

Literature highlights – Shared care

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Compiled by Carole Jean, Librarian

The Child Responsive Program, operating within the Less Adversarial Trial: A follow up study of parent and child outcomes. Report to the Family Court of Australia. (2007). McIntosh, J. E., & Long, C. Carlton North: Family Transitions. Available at <http://www.familycourt.gov.au/wps/wcm/resources/file/ebc70245b4d525f/CRP_Follow_up_Report_2007.pdf>

The Less Adversarial Trial (formerly the Children's Cases Program) is a Family Court process for separating parents, which aims to maximise effective and less adversarial dispute resolution. The Child Responsive Program (CRP) provides an improved screening and support intervention and aims to assist pre-trial settlement. This report describes a follow up study of the CRP, piloted in Melbourne and Dandenong in 2006. It presents data from 77 parents from 54 matters who responded to a follow up survey four months after settlement. The report looks at characteristics of those who settled in the CRP; children's main residence; substantially shared care; the impacts of CRP and LAT on parents' relationship and parenting; court impact on safety and conflict; being a client in the CRP and LAT processes; what was most helpful for children; what aspects of the court process were most helpful and most unhelpful for parents; and children's emotional wellbeing.

Shared care and children's best interests in conflicted separation: A cautionary tale from current research. (2008). McIntosh, J., & Chisholm, R. *Australian Family Lawyer*, 20(1), 3–16

The 2006 amendment to the Family Law Act makes a presumption of equal shared parental responsibility for children of separating parents. This article presents new Australian data on the emotional wellbeing of children whose separated parents are in continuing conflict. The data are drawn from two recent studies that explored the impacts of Family Court and community based dispute resolution interventions for parents experiencing significant conflict over the nature of their post separation parenting agreements. Each study tracked family functioning prior to intervention and after settlement of the dispute, and considered

associations between children's wellbeing and parental acrimony, alliance and living arrangements. The results showed higher than average rates of clinical anxiety in school aged children of separated parents. Ongoing inter-parental conflict was associated with children's high emotional distress scores in each study. The article also considers the impact of shared care on very young children and infants in developmentally inappropriate living arrangements.

Cautionary notes on the shared care of children in conflicted parental separations. (2008). Chisholm, R., & McIntosh, J. *Family Relationships Quarterly*, 8, 3–4. Available at: <<http://www.aifs.gov.au/afrc/pubs/newsletter/newsletter8.html>>

In this summary, the authors discuss the findings from their forthcoming article on the difficulties faced by the family law system in judging what is best for children in shared care arrangements. Section one of their article reports on two studies on the rates of conflict and cooperation among separated parents. Section two is a literature review on the psychological effects of shared care arrangements on young children. Section three examines the 2006 amendments to the Family Law Act, and the paramount consideration of the best interests of the child.

Changes in patterns of post-separation parenting over time: A brief review. (2008). Smyth, B., & Moloney, L. *Journal of Family Studies*, 14(1), 7–22.

In Australia, there has been considerable interest in recent years in the policy and practical implications of sharing parental care and responsibilities after separation—concepts that have culminated in the *Family Law Amendment (Shared Parental Responsibility) Act 2006*. While there is now good information on the prevalence, demography and dynamics surrounding different patterns of parenting after separation, not a great deal is known about the extent to which patterns change for individual families over time. This article reviews international and Australian studies that shed light on the stability of post-separation parenting arrangements in relation to shared and sole

care. The notion of "stability" is shown to have several dimensions, not all of which are necessarily beneficial to children. The implications of placing a greater focus on how post-separation parenting arrangements evolve over time are discussed in the context of child focused dispute resolution and decision-making.

Changes in patterns of post-separation parenting over time: Recent Australian data. (2008). Smyth, B., Weston, R., Moloney, L., Richardson, N., & Temple, J. *Journal of Family Studies*, 14(1), 23–36

This article examines continuity and change in post-separation patterns of parenting across a three-year time span. The authors analyse longitudinal data from two recent Australian studies: the Household, Income and Labour Dynamics in Australia (HILDA) Survey; and the Caring for Children after Parental Separation (CFC) Project. Mother-residence was found to be the most common and the most stable pattern. Though far less common, father-residence also appeared to be reasonably stable. By contrast, shared care was found to be the most fluid of these three parenting configurations.

Cautionary notes on the shared care of children in conflicted parental separation. (2008). McIntosh, J., & Chisholm, R. *Journal of Family Studies*, 14(1), 37–52.

The *Family Law Amendment (Shared Parental Responsibility) Act 2006* has brought into sharp focus the issue of shared physical care of children, post separation. In this article, the authors explore new data suggesting accumulative risks for children whose care is divided between parents who lack the core relational infrastructure to support a healthy environment for shared care. Developmental background is provided, giving context to the complex dynamics at play, particularly for young children who experience divided care in a hostile climate. A discussion of the amendments shows that, rather than endorsing an assumption of shared care, the legislation supports and indeed requires professionals to engage in active consideration of the child's "best interests" in each case. The article outlines a tighter "safety net" of considerations through which

the “best interests” question might be filtered. Implications for supporting separated parents to develop and maintain adequate foundations for shared care are discussed.

Are we there yet? An analysis of relocation judgments in light of changes to the Family Law Act. (2008). Eastal, P., & Harkins, K. *Australian Journal of Family Law*, 22(3), 259–278.

The authors examine 50 relocation matters heard in the Family Court and the Federal Magistrates Court from 2003–2008 for evidence that the 2006 Family Law Act amendments, which emphasise continued contact and shared responsibility by both parents, have affected the primary caregiver’s ability to relocate. They found an indication that the outcome of cases has shifted in the predicted direction. In determining a child’s best interests, many judges have seemingly integrated the importance attached to children maintaining meaningful relationships with both parents, particularly in cases where children have existing strong relationships with both parents and there is no history of family violence. The weight given to specific new provisions is unclear, however, because there is a lack of uniformity in judicial approach. Decision-making remains indeterminate and there are substantial differences in the way terms introduced in the 2006 legislation, such as “substantial and significant time” and “meaningful relationship”, are interpreted. More cases need to be included to control for the effects of confounding variables such as the registry, distance of move, age of children and violence allegations. However, including more cases would increase the period covered by a study thereby introducing additional confounding factors so that the full effects of the legislation are themselves likely to remain indeterminate.

Mediation on children’s issues in family law: Some information and tips for women. (2008). Women’s Legal Service (2nd ed.). Annerley, Qld.: Women’s Legal Service.

Family dispute resolution is a requirement before an application to the court for a parenting order can be made, however there are exceptions. This booklet, for separated and divorced parents, provides information on mediation and court processes, exemptions, and advice on preparing for mediation sessions. Sections are included on shared parenting and mediation for people experiencing domestic violence. A listing is provided of

key contacts on legal assistance, domestic violence support, and other related services in Queensland. The booklet can be ordered from: <http://www.wlsq.org.au/sub%20webs/Publ%20pages/mediation.html>

The idealised post-separation family in Australian family law: A dangerous paradigm in cases of domestic violence. (2008). Hart, A. S., & Bagshaw, D. *Journal of Family Studies*, 14(2–3), 291–309.

This article presents the findings of an in-depth discourse analysis of 20 First Instance unpublished judgments, delivered over a five-and-a-half-year period from one registry of the Family Court of Australia, in contested contact cases where the presence of domestic violence was acknowledged by the Court. A number of dominant themes from the judgments intersected to show how many judicial determinations about children’s “best interests” were underpinned by conservative values that emphasised the importance of the fathers’ presence for children’s future wellbeing and development. In most of the judgments analysed, the fathers’ history of violence was readily excused or ignored, mothers were blamed for failing to support father-child contact, the voices of the children involved were often discounted and a dominant paradigm of the idealised post-separation family took precedence over the special needs of the children. There was little visible consideration of the potential or current effects of domestic violence on the children concerned.

“Meaningful relationship” in the Family Law Act Amendments of 2006: A socio-legal perspective on fathers, mothers and the “sharing” of parenting after separation. (2009). Moloney, L. *Journal of Family Studies*, 15(1), 9–19.

This is one of four papers in the present issue of the *Journal of Family Studies* on the concept of “meaningful relationships” between separated parents and their children. The term was introduced into the 2006 amendments to the *Family Law Act 1975* (Cth), which also endorses the concept of shared parental responsibility and, when practicable and in the interests of the child, shared parenting time. The present paper explores some of the socio-legal antecedents to these concepts. It traces the historical shift from relationship as an externally located obligation of the father, to relationship as a mysterious internally fashioned bond between a mother and her child, essential to the child’s psychological development. The author argues that the right of

children to enjoy meaningful relationships with both their separated parents is closely linked to the need to make a further cultural shift that sees fathers too, as equally capable of bonding emotionally with their children. The author sees “meaningful relationships” as an important conceptual breakthrough in family law, and suggests that from the child’s standpoint, meaningful relationships are primarily about parental attunement and the flexibility and emotional security that this brings, and less about processes principally aimed at determining or agreeing upon parcels of parenting time.

What might children mean by a “meaningful relationship”? (2009). Trinder, L. *Journal of Family Studies*, 15(1), 20–35.

The concept of a meaningful relationship is a key part of the *Family Law Amendment (Shared Parental Responsibility) Act 2006*. Although intuitively attractive as an idea there remain some questions about the precise meaning of the term “meaningful”. In this paper the author explores what children themselves might define by meaningful relationships. She draws on some material from a UK study of contact to illustrate some of the ways in which school-age children of 7 years of age and upwards, might define meaningful relationships, and what implications that might have for policy and practice.

A 5-year retrospective of post-separation shared care research in Australia. (2009). Smyth, B. *Journal of Family Studies*, 15(1), 36–59.

In recent years, sweeping changes to the Australian family law system—new services, legal processes, legislation, and a new child support scheme—have been put into place, accompanied by a large research evaluation program. A central plank running through the recent reforms is the need for courts, and those who work with separating parents, to consider whether a child spending equal or else substantial and significant periods of time with each parent would be in his or her best interest and be reasonably practicable. While legal professionals, practitioners and policy analysts wait for the first wave of findings about how the new system is working, now seems like an opportune moment to pause and reflect on the past 5 years of Australian research into shared care. Do we know much more than we did 5 years ago when equal parenting time was first given formal policy prominence? The short answer is “Yes” but the long answer is that our knowledge still remains at a basic level.