' comments on their legal costs are included in Chapter 3: The implementation of the provisions for access to children in the domestic violence legislation. Parents who had paid high legal costs felt that this was a barrier to resolving access issues. Some parents who were not eligible for legal aid and whose corresponding custodial or non-custodial parent was eligible, felt that the budget for someone on legal aid should be limited. Others who had been given a limit to their legal aid budget felt it had been set too low.

Resourcing of supervised access services

The concerns of providers of supervised access services are documented in Chapter 4: The impacts of formal supervised access. Providers stated that full costs could not be recovered from parents and that they were subsidising supervised access services from elsewhere in the organisation. This practice could not be sustained, particularly as rolls were increasing. Providers believed that services should be funded by government, although some felt that parents should continue to be asked to pay a contribution. By the time of the follow-up survey in 1998, the Community Funding Agency (now CYPFA) was partially funding some services.

Key points: Perceptions of the legislation and informants' suggested improvements

- Parents stated they needed clear, accurate and accessible information
- Most (71%) parents received their main information from a lawyer
- There was a relatively high level of dissatisfaction with the information received
- Parents, particularly non-custodial parents, had a poor understanding of the legislation and the reasons for it
- Most key informants believed the legislation had enhanced the safety of children in violent families
- Parents and key informants suggested improvements to: supervised access for Māori children; the information available to parents; the information available to the court; court processes; professional services; supervised access centres; the fairness of decisions; costs and legal aid; and funding of supervised access services.

9 Summary and conclusions

New legislation in 1995 changed the approach taken by the Family Courts in relation to the children involved in domestic violence cases. Both the Domestic Violence Act 1995 and an amendment to the Guardianship Act 1968 included provisions to enhance the protection and safety of the children involved in family violence. This report presents the results of a research study which was designed to assess the implementation and impacts of these new provisions, particularly in relation to the arrangements made for access to children.

The legislation represents a significant departure from the approach previously taken by the Family Court in relation to custody and access. The previous approach promoted resolution by agreement between the parties. The Domestic Violence Act 1995 now provides that, when there is a Protection Order in place, the respondent may not contact any child of the applicant's family, unless contact is permitted under any order or written agreement. Section 16B of the Guardianship Act presumes that children's access with a parent who has previously been violent within the family will be supervised unless the court can be satisfied that the children will be safe.

The researchers have used a range of methods and sources of information to assess the implementation and impacts of the legislation. In the first stage of the research in 1997, a study of 558 files from five Family Courts was completed. The cases selected were applications for Protection Orders in which children were involved and applications for custody in which there were allegations of violence. Also at this time 53 key informants were interviewed, including providers of supervised access services, programme providers, court staff, lawyers, and judges.

During the second stage in 1998 a follow-up survey was carried out with these key informants. Also in 1998, interviews were conducted with 82 custodial and non-custodial parents and five people who had supervised access informally. The information from interviews represents the views and experiences of those who were interviewed, and cannot be regarded as being representative of the population of parents who are subject to Protection Orders. For example, because of difficulties making contact with some parents, it is likely that the sample does not include some of the most serious cases.

This section of the report presents the summary and conclusions drawn from the findings of the full study. Each of the study objectives will be considered in turn.

9.1 The operation of the provisions for child access in the domestic violence legislation

The Domestic Violence Act 1995 and the amended Guardianship Amendment Act 1968 have required Family Courts to change the way in which they consider access to children in cases where violence is alleged and children are involved. The research has shown that the Family Court had followed two routes to arrive at court directions relating to access in these cases.

The court may make access directions as special conditions of Protection Orders, or as access orders in conjunction with custody orders. The legislation guides the court to consider access decisions in several stages, beginning with the seeking of protection or custody. The court is then required to establish whether violence has occurred and if so, assess the level of risk during access. If the court makes directions for supervised access, it is required to approve the suitability of the supervision.

Information on which the courts could base decisions relating to access was found to be limited. A high proportion of Protection Order applications were decided on the papers alone, which meant that judges relied on the information in the initial affidavits on safety of the children. Only 24 per cent of the affidavits in the file study included information about the safety of the children, despite frequent reference to children having been present during violence or abuse. Other sources of information used in small proportions of cases were hearings, Counsel for the Child, counsellors, mediators, CYPFS (The Children, Young Persons and their Families Service²³) reports, and psychologist reports. These sources were not always accessible to the court because of delays or costs.

Because information sources were limited, directions for access were made in only 42 per cent of the cases studied. Directions for supervised access were made in 18 per cent of cases, directions for access (presumably unsupervised) were made in 12 per cent, and directions for no access were made in 12 per cent of cases. Despite the intention of section 16A that the court would assess the suitability of the supervisor, the type of supervision was specified in only 24 of the 86 cases with directions for supervised access.

Parents found the process of arriving at access decisions through the court complex, costly and lengthy. The average legal cost for parents not eligible for legal aid was high (\$8400). A substantial group of parents reported they made access decisions informally. The high cost and complexity of the court process were two reasons for this, although as will be explored later in the report, a number of parents were not aware that a Protection Order had any implications for access in their case.

The findings point to a number of areas where improvements are needed in the operation of the provisions. In particular, information available to the court could be improved through issuing guidelines to lawyers on information about children which should be included in affidavits. Psychologist and social work reports need to be made more accessible to the court. And delays in court hearings should be reduced.

9.2 Are the provisions protecting children from violence?

Section 16B of the Guardianship Act 1968 and the inclusion of children in the non-contact conditions of a Protection Order were measures introduced to ensure greater protection of children in families where a parent has previously been violent. These provisions presumed that only supervised access or no access would be allowed unless the court had assessed that a child would be safe with a non-custodial parent who had previously been violent.

²³ CYPFS became The Children, Young Persons and their Families Agency (CYPFA) in 1998.

On the whole, the custodial parents in our sample indicated they had felt empowered by the law to resist pressure to make access arrangements that they felt would place their children at risk. In many cases, the need to work through the legal process had made parents consider carefully the children's needs and best interests. Unfortunately we have little baseline information to describe the situation prior to the introduction of the legislation. However, the information from key informants indicates that a temporary cessation of access or use of supervised access are now far more common than was the situation prior to the legislation.

Immediately after a Protection Order was made, in 48 per cent of the families interviewed there was no access and in 29 per cent of families supervised access was arranged. Custodial parents whose children were having supervised access believed this was considerably safer for them than if access were to be unsupervised. However there was a substantial group who believed their children would be safest with no access.

In the majority of cases (68 per cent of the families interviewed) there had been no clear directions from the court about access, or parents could not remember whether directions had been made. Many parents simply were not aware of the implications for children in the legislation. When specific directions about access accompanied the Protection Order and parents were aware of these (23 families or 32 per cent) there was general compliance with directions in all but four cases.

It is of concern that in 17 families (23 per cent) unsupervised access was taking place immediately after a Protection Order had been made. Unsupervised access was occurring at this stage in most cases without any assessment of risk or formalised direction from the court, and in contravention of the non-contact conditions of the Protection Order. Although a substantial group of custodial parents believed that their children were not at risk with unsupervised access, this had not been substantiated by any formal assessment.

It is of grave concern that children in four families were reported to have suffered direct physical or sexual abuse during access, despite being subject to a Protection Order. All of the children concerned were very young, below school age. In three of these cases access was being supervised by the custodial parent at the time and no directions had been made by the court in relation to access. In one case the court had ordered access as approved by the applicant and access was unsupervised at the time. In all four cases the custodial parents had subsequently made safer arrangements.

In addition, in 25 families (34 per cent), children were reported to have suffered some form of psychological harm during access. Psychological harm occurred when children were verbally abused; when children were used to pass messages; when children were present at the time a custodial parent, or another person was being physically or verbally abused; or the non-custodial parent damaged property. These situations were most frequently reported in the context of unsupervised access, or access supervised by the custodial parent, although could occur with any type of access.

In summary, the legislation has undoubtedly led to a range of safe access arrangements being available and used in families where there has been violence. Nevertheless, some children have remained in situations of risk and exposure to violence. From the cases cited, it would appear that if the courts were to clearly direct families towards safe access or no access as an interim measure when an application is first made such situations may be prevented. Custodial parents also need more information about the options available to them to make

safe access arrangements, including the possibility of no access, at the time a Protection Order is first made.

9.3 Are the provisions promoting the welfare of the child?

The level of understanding of the legislation

If the legislation was operating effectively, a widespread understanding of the need to give high priority to the best interests of the children would be expected. The legislation was put in place primarily to protect children from direct physical harm. It was also designed to prevent their further exposure to violence, in particular by preventing further abuse during access of any member of the family by the non-custodial parent.

The research has revealed a poor understanding of the reasons for the legislation, both among custodial and non-custodial parents and some of the professionals working with it. Non-custodial parents in particular believed the legislation was in place as a further sanction on them. Custodial parents and professionals frequently believed the legislation was in place to prevent direct physical abuse of children, and that because such abuse was rare, the law was unnecessarily harsh. Few informants understood the need to protect children from witnessing further violence or conflict, or the need to provide additional protection for the custodial parent, by means of safe access arrangements. The well being of the children caught up in domestic violence would be enhanced if parents had a better understanding of the impacts of violence on children.

The availability of good information

Parents reported a high level of dissatisfaction with the information they received about the implications of the legislation, particularly from some lawyers. A lack of knowledge about legal processes left some custodial parents and children at risk. Inaccurate, incomprehensible and confusing information led to decisions which were not in the child's best interests. Poor information could also have the effect of escalating conflict between parents and thus exposing children to further risk. At the time of crisis when a Protection Order is made and served, both parents need special guidance to be able to give their children's needs and best interests a high priority. They also need to know what steps they can take to change their legal position if they believe the protection provided by the law is not necessary. Vastly improved information at this stage would help to achieve a greater acceptance of the legislation and thus improve the outlook for the children involved.

The quality of information could be improved through raising the quality of service given by professionals involved, through promotional material such as videos or pamphlets and, especially for Māori parents, improving access to support services (discussed further in the following section). Because not all cases proceed to a hearing, the lawyers who handle Protection Order applications have a crucial role to play in informing and guiding parents. And because many non-custodial parents do not make contact with a lawyer, they need to receive quality information at the time an order is served. This should include information about the reasons for the legislation, the impact of violence on children, and reasonable steps to take to deal with the implications of the order.

Access to effective services for Māori parents

Māori parents in particular lacked information about the services available to them. They tended to be unaware that programmes for applicants and children were provided under the Act, that Family Court Co-ordinators could provide general information, and that supervised access services were available. Māori parents also would have liked to receive information in person, and reflected a preference for holistic service provision from the community sector. While there may be appropriate groups in the community who could provide this type of service, it needs to be conveyed to Māori parents that there are services available that are appropriate to their needs.

Some Māori service providers believe it is desirable for the same service to cater for custodial and non-custodial parents and children. However, this may not be conducive to effective service provision where there are issues of violence and abuse. As with all parents, Māori need a choice of quality services. Nevertheless, it is recognised that Māori clients tend to be more comfortable with services provided by Māori.

The impacts of no access

A further issue which relates to the welfare of the child is whether a cessation of access is in the child's best interests. In the first stage of the research, the professional groups expressed concerns that the legislation had resulted in non-custodial parents abandoning their relationships with their children. Within our sample of 73 families, eight non-custodial parents were reported to have refused supervised access, because they found the idea intolerable, they could not accept the conditions, or they found it too costly. In total, in approximately 11 per cent of the families, children had a period of time with no access to their non-custodial parent because supervised access was seen as a barrier. It is not clear how many of these non-custodial parents would have persisted with access under other conditions, however.

A cessation of access was common immediately after a Protection Order was made. Almost half of the families had no access arrangements at this stage, but this was usually interim to access decisions being made through the court, through lawyers, or informally. In only three families children had had no access to their non-custodial parent in the entire period of time since the Protection Order.

When parents were asked about the impact of cessation of access on their children, views were polarised. One group of parents, largely custodial parents, described their children as more settled, happy, and relieved because they were no longer in fear, when all contact ceased with the non-custodial parent. Another set of parents, largely but not exclusively non-custodial parents described their children as grief stricken, confused and angry when all contact ceased with the non-custodial parent. When we look at wider research in this area²⁴, the effect of contact or absence of contact with a non-custodial parent has been found to depend on certain factors. The most important factors are the relationship between the separated parents and the relationship between the children and their non-custodial parent. Some studies have found that, when the level of conflict between parents is high, particularly when expressed violently, frequent contact may not be beneficial to children. Thus research

²⁴ See Hall, G, 1989; Rodgers and Pryor, 1998.

leads to the view that children in some families may be best protected through a cessation of contact, at least until the level of conflict reduces.

Children's well being with informal supervised access

Concerns were also expressed in the first stage of the research about the quality of supervision, and thus the well being of children, when supervised access is arranged informally within families. Children in our sample of families were reported to be happy and compliant with this form of access arrangement. There appeared to be important benefits to the children from having contact with their wider family when both parents had agreed to this.

Nevertheless, while there were no reports of direct physical abuse of children during visits supervised by family members, informal supervisors seemed poorly prepared to preserve the emotional safety of children. For example, a grandparent was unable to prevent the non-custodial parent from using the child to pass abusive messages to the custodial parent. This type of arrangement was also unsafe when a non-custodial parents' family who were supervising access harassed the custodial parent, and when a non-custodial parent threatened the supervisor. The five informal supervisors who were interviewed had received little information about their role and, with one exception, did not actively supervise the visits. When this type of arrangement is agreed by both parents and the court, steps need to be taken to ensure the appointed supervisor has a clear understanding of their role and the reasons for it. A mechanism needs to be in place for independent monitoring of such arrangements to ensure the on-going safety of the children, the custodial parent, and the supervisor.

Children's well being with formal supervised access

In the main, children were reported to be happy and secure with formal supervised access. In addition to contact with the non-custodial parent, they enjoyed the range of activities available to them, the company of other children, and made attachments to the staff. Keeping children happy and occupied during access appeared to help foster a positive relationship with the non-custodial parent and thus contributed to the children's safety.

Some parents reported that formal supervised access had not been a good experience for their children. Some custodial parents remained fearful for their children's emotional safety. Some non-custodial parents spoke of children being strained or distant, although at least one parent suggested the possibility that the children had picked up on his own negative attitudes.

In general, custodial parents were fearful that supervised access would come to an end, while non-custodial parents were anxious to move on to unsupervised arrangements. When orders are made for formal supervised access, consideration needs to be given to whether this is intended as an interim or permanent arrangement. Parents need to be briefed about processes to follow should they wish the arrangement to be reviewed. These processes should place the welfare of the children involved as the highest priority.

9.4 Do the provisions cause unintended consequences?

Safety of custodial parents

The interviews with parents have raised issues relating to the safety of custodial parents in the implementation of the legislation. The most serious issue is the informal practice of supervision of access by the custodial parent. This was arranged within a small group of families (12 per cent of families had arranged access in this way immediately after a Protection Order was made) and was often a compromise position agreed to by the custodial parent in the face of pressure. Custodial parents' interviews indicated this situation placed them at risk of on-going physical and verbal abuse and harassment from the non-custodial parent. In most cases non-custodial parents used the informality of the arrangement to visit or phone at any time and to abuse the custodial parent if denied access. As outlined above, the fact that direct abuse of children also occurred within these types of arrangements also shows that these were not safe situations for children. It was not intended that the legislation would encourage this type of supervision. Courts need to be aware that the legislation or their directions may be interpreted in this way and endeavour to be more specific about the type of supervision being ordered. Both custodial and non-custodial parents need to be informed that this type of supervision is not advisable and given safer options.

One aspect of the operation of formal supervised access centres was found to be unsafe for custodial parents. Almost all custodial parents who used the centres said that they had been harassed by the non-custodial parent when arriving at or leaving the centre. This is a breach of the rules of most centres and a breach of the Protection Order, and left custodial parents feeling very unsafe. When making decisions about access, courts need to take into consideration that any access places custodial parents in the position of being accessible to the non-custodial parent and assess the safety implications of this. Organisations responsible for supervised access services need to be aware of this aspect of their service and take steps to ensure change-overs can be accomplished safely for all parties.

Appropriateness of supervised access for Māori

Several of the programme providers, Family Court Co-ordinators, and counsel who were close to Māori clients raised concerns about the appropriateness of formalised supervised access for Māori. They believed that Māori parents and children were alienated by the concept of supervision at a centre which excludes other members of the whānau. The interviews with parents have shown that families with Māori children were less likely to use supervised access, both formal and informal.

Some informants thought that it would be possible to arrange for formal supervision to take place at a more culturally familiar setting, such as a marae. Others, however, thought that for Māori families, supervision should always be arranged within the extended family. This would benefit the children in providing a natural and familiar setting to spend time with their non-custodial parent and ensuring the links with whānau are preserved. One Māori programme provider raised the issue of needing to ensure children are protected within extended families. Further information is needed about models for supervising access which preserve the link with whānau, while also providing assurance that the children will be protected.

Complexity and cost of court processes

Although cases relating to custody and access in the Family Court have always potentially been lengthy and complex, key informants in the first stage believed that the new legislation had compounded this problem. More access cases were coming to the Family Court and cases were more lengthy and complicated because of the assessment of risk that Section 16 required. Requests for reports from Counsel for the Child and psychologists were more common, and important for obtaining the necessary information, but could delay decisions. Parents who were interviewed expressed frustration and concern at long delays to the point that some parents made informal arrangements and others abandoned any application for access. An increase in legal costs accompanied this increase in complexity. For parents not eligible for legal aid, the high cost of legal advice was unacceptable and did deter some from proceeding. The implications of the additional costs of these cases to the government's legal aid budget are being addressed in a wider review of legal aid being undertaken by the Ministry of Justice.

Growth of services

A positive consequence of the introduction of the legislation is the growth in the range and number of supervised access services available. A New Zealand Association of Children's Supervised Access has been formed, and this organisation has developed standards of service and is negotiating protocols with the Family Court. However, all of the representatives of supervised access services interviewed for this research have referred to problems with funding arrangements. Although by 1998 some centres were receiving a small amount of government funding from CYPFA, all were attempting to recover at least partial costs from the users of the service. At least one centre had been obliged to terminate the service for families who could not afford to pay. Supervised access services were usually subsidised from other aspects of the organisations' operations, a state of affairs which most of those interviewed stated could not continue as demand for the service continued to rise.

Interviews with parents indicated that the cost of supervised access was not a significant barrier to using most services, although it was reported that several non-custodial parents had failed to pay. Charges to non-custodial parents were commonly between \$5 and \$10 per hour, or a donation. Some independent services providing one-to-one supervision charged relatively high hourly rates (up to \$30) that were found to be unsustainable by the non-custodial parents who used them. Although the legislation clearly expects that the costs of supervised access will be met by the non-custodial parent (S16C Guardianship Act 1968), the research suggests that the burden of cost is tending to fall on the providers.

In conclusion, the provisions for access to children within the domestic violence legislation have clearly led to a growing use of safer access arrangements for children and custodial parents. It is also clear that a number of improvements are needed to assist parents and the Family Courts to make and implement decisions that promote the best interests of the children caught up in domestic violence. It is hoped that the study findings will be useful to the range of professionals working with the legislation, as well as to those who develop policy on domestic violence.

References

- Australian and New Zealand Association of Children's Contact Services (ANZACCS). October 1996. Fact Booklet.
- Bowker, L, Arbitell, M. and McFerron, J.R. 1988. 'On the Relationship Between Wife Beating and Child Abuse' in Yllö, K and Bograd, M. (eds.) Feminist Perspectives on Wife Abuse. Sage, London.
- Busch, R. and Robertson, N.R. 1994. 'Not in Front of the Children'. Butterworths Family Law Journal, 1(6), 107-115.
- Davison, R. K. 1994. Report of inquiry into the Family Court proceedings involving Christine Madeline Marion Bristol and Alan Robert Bristol. Wellington, N.Z: Office of the Minister of Justice.
- Hall, G. 1989. The Welfare of the Child: A Literature Review. Department of Justice, New Zealand.
- Hester, M. and Radford, L. 1996. Domestic Violence and Child Contact Arrangements in England and Denmark. The Policy Press, University of Bristol.
- Knaggs, T. 1998. 'Ethical issues in evaluating domestic violence legislation' in Evaluation – Investing in our Future – the proceedings of the 1998 Australasian Evaluation Society International Conference, Vol 2, 592-600.
- Lee, A. 1990. A Survey of Parents who have obtained a Dissolution. Family Court Custody and Access Research, Report 2. Department of Justice, New Zealand.
- New Zealand Law Society. 1997. Seminar: Access Issues. Continuing Education Department of the New Zealand Law Society.
- Rodgers, B and Pryor, J. 1998. Divorce and Separation: the Outcomes for Children. Joseph Rowntree Foundation, York.
- Straus, R. and Alda, E. 1994. 'Supervised Child Contact: the Evolution of a Social Service'. Family and Conciliation Courts Review. Vol. 32(2), April.

Appendices

Appendix one: Stage one - File study data collection sheet

		Court	
		File Number.....	

1 Application/s for: Protection Order	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Interim Custody Order	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Final Custody	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Access	Yes <input type="checkbox"/>	No <input type="checkbox"/>	

Date/s

Are children involved? (number)	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Access mentioned in affidavit?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Custody issues?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	

Applicants wishes regarding access

No access.....

Unsupervised access.....

Supervised Access.....

Other.....

More information needed?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
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Type of information sought.....

2 Application/s for Interim Custody Orders	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Final Custody Orders	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Orders Defining Access	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Ex parte <input type="checkbox"/>	On Notice <input type="checkbox"/>		

Date

Is violence alleged?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Application for Protection Order?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Facts in affidavit?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Other information used?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	

Type of information

3 Order made for Temporary Protection Order? Yes ☐ No ☐

On notice ☐ Without notice ☐

Date

Conditions	Standard	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
	Special conditions relating to access (copy down wording)	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
	Written Agreement	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
	Order defended?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	

4 Order made for: interim custody Yes ☐ No ☐
 final custody Yes ☐ No ☐
 access Yes ☐ No ☐

Date

No Access Yes ☐ No ☐
 Unsupervised Yes ☐ No ☐
 Supervised Yes ☐ No ☐
 Type of Supervision
 Centre ☐ Family ☐ Other ☐
 Information on suitability of supervision Yes ☐ No ☐

5 Final Protection Order? Yes ☐ No ☐
 Date

Conditions
 Standard Yes ☐ No ☐
 Special Yes ☐ No ☐
 Same as T P O Yes ☐ No ☐
 Written Agreement Yes ☐ No ☐
 Variation related to access Yes ☐ No ☐
 Discharge Yes ☐ No ☐

6 Pre-Trial Conference? Yes ☐ No ☐
 More information needed? Yes ☐ No ☐
 Type of information sought.....

7 Hearing? Yes ☐ No ☐
 Access discussed? Yes ☐ No ☐
 More information needed? Yes ☐ No ☐
 Type of information sought.....

Appendix two: Stage one - Interview schedules

Supervised access providers

- 1 What is the procedure followed by your organisation for providing a supervised access service?
- 2 Could you briefly describe how the service is funded?
- 3 At what stage in the Family Court process is your organisation informed that their services are likely to be required?
- 4 Does your organisation have any problems with providing supervised access?
- 5 How do you feel these issues could be remedied?
- 6 Are you aware of situations where the Court has made an order for supervised access and the access has not occurred?
- 7 Why do you think this is?
- 8 In your opinion how are the children generally affected by:
 - a supervised access?
 - b unsupervised access?
 - c no access?
- 9 How do you think the parents of the children are affected by supervised access?
- 10 Do you have any ongoing concerns about the children's safety as a result of the court's decision regarding access?
- 11 Do you have any other comments relating to access in families where violence has occurred?
- 12 This final question is about the second stage of this research which will take place towards the end of the year. This phase will involve interviewing applicants and respondents. Would your organisation be willing to approach some applicants and respondents on our behalf (safety issues, etc)??

Thank you for your time.

Programme providers

- 1 Firstly, what is your role in relation to the domestic violence legislation?
- 2 What are some of the issues for your clients in relation to access arrangements?
- 3 In situations where there has been an allegation of violence and where the Court has made an order for unsupervised access, are you aware whether the access generally occurs?
- 4 If access occurs, are the children safe?
- 5 If the access occurs, are you aware of any other impacts this may have on the children?
- 6 If the access does not occur, why is that?
- 7 Are there any other impacts on the child?
- 8 Where the Court has made an order for supervised access, are you aware whether the access generally occurs?

- 9 If the access occurs, are you aware whether the supervision is effective or ineffective in keeping the children safe?
- 10 Again if the access occurs, are there any other impacts on the children?
- 11 In cases where the access does not occur, why is that?
- 12 If the access does not take place, are there any other impacts on the children?
- 13 When the court has denied access, are you aware of any impacts on the children?
- 14 Do you have any ongoing concerns about the children's safety as a result of the court's decisions regarding access?
- 15 Do you have any other comments relating to access in families where violence has occurred?
- 16 This final question relates to the second stage of this research project which will take place towards the end of the year. This phase will involve interviewing applicants and respondents. Would your organisation be willing to approach a selected sample of applicants and respondents on our behalf???? (safety issues, etc)

Thank you for your time

Family Court Judges

- 1 What factors do you consider in relation to access arrangements when protection orders are made?
- 2 When applications for protection orders are made, under what situations do you consider making special conditions relating to supervised access?
- 3 What information do you use when considering the need for special conditions relating to supervised access?
- 4 Is the information which is available to the Court sufficient when considering access in relation to protection orders?

The next questions refer to the supervised access provisions of the Guardianship Amendment Act 1995.

- 5 Where the Court is satisfied that violence has occurred, how does the Court determine whether the children will be safe or at risk while the violent party has access to the children?
- 6 Do you believe that the information available to the Court is sufficient?
(If no, go to next question)
(If yes, to question 10)
- 7 How do you think this information could be improved?

The next questions focus on the suitability of the supervision.

- 8 When the Court has determined that the children's safety would be at risk during access, do you think that the Court is able to satisfy itself that a suitable person and place is available to supervise the access?
- 9 How does the Court determine that the supervision is suitable?
- 10 In your opinion, is this information satisfactory?
(If No, go to next question)
(If Yes, go to Q14)

- 11 How do you think the Court could determine that the supervision is suitable?
- 12 Are you aware of how the children are generally affected by:
 - a supervised access
 - b unsupervised access
 - c no access?
- 13 Do you have any ongoing concerns about the children's safety as a result of the court's decisions regarding access?
- 14 Finally, do you have any other comments relating to access in families where violence has occurred?

Thank you for your time.

Family Court Co-ordinators

- 1 Firstly, what is your role in relation to the domestic violence legislation?
- 2 Are you involved in making arrangements for access for clients of the family court? If so, how are you involved?
- 3 Do family court clients contact you about access? What are some of the problems raised by applicants and respondents?
- 4 Do you think that the information which is available to the Court is sufficient when access in relation to protection orders is being considered?

The next questions relate to the supervised access provisions of the Guardianship Amendment Act 1995.

- 5 Where the Court is satisfied that violence has occurred, how does the Court determine whether the children will be safe or at risk while the violent party has access to the children?
- 6 Do you believe that the information available to the Court is sufficient?
(If no, go to next question)
(If yes, to question 10)
- 7 How do you think this information could be improved?

The next questions focus on the suitability of the supervision.

- 8 When the Court has determined that the children's safety would be at risk during access, do you think that the Court is able to satisfy itself that a suitable person and place is available to supervise the access?
- 9 How does the Court determine that the supervision is suitable?
- 10 In your opinion, is this information satisfactory?
(If No, go to next question)
(If Yes, go to Q14)
- 11 How do you think the Court could determine that the supervision is suitable?
- 12 Are you aware of how the children are generally affected by:
 - a supervised access?
 - b unsupervised access?
 - c no access?

- 13 Do you have any ongoing concerns about the children's safety as a result of the court's decisions regarding access?
- 14 Finally, do you have any other comments relating to access in families where violence has occurred?

Thank you for your time.

Counsel for Applicant and Counsel for Respondent

- 1 Is the issue of access generally discussed when advising a client who is making a protection order application? (Prompt for details)
- 2 At this stage what alternative arrangements for access are discussed with the client?
- 3 In what circumstances would you advise that reference to supervised access is made in the affidavit?
- 4 When your client is a respondent who has been served with an interim protection order, do you discuss the issue of access? (Prompt for details)
- 5 In these circumstances what alternatives relating to access are discussed?
- 6 What is the role of Counsel for Applicant in determining whether allegations of violence are proved?
- 7 Where the Court is satisfied that violence has occurred, how does the Court determine whether the children will be safe or at risk while the violent party has access to the children?
- 8 Do you believe that the information available to the Court is sufficient?
(If no, go to next question)
(If yes, to question 10)
- 9 How do you think this information could be improved?

The next questions focus on the suitability of the supervision.

- 10 When the Court has determined that the children's safety would be at risk during access, do you think that the Court is able to satisfy itself that a suitable person and place is available to supervise the access?
- 11 How does the Court determine that the supervision is suitable?
- 12 In your opinion, is this information satisfactory?
(If No, go to next question)
(If Yes, go to Q14)
- 13 How do you think the Court could determine that the supervision is suitable?
- 14 Are you aware of how the children are generally affected by:
a supervised access?
b unsupervised access?
c no access?
- 15 Do you have any ongoing concerns about the children's safety as a result of the court's decisions regarding access?
- 16 Finally, do you have any other comments relating to access in families where violence has occurred?

Thank you for your time.

Counsel for Child

- 1 At what point are you usually appointed as Counsel for the Child in the process of a Protection Order application?
- 2 What do you see as the main aspects of your role as Counsel for the Child when a Protection Order is in place?
- 3 Do you usually comment on access issues in this role?
- 4 In your reports to the Family Court what alternatives do you suggest for dealing with access issues?
- 5 In what circumstances would you recommend supervised access?
- 6 Where the Court is satisfied that violence has occurred, how does the Court determine whether the children will be safe or at risk while the violent party has access to the children?
- 7 Do you believe that the information available to the Court is sufficient?
(If no, go to next question)
(If yes, to question 10)
- 8 How do you think this information could be improved?

The next questions focus on the suitability of the supervision.

- 9 When the Court has determined that the children's safety would be at risk during access, do you think that the Court is able to satisfy itself that a suitable person and place is available to supervise the access?
- 10 How does the Court determine that the supervision is suitable?
- 11 In your opinion, is this information satisfactory?
(If No, go to next question)
(If Yes, go to Q14)
- 12 How do you think the Court could determine that the supervision is suitable?
- 13 Are you aware of how the children are generally affected by:
 - a supervised access?
 - b unsupervised access?
 - c no access?
- 14 Do you have any ongoing concerns about the children's safety as a result of the court's decisions regarding access?
- 15 Finally, do you have any other comments relating to access in families where violence has occurred?

Thank you for your time.

Appendix three: Stage two – Information sheet



Research on access to children

We want to tell you about the research that we are doing on access to children when there is a Protection Order in place. We want to find out about access arrangements between children and their parent who doesn't have custody. Even if there is no access arranged we would still like to talk to you. There was a change in the law in 1995, and to find out how this is working, we need information from people like yourselves.

If you agree, a researcher employed by the Ministry of Justice will contact you in the next week to ask you to take part. We would like to meet with you, or talk over the phone if that is what you would prefer. We would be happy to arrange the time and place to suit you.

Anything you tell us will be used only for the research, and will not be passed on to the Family Court, or anyone else (unless anyone is at immediate risk of serious harm). If you take part in the research, it will not affect your case. Your name will not be used at any stage during the research or in the research report. We will avoid using information that might identify you. When we contact you, you don't have to agree to take part, or, if you do take part, you don't have to answer every question.

If you agree to be contacted, please fill in the attached form and send it to us in the envelope provided. We look forward to meeting you, and appreciate your help.

The researchers are Alison Chetwin, Trish Knaggs and Trish Young. If you have any questions or concerns please feel free to contact us (you can phone us collect).

Alison Chetwin *or* Trish Knaggs
Ministry of Justice
Private Box 180
Wellington

Phone (04) 494 9700

Appendix four: Stage two - Interview schedules Custodial and non-custodial parents²⁵

Introduction

Greeting. “Before we start, I need to make sure you understand what the research is about, and what we will do with your information.”

We’re not from the Courts. The research will contribute to policy development, won’t lead to changes in your case.

Show information sheet – what research is about
how it will be used
confidentiality
right to withdraw at any time, right to refuse to answer any question
permission to use tape recorder (who listens/disposal)
permission to quote
any questions
sign information sheet?

The first few questions will be about your involvement with the Family Court, and any access arrangements which you may have made. We’ll then move on to talk about how you or your children might have been affected by the access arrangements. The interview will end with a few questions about your family and Protection Orders in general.

Family Court decisions

- 1 How long ago did you become involved with the Family Court?
- 2 Have there been any orders made as a result of your contact with the Family Court?
Prompts – If yes, What sort of orders?
How long ago were the orders made?
- 3 Can you remember whether anything was written on the Protection Order or the Custody Order about access? [If the interviewee has papers on hand, and if appropriate, ask to look at the papers]
If yes - What do you think this meant?
Have there been any changes to the directions for access?
- 4 Was an agreement about access made through your lawyer?
If yes, Can you tell me about this?
- 5 Can you tell me how much your legal costs have been?
Do you have legal aid?

Access Arrangements

- 6 Have access arrangements been made since the Protection Order or Custody Order has been in place?
Prompt If not, why is that?
- 7 If yes, can you describe what access arrangements are in place now?
Prompt Type/s of access? (including ‘no access’)
Who is involved (formal/informal, or unsupervised access)?
Arrangements for changeovers (all types of access)
Where does access take place?
How long is each access visit?

²⁵ The interview schedules for custodial and non-custodial parents were very similar. The differences have been noted in the questionnaire.

How frequently does access occur?
How long has this arrangement lasted?
What do you usually do during access with the children?²⁶
What do the children usually do during access?
How do you think the children feel about this arrangement?
How do you feel about this arrangement?
What has worked well?
What hasn't worked well?

- 8 Has access always been arranged like this? If not, how was access arranged before?
Prompts Ask for each arrangement, if more than one:
Type/s of access? (including 'no access')
Who was involved (formal/informal, unsupervised access?)
Arrangements for changeovers?
Where did access take place?
How long was each access visit?
How frequently did access occur?
How long did this arrangement last?
Why did this arrangement stop?
How do you think the children felt about this arrangement?
How did you feel about this arrangement?

- 9 Do you know why [choose one of the following]
a the access had to be supervised?
b no access is allowed?
c unsupervised access is allowed?

Were there allegations of harm to the children?
What are/What were the allegations?

If supervised access mentioned in Qs 7 & 8 ask following. If not mentioned, miss this one out, and go to Q11.

- 10 How easy or difficult was it for you to arrange supervised access?
If difficult, what were some of the problems?
Who paid for it?
If supervised access was ordered but not arranged, why was that?

Impact of Access Arrangements

Custodial parents were asked

- 11 Are you aware of any problems for the children during access with (name), the respondent?
If access has been supervised ask:
Do you think the children are any safer with supervised access than they would be if access wasn't supervised?

Non-custodial parents were asked

Have you had any problems looking after the children during access?
Have the children been safe?
If access has been supervised ask –
Do you think the children are any safer with supervised access than they would be if access wasn't supervised?

- 12 Has there been any conflict/fights/clashes between you and the other parent during access?
If access supervised ask:
Do you think that having access supervised has made conflict/fights/clashes less likely than if access was not supervised?

²⁶ Only included in non-custodial parent's questionnaire

13 How would you like the access to be arranged?

Conclusion

I'd now like to ask you a couple of question to find out your general understanding of Protection Orders.

14 How did you find out what was allowed under the law in relation to access to children?
How satisfied were you with this information?
Did you find out any information about access from counselling or the group that you attended?

15 Why do you think having a Protection Order restricts access to children?

16 Can you think of any improvements the Family Court could make in relation to supervised access?

Finally, some questions about you and your family

17 How many children do you have? How old are they?
Number
Ages

Custodial parents were also asked Is (name) the respondent the father of the children named in the Protection Order?

This research is looking at ways in which the Family Court deals with different ethnic groups in relation to access and will suggest how improvements might be made.

Please tick as many boxes as you need to show which ethnic group(s) you belong to.

<input type="checkbox"/> NZ Maori	
<input type="checkbox"/> NZ European or Pakeha	
<input type="checkbox"/> other European →	<input type="checkbox"/> Which of these groups
<input type="checkbox"/> Samoan	<input type="checkbox"/> English
<input type="checkbox"/> Cook Island Maori	<input type="checkbox"/> Dutch
<input type="checkbox"/> Tongan	<input type="checkbox"/> Australian
<input type="checkbox"/> Niuean	<input type="checkbox"/> Scottish
<input type="checkbox"/> Chinese	<input type="checkbox"/> Irish
<input type="checkbox"/> Indian	<input type="checkbox"/> other
<input type="checkbox"/> other	↓
(such as Fijian, Korean)→	Print your ethnic group(s)
<div style="border: 1px solid black; height: 20px; width: 350px;"></div>	

19 Please tick as many boxes as you need to show the ethnic group(s) of the children which you have access to. (put number of children in box)

<input type="checkbox"/> NZ Maori	
<input type="checkbox"/> NZ European or Pakeha	
<input type="checkbox"/> other European →	<input type="checkbox"/> Which of these groups?
<input type="checkbox"/> Samoan	<input type="checkbox"/> English
<input type="checkbox"/> Cook Island Maori	<input type="checkbox"/> Dutch
<input type="checkbox"/> Tongan	<input type="checkbox"/> Australian
<input type="checkbox"/> Niuean	<input type="checkbox"/> Scottish
<input type="checkbox"/> Chinese	<input type="checkbox"/> Irish
<input type="checkbox"/> Indian	<input type="checkbox"/> other
<input type="checkbox"/> other	↓
(such as Fijian, Korean)→	Print your ethnic group(s)
<div style="border: 1px solid black; height: 20px; width: 350px;"></div>	

Thank you for your time.

Informal supervisors

Introduction

Greeting. “Before we start, I need to make sure you understand what the research is about, and what we will do with your information.”

Show information sheet – what research is about
how it will be used
confidentiality
right to withdraw at any time, right to refuse to answer any question
permission to use tape recorder (who listens/disposal)
permission to quote
any questions
sign information sheet?

- 1 Can you tell me how you know [name/s] the child/ren?
- 2 How did you become involved in supervising the access to [name/s] the children?
Prompt Who arranged it?
Did you attend a court hearing?
Did you talk to a lawyer?
- 3 What arrangements were made with you regarding access to [name/s] the children?
Prompt How frequent was the access?
Where did the access visits take place?
What were the arrangements at changeovers?
How long did this access arrangement last?
- 4 Could you describe how you supervised the access?
What sorts of things is it important for you to do supervise access?
- 5 How did you find out what you were supposed to do to supervise the access?
- 6 Did this differ from what you first thought you would have to do? In what way?
- 7 How did the supervised access go? Did you have any problems supervising the access?
What went well when you supervised the access?
- 8 How do you think the children felt about the supervised access?
- 9 Where there any problems between [name] the respondent and [name/s] the child/ren during access?
What did you do?
- 10 Were/was [name/s] the child/ren safe during access?
- 11 Were there any problems between [name] the respondent and [name] the applicant during access?
- 12 Was [name] the applicant safe during the changeover?
- 13 Why do you think the law requires that [name] the respondent’s access to the children is supervised?
- 14 Are there any ways that the Family Court could make it easier to supervise access to children?

Thank you for your time.

Appendix five: Stage two – Key informants' questionnaires

Participants received a copy of the summary of the first stage findings and were asked to respond to the following questions.

Family Court Judges

- 1 The study found there was frequently little information available.....on which to establish the level of risk during access.

Over the past year (since June 1997) have there been any changes in the quality of information available to the court to assess the risk to children in relation to access arrangements in cases involving domestic violence?
- 2 How do you think better quality information could be made available to the court to assess the risk to children in relation to access arrangements in cases involving domestic violence?
- 3 The study found that key informants expressed concerns about a lack of assessment and monitoring of the supervision carried out by family members.

Over the past year (since June 1997) have there been any changes in the information available to the court to assess the suitability of the supervision of access by family members?
- 4 How do you think information on the suitability of supervision of access by family members could be improved?
- 5 The study found that “when considering the cases in which orders were made (i.e. Protection Orders and/or Custody Orders), and in which access was likely to be an issue, 58 per cent contained no specific directions about access”.

Why do you think in the majority of cases there has been a lack of specific directions made about access in cases involving domestic violence?
- 6 Over the past year (since June 1997) have you noticed any changes in the proportion of cases involving domestic violence in which specific directions are being made about access?
- 7 Over the past year (since June 1997) have you noticed any changes to the proportion of cases involving domestic violence in which supervised access has been ordered?
- 8 The study found that “In general, people interviewed during the first stage supported the new legislation and felt that it provided greater protection for children than was the case in the past”.

Given that the legislation (Domestic Violence Act 1995 and Guardianship Amendment Act 1995) has now been in place for two years, do you have any further comment on the contribution made by legislation to the protection of children who have been exposed to domestic violence?
- 9 Do you have any other comment to make about the issues raised in the first stage report?

So that we can assess the response rate to this questionnaire, please state:

Your name _____
Family Court _____

Thank you for taking part in this project.

Please return the completed questionnaire by Friday 9 October using the stamped addressed envelope provided.

Programme providers

- 1 The study found that “in general, people interviewed during the first stage supported the new legislation and felt that it provided greater protection for children than was the case in the past.”

Given that the legislation (Domestic Violence Act 1995 and Guardianship Amendment Act 1995) has now been in place for two years, do you have any further comment on the contribution made by the legislation to the protection of children who have been exposed to Domestic Violence?

Over the past year (since June 1997) have you noticed any changes to the types of arrangements being made for access to children in cases involving domestic violence?
- 3 The study found that “Several of the programme providers, Family Court Co-ordinators and counsel who were close to Māori clients raised concerns about the appropriateness of formalised supervised access for Māori”.

How do you think these concerns could be addressed?
- 4 Do you have any further comments to make about the issues raised in the stage one report?

So that we can assess the response rate to this questionnaire, please state:

Your name _____
The organisation you work for _____

Thank you for taking part in this project.

Please return the completed questionnaire by Friday 9 October using the stamped addressed envelope provided.

Counsel

- 1 The study found there was frequently little information available.....on which to establish the level of risk during access.

Over the past year (since June 1997) have there been any changes in the quality of information available to the court to assess the risk to children in relation to access arrangements in cases involving domestic violence?
- 2 How do you think better quality information could be made available to the court to assess the risk to children in relation to access arrangements in cases involving domestic violence?
- 3 The study found that key informants expressed concerns about a lack of assessment and monitoring of the supervision carried out by family members.

Over the past year (since June 1997) have there been any changes in the information available to the court to assess the suitability of the supervision of access by family members?
- 4 How do you think information on the suitability of supervision of access by family members could be improved?
- 5 The study found that “when considering the cases in which orders were made (i.e. Protection Orders and/or Custody Orders), and in which access was likely to be an issue, 58 per cent contained no specific directions about access”.

Over the past year (since June 1997) have you noticed any changes in the proportion of cases involving domestic violence in which specific directions are being made about access?

6 Over the past year (since June 1997) have you noticed any changes to the proportion of cases involving domestic violence in which supervised access has been ordered?

7 The study found that “In general, people interviewed during the first stage supported the new legislation and felt that it provided greater protection for children than was the case in the past”.

Given that the legislation (Domestic Violence Act 1995 and Guardianship Amendment Act 1995) has now been in place for two years, do you have any further comment on the contribution made by legislation to the protection of children who have been exposed to domestic violence?

8 Do you have any other comment to make about the issues raised in the first stage report?

So that we can assess the response rate to this questionnaire, please state:

Your name _____

The organisation you work for _____

Thank you for taking part in this project.

Please return the completed questionnaire by Friday 9 October using the stamped addressed envelope provided.

Family Court Co-ordinators and programme providers

1 The study found that “ in general, people interviewed during the first stage supported the new legislation and felt that it provided greater protection for children than was the case in the past.”

Given that the legislation (Domestic Violence Act 1995 and Guardianship Amendment Act 1995) has now been in place for two years, do you have any further comment on the contribution made by the legislation to the protection of children who have been exposed to Domestic Violence?

Over the past year (since June 1997) have you noticed any changes to the types of arrangements being made for access to children in cases involving domestic violence?

2 The study found that “Several of the programme providers, Family Court Co-ordinators and counsel who were close to Māori client raised concerns about the appropriateness of formalised supervised access for Māori”.

How do you think these concerns could be addressed?

3 Over the past year (since June 1997) are you aware of any changes to the funding arrangements for supervised access services?

4 Over the past year (since June 1997) have there been any local developments in the relationship between supervised access providers and the Family Court?

5 Do you have any further comments to make about the issues raised in the stage one report?

So that we can assess the response rate to this questionnaire, please state:

Your name _____

The organisation you work for _____

Thank you for taking part in this project.

Please return the completed questionnaire by Friday 9 October using the stamped addressed envelope provided.