



Australian Government

Australian Institute of Family Studies

Senate Standing Committee on
Legal and Constitutional Affairs

Inquiry into the Family Law Amendment
(De Facto Financial Matters and Other Measures)
Bill 2008 [Provisions]

Submission from the
Australian Institute of Family Studies

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Introduction

The Australian Institute of Family Studies (AIFS) endorses, in principle, the proposal to introduce a federal regime to govern property and financial settlements for cohabiting couples following relationship breakdown. A uniform national scheme that provides access to the federal court system for cohabiting couples for property and financial matters has the potential to reduce some of the stress associated with relationship breakdown for this section of the Australian population.

Trends in cohabitation

Cohabitation—that is, when people live together as a couple outside registered marriage (including same-sex relationships)—is an increasingly common family form. However, data on cohabitation are sparse in some areas, particularly those relating to financial issues. According to the 2006 Census, 1.24 million people were in a cohabiting relationship. Persons living in a cohabiting relationship accounted for 15% of all persons living with a partner in 2006, compared with 10% in 1996.

Cohabitation has increasingly become the common pathway to marriage: 76% of couples who entered a registered marriage in 2006 indicated that they were living together prior to marriage, compared with only 20% in 1980 (Australian Bureau of Statistics [ABS], 2001b, 2007b).

Cohabitation is more common among young people than older people. Most people aged under 25 years who are living with a partner are in a cohabiting relationship rather than a marriage (Appendix 1). The reverse applies to people aged 25 years and over who are living with a partner. However, most people aged under 25 years are not living with a partner (Appendix 2).

How cohabiting relationships unfold

The period of cohabitation tends to be short-term. Most cohabiting couples either marry or separate within a few years of the start of their union. For example, less than 20% of men and women who started living together in the early 1990s were still cohabiting after 5 years, while 38% had separated¹ and 43% had married (AIFS, 2004). In contrast, less than 10% of marriages registered in the mid-1990s had ended in divorce after 5 years. Thus, cohabitation is much less stable than marriage.

Cohabiting relationships today are also more likely to end in separation and less likely to be converted to marriage than in the past. Of the cohabiting relationships started in the early 1970s, 25% ended in separation after 5 years and 63% were converted to marriage, while, as mentioned above, 38% of those that began in the early 1990s ended in separation and 43% were converted to marriage.

The circumstances surrounding cohabitation can be diverse. Couples may decide to cohabit early in their relationship when first “going steady”, or they may embark on cohabitation as a trial marriage or for practical reasons after having decided to marry. Others who opt for cohabitation may expect to marry if and when they want to have children, while other committed cohabiting couples may view marriage as redundant. Still others may decide to cohabit in an attempt to avoid all commitment—a “no strings attached” strategy. Some partners in couples may agree about the meaning of cohabitation, while others may hold quite different views, and the meaning for each partner may change during the course of cohabitation. Nevertheless, cohabiting relationships have increasingly become a setting in which children are raised.

Cohabiting relationships as a setting for raising children

Over the last few decades, the proportion of all babies that were born outside marriage increased from 12% in 1980 to 33% in 2006 (ABS, 2001a, 2007a). Births outside marriage have been increasingly acknowledged by the father: in 2006, 90% of the birth registrations for these ex-nuptial births contained the father’s name, compared with 58% in 1980. Although the ex-nuptial birth rate has

¹ This does not take into account those couples who married and subsequently divorced.

increased, the proportion of all babies born to single mothers has remained stable at 12–13% between 1991 and 2005 (AIHW, various years) (see Appendix 3).² Therefore, it appears that the increasing proportion of babies born outside marriage has been mainly due to the increasing proportion born to cohabiting couples.

The 2006 Census data indicate that there were 261,600 families in which parents were cohabiting with dependent children.³ This represents 11% of all families with dependent children.

Socio-demographic profiles of married and cohabiting parents

Recent research—based on data from the Longitudinal Study of Australian Children (LSAC), which is funded by the Australian Government—suggests that cohabiting families with children have different socio-demographic characteristics to married families with children. Qu and Weston (2008) compared parental characteristics of the LSAC 4–5 year old cohort living with (a) both biological cohabiting parents, and (b) both biological married parents. The authors found that, compared with married mothers, cohabiting mothers were younger, less educated and less likely to be in paid work. They also had lower family incomes and reported lower quality relationships with their current partners. The authors also examined family stability across two years and found that children living with cohabiting parents were more likely to experience parental separation compared with those with married parents (9% compared to 3%). These findings are consistent with overseas studies (e.g., Artis, 2007; Brown, 2004), which suggest that children living with cohabiting parents tend to do less well developmentally and have access to more limited economic resources than children with married parents.

Financial circumstances

Little is known about how cohabiting couples arrange their financial matters during their relationship and upon separation. As noted above, some data suggest that cohabiting couples may have a different financial profile than married couples. For example, property ownership is less prevalent among cohabiting couples. The 2005 data from the Household, Income and Labour Dynamics in Australia (HILDA) survey show that 50% of women in their 30s who were cohabiting owned outright or were purchasing their home, compared with 79% of married women of the same age. The property ownership gap appears smaller for older women in cohabiting relationships: the proportions of women in their 40s either owning or purchasing their home were 73% for those in a cohabiting relationship and 88% for those who were married.

More research is needed to understand how separating couples settle their financial matters and resolve their parenting issues.

Summary

In summary, the data show that:

- cohabitation has become an increasingly common family form, with the number of children being born into cohabiting relationships increasing;
- children living with cohabiting parents appear to be less well-off than those living with married parents; and
- children living with cohabiting parents appear to be more likely to experience parental separation.

Legislative policy in relation to post-separation parenting arrangements has not distinguished between nuptial and ex-nuptial children since the late 1980s (Fehlberg, Behrens, & Kaspiw, 2007).

² Australian Institute of Health and Welfare (AIHW) data are based on reports of midwives and other staff, who obtain information from mothers and from hospital or other records. The annual publication on births by the ABS is based on the information obtained from registered births each year. AIHW and ABS data sets do not necessarily correspond with each other for a particular year but they can help determine trends over time.

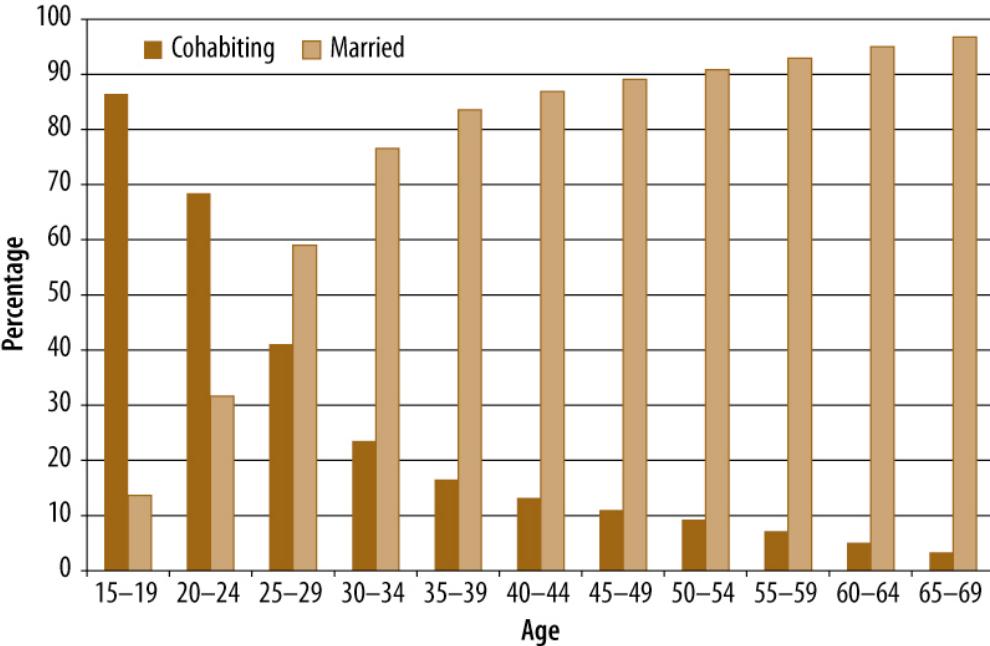
³ This includes step-families, blended families, families with fostered children, etc.

Given the increasing prevalence of cohabiting relationships, and the increasing number of children cared for in such relationships, the removal of legal distinctions between the post-separation financial regulation of cohabiting and married relationships appears justified.

References

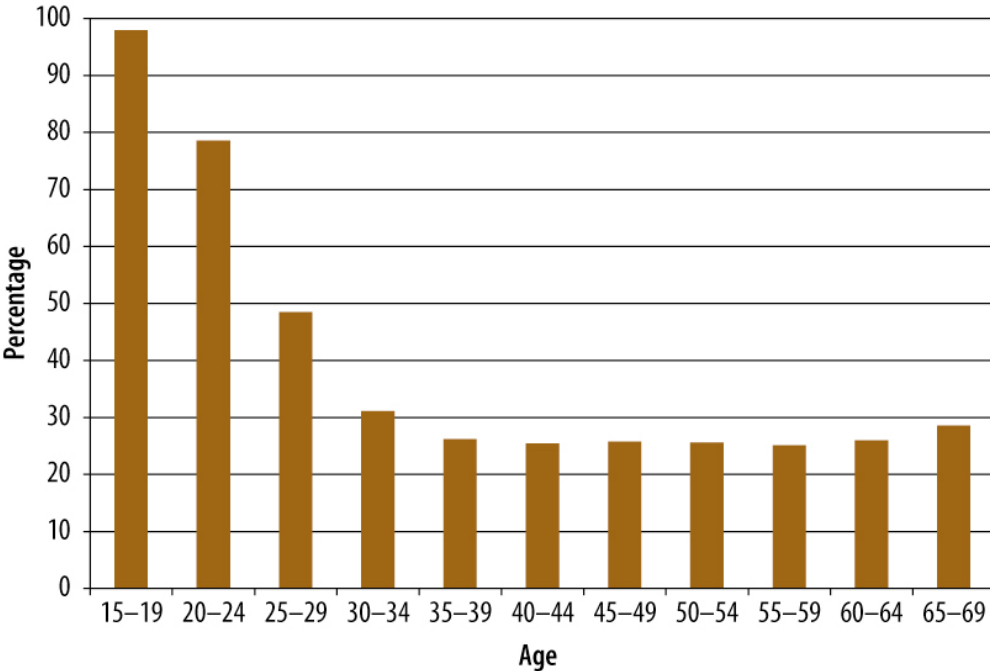
- Artis, J. (2007). Maternal cohabitation and child well-being among kindergarten children. *Journal of Marriage and Family*, 69, 222–236.
- Australian Bureau of Statistics. (2001a). *Births Australia 2000* (Cat. No. 3301.0). Canberra: Author.
- Australian Bureau of Statistics. (2001b). *Marriages and divorces Australia 2000* (Cat. No. 3310.0). Canberra: Author.
- Australian Bureau of Statistics. (2007a). *Births Australia 2006* (Cat. No. 3301.0). Canberra: Author.
- Australian Bureau of Statistics. (2007b). *Marriages Australia 2006* (Cat. No. 3306.0.55.001). Canberra: Author.
- Australian Bureau of Statistics. (various years). *Births Australia* (Cat. No. 3301.0). Canberra: Author.
- Australian Institute of Family Studies. (2004). *Family facts and figures*. Melbourne: Author. Retrieved 30 July 2008, from <http://www.aifs.gov.au/institute/info/charts/cohabitation/outcomes.html>
- Australian Institute of Health and Welfare. (various years). *Australian mothers and babies* (Perinatal Statistics Series Nos. 1–20). Canberra: Author.
- Brown, S. L. (2004). Family structure and child well-being: The significance of parental cohabitation. *Journal of Marriage and Family*, 66, 351–367.
- Fehlberg, B., Behrens, J., & Kaspiew, R. (2007) *Australian family law: The contemporary context*. Melbourne: Oxford University Press.
- Qu, L., & Weston, R. (2008). *Snapshots of family relationships*. Melbourne: Australian Institute of Family Studies.
- Weston, R., & Qu, L. (2007). An update on partnership formation trends: What does the 2007 Census suggest? *Family Relationship Quarterly*, 6, 16–19.

Appendix 1. Persons living with a partner: Proportion cohabiting or married, by age, 2006



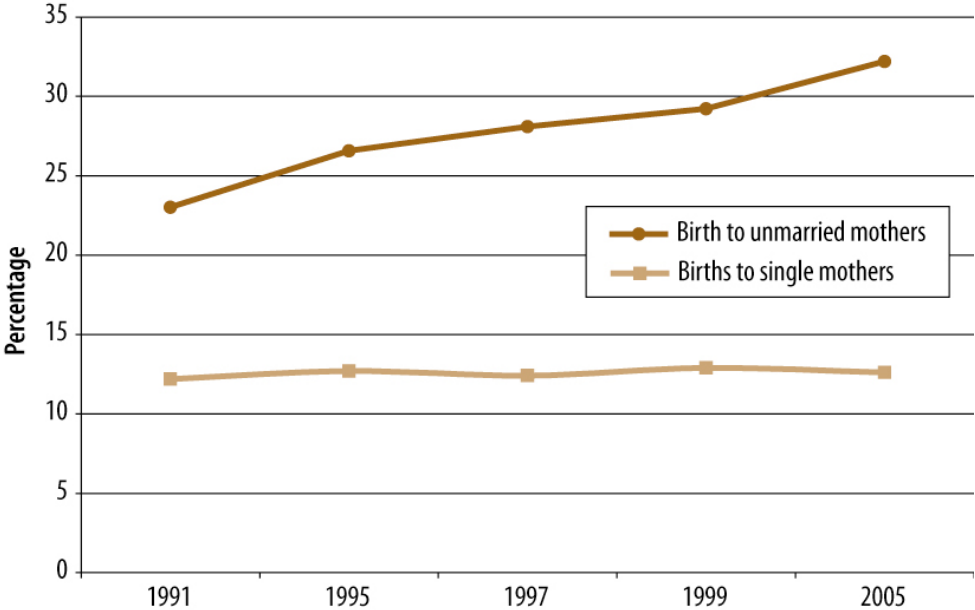
Source: Weston & Qu (2007)

Appendix 2. Proportion of persons not living with a partner, by age, 2006



Source: 2006 Census data

Appendix 3. Proportion of births to unmarried mothers and single mothers, 2006*



* Proportion of births to single mothers for 2005 does not include the single mothers who were married previously, though the number of ever-married single mothers is very small.

Sources: Unmarried mothers: ABS (various years); single mothers: AIHW (various years)