

# Cautionary notes on the shared care of children in conflicted parental separations

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The shared physical care of children following separation has long been a complex issue, and is again in the spotlight following the passing of the *Family Law Amendment (Shared Parental Responsibility) Act 2006*. Of course, in general, children benefit from having both parents involved in their lives; but the problem for those involved in family law is to help the parties work out what is best for the children in each particular case. Unfortunately, the circumstances of families that come into the family law system can be unusual and troubling, and working out what is best in particular cases often poses difficulties and challenges. Statements about what is generally good for children are not always a sufficient basis for giving advice and making decisions in these cases. We need to look carefully at the specific facts of each case.

Doing that is essentially the subject of our article, soon to be published in the *Australian Journal of Family Studies*.<sup>1</sup>

## New research findings

There are three components to the article. First, there are some concerning findings by Dr McIntosh about the circumstances in which shared care arrangements are sometimes being made, whether by agreement or by court order. The findings are contained in two separate studies. Interested readers can check the details of the studies and the findings from the article, as only an indication is provided here.

The studies draw attention to some things that need to be considered when dealing with parenting arrangements. For example, one might think that shared care arrangements are only put into place when the parents are able to work harmoniously, or at least civilly, and are able to protect the children from exposure to hostility, sharp words, denigration, and the like. But the findings cast doubt on this comfortable assumption.

In one study involving over 300 children, 27% were in shared care arrangements. In these cases, the fathers reported consistently higher frequencies of minor conflict, serious verbal conflict and major conflict with their former wives throughout that year; and the mothers were more likely than mothers in other sorts of arrangements to feel that their former partner did not believe they were good parents. In the second study, in 73% of the shared care cases resolved at court, at least one parent reported “almost never” co-operating with the other. And in 39% of shared care cases, a parent reported “never” being able to protect their children from their conflict.

Such findings are concerning, because they suggest that a significant proportion of these children emerged from Family Court proceedings with substantially shared care arrangements that occurred in an atmosphere that placed psychological strain on the child. Dr McIntosh’s research suggests that children are particularly at risk when certain factors are present, such as parents having low levels of maturity and insight; poor emotional availability of parents to the child; ongoing, high levels of inter-parental conflict; ongoing significant psychological acrimony between parents; and one or both parents seeing the child as being at risk when in the care of the other.

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## A review of the psychology of shared care for young children

The second component is a review of the literature on the psychology of shared care for young children. We describe the “core finding” as follows:

<sup>1</sup> McIntosh, J., & Chisholm, R. (forthcoming). Cautionary notes on the shared care of children in conflicted parental separation. *Journal of Family Studies*. The article is a revised and expanded version by the same authors of Shared care and children’s best interests in conflicted separation: A cautionary tale from current research. (2008). *Australian Family Lawyer*, 20(1), 3–16.

The healthy emotional development of children depends upon their early experience of a continuous, emotionally available care-giving relationship, through which they are able to form an organised attachment, and to develop their human capacities for thought and relationships. (McIntosh & Chisholm, forthcoming)

While such a statement might be widely accepted, we urge that its ramifications for care arrangements be carefully considered. For example, attachment security is not transferred by the child from one parent to another when they move between their care—a child who has a secure attachment to one parent will not necessarily have an equally good attachment to the second parent. If increasing the child's time with the second parent means reducing the child's time with the first, the change can, in some circumstances, compromise the security of attachment with the first parent, with all of its attendant developmental ramifications.

We do not argue for or against shared care, only against shared care arrangements or any other arrangements that proceed from notions of parents' rights, or that disregard the needs of the particular children in each case (considered in the light of what we know from research). That research does not lead to black-and-white answers or one-size-fits-all solutions, but we think that it does help parents and their advisers, and where necessary the courts, to make informed judgments about what is likely to benefit children.

## A consideration of the legal framework

But what about the law? Didn't the amendments to the *Family Law Act* in 2006 have a lot to say about shared parenting?

The third component of the article is an examination of the *Family Law Act* as it is now. We set out what it says and what it doesn't say. We argue that while the provisions clearly encourage the involvement of both parents following separation, that is always subject to what is in the best interests of the child, whose best interests remain, under the Act, the "paramount consideration".

In our view there is nothing in the legislation that is intended to prevent people from concentrating on the best interests of each child, and drawing on the lessons from research in making parenting arrangements. Indeed there are indications that the legislation encourages that approach.

In considering what parenting arrangements are likely to be best for the children, it is not enough to mediate or adjudicate shared arrangements with conflicted parents without considering the structural and relational equipment necessary to support and safeguard children, so that they indeed benefit from the ongoing care of each parent. We conclude by asking professionals to ask themselves:

Will a shared living arrangement in this parental context lead to an experience for the child of being richly shared, or deeply divided?

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