



Shared post-separation parenting

Pathways and outcomes for parents

Belinda Fehlberg, Christine Millward and Monica Campo

This article presents key findings from the first year of our Post-Separation Parenting and Financial Settlements study, conducted at the Melbourne University Law School and funded by the Australian Research Council. We focus on 32 in-depth interviews conducted in 2009 with parents in post-separation shared care arrangements, drawn from a qualitative sample of 60 (see Sample and Method boxes at the end of this article). For this study, we defined “substantial” shared care as a child spending at least 30% of their time with each parent and “equal” shared care as a child spending at least 45% of their time with each parent.

The background to our project was the significant amendment to the *Family Law Act 1975* (Cth) (*FLA*) Part VII, via the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth). The changes were complex but key goals appeared to have been to encourage separated parents, if safe to do so, to continue to take a significant role in their children’s lives, parent cooperatively and agree on parenting arrangements outside the legal system (Explanatory Memorandum, 2005, p. 16).

Before the 2006 changes to the Act, shared care had been found to work best where parents were cooperative, child-focused and flexible; had reached agreement without legal assistance; had “exercised their responsibilities jointly and co-operatively before their separation; and fathers had taken an active care-giving role” (Rhoades, Graycar, & Harrison, 2000 [1.3]; see also Smyth, Caruana, & Ferro,

2004). Post-reform, shared care remains unusual in the broader community—about 16% of the 10,000 recently separated parents who participated in the Australian Institute of Family Studies (AIFS) Longitudinal Study of Separated Families Wave 1 described themselves as being in this circumstance (Kaspiew et al., 2009, p. 116). However, early data from the Family Court of Australia (FCoA, 2009) and the AIFS’ *Evaluation of the 2006 Family Law Reforms* (the Evaluation) show that court orders for shared care are now made “in a higher percentage of contested cases than occur in the general population” (Kaspiew et al., 2009, pp. 132–133). This is a cause for concern, as parents with adjudicated orders would seem unlikely to be able to communicate and cooperate in the manner evident in workable shared care arrangements pre-2006.

At the time we began our research, little was known about families entering shared parenting arrangements post-2006. The AIFS Evaluation has since provided significant quantitative data on post-separation parenting, including shared parenting arrangements following the reforms. The *Family Courts Violence Review* (the Chisholm Review), released on the same day as the Evaluation, also addressed the operation of the 2006 changes in the course of identifying significant failure of the family law system in supporting victims of family violence (Chisholm, 2009). A number of other reports on the 2006 changes have been released since then and we refer to these at various points in this article. Our study adds to this burgeoning

knowledge base by providing in-depth analysis drawn from a small, purposive sample (see Sample and Method boxes on page 38).

The aim of this article is thus to summarise, with reference to the AIFS Evaluation as well as other recent research, our key 2009 findings concerning pathways into, and experiences of, shared post-separation parenting in a range of situations, including both conflicted and amenable arrangements. We do this by first considering our parents' pathways into shared parenting arrangements and then exploring parents' descriptions of their shared care arrangements.

In taking this approach, we make no claim that these experiences are representative of the population of separated parents with shared care arrangements. We also emphasise that our analysis in this article is *only* of shared care arrangements; and some of the patterns we identify might also be found in other parenting arrangements. Additionally, as the Sample box indicates, our sample was largely recruited from newspaper advertising. While we took care in stating in our advertisement that the goal of the study was to “better understand decisions about parenting and finances after separation”, it is possible that the parents most likely to respond had strong views about their shared care arrangements. Nevertheless, the variety of experiences we describe does exist and can deepen our understanding of shared care arrangements. Our qualitative data can throw light on what some of the quantitative trends *mean* in the everyday lives of families who fit those trends, while also perhaps identifying and exploring other experiences.

Pathways to care arrangements

Of our sample of 32 parents with shared care arrangements, half had attended family dispute resolution (FDR) or mediation services, and 10 had parenting court orders (6 Federal Magistrates Court [FMC] consent, 1 Family Court of Australia [FCoA] consent, 1 FMC contested, 2 FCoA contested). The focus of this section is our shared care parents' experiences of FDR and mediation, as well as family law court pathways.

In our sample, parents who did not seek any professional assistance consistently described consensual shared care arrangements ($n=8$). They described mutual willingness to cooperate and communicate in a child-focused and flexible way, and the 2006 *FLA* amendments did not seem to have shaped their decisions:

[Substantial care was] just how it worked out because we weren't arguing or fighting or anything, and both had a really good relationship

Requirements to attend pre-filing FDR and the equal time amendments led several mothers in our sample to feel under pressure to agree to shared care in FDR or mediation and to believe ... that there was no point in resisting because shared time was what the court would order if they litigated.

with [our daughter] and it's not about us, it's about her, so we just try and do what's best for her, basically. So it's been easy, really easy.

The presence of this cooperative group as well as parents who expressed (to varying degrees) less satisfaction with their shared parenting arrangements meant our sample was quite diverse.

As mentioned, half of our 32 parents with shared care arrangements had used mediation or FDR services. Reasons for doing so included wanting to avoid or reduce conflict over parenting arrangements or to save on the financial costs of the legal system:

We thought it made a lot more sense to do that rather than throw money at lawyers.

Others sought mediation or FDR to assist negotiations and found it assisted them to preserve amicable post-separation relationships while also providing structure and formality for their negotiations—in some cases resulting in a “Parenting Plan” to clarify and record arrangements:

It sounded better when it came from somebody else's voice, as opposed to the dialogue that we had between us ... When that third party agreed that what we had come up with was okay, then [my ex-partner] thought that then [it] was okay.

Mediation and FDR were of most assistance to parents who described low levels of post-separation conflict and said that they and their ex-partner had voluntarily sought it so they could negotiate more effectively.

Our sample also included several mothers and fathers who sought mediation or FDR because they needed help to try to resolve conflict with an ex-partner who they said was uncooperative. In two cases, the mother described the father as being highly controlling and intimidating. Neither of these mothers said that mediation or FDR had helped in this situation. Rather, they said their ex-partner had dominated the mediation process, so that they felt pressured into agreeing to shared care during mediation:

The mediators ... swayed to the strongest personality.

[The mediator] was mapping it all out to make this arrangement but [my child's father] just decided he didn't want to do any of that. [The mediator] signed us off. She tried; she wasn't getting anywhere.

A few mothers and fathers in our sample said they or their ex-partner intended to seek court orders and that they attended FDR because they were required to do so before going to court (*FLA* s60I). Parents who mediated where one or both were determined to go to court were likely to describe mediation as a waste of time:

I thought we had reached a resolution but we obviously hadn't reached the resolution that [my ex-husband] wanted. So he got his piece of paper that released him, because he had attended mediation and said that he had, you know, made an effort. He was then released to go on to court.

Requirements to attend pre-filing FDR (*FLA* s60I) and the equal time amendments (*FLA* s65DAA) led several mothers in our sample to feel under pressure to agree to shared care in FDR or mediation and to believe (sometimes on the advice of professionals, including mediators and solicitors) that there was no point in resisting because shared time was what the court would order if they litigated. One mother, for example, said she agreed to equal shared care after the mediator “pulled me aside and said, ‘Look here, ...



Reasons for using mediation or FDR included wanting to avoid or reduce conflict over parenting arrangements or to save on the financial costs of the legal system.

the Dads' groups in Canberra are very strong ... there's all this new legislation; when you go to court the default will be 50-50 and you can't do a thing about it.' That's basically what she said to me."

In contrast, fathers appeared less malleable, both on mothers' and their own descriptions. They were less likely than mothers to attend mediation and FDR, or were likely not to engage in the process when they did attend. Fathers were more likely to describe themselves and to be described as having been able to resist agreement in mediation or FDR, or to utilise these processes to work towards the outcomes they preferred.

The observations of parents in our sample shed light on the broader AIFS Evaluation suggestion that the 2006 changes have diminished mothers' bargaining positions and have put them "on the back foot" when negotiating parenting arrangements (Kaspiew et al., 2009, pp. 101-102; 219-221).

As noted earlier, and consistent with the wider community pattern of sorting out post-separation parenting arrangements without court involvement (Kaspiew et al., 2009, pp. 65-75), only 10 of our 32 shared care parents had parenting orders from a family law court (seven by consent). Our sample included cases in which consent orders were sought to formalise a mutual agreement and also to provide evidence to the Child Support Agency (CSA) for child support assessment purposes, or to Centrelink, so that Family Tax Benefit (FTB) sharing could be claimed.

While parents describing consent orders had formally agreed to the orders made, they often maintained that they had not been happy about doing so. Mothers were particularly likely to describe consent orders as a defeat because they had felt pressured into agreeing to substantial care. One mother, for example, said her husband "took

me to court as a result of the new legislation that had come through. He saw that as an opportunity to increase the time he has with the children". She also said that her solicitor was "scared during the negotiation process ... that the judge might rule a 50-50", and that as a result she had agreed to consent orders for substantial shared care. Cases like this in our sample (of which there were several) were consistent with the AIFS Evaluation suggestion that women's bargaining positions have been compromised by the 2006 reforms, and that they often agree to shared parenting arrangements out of fear that a more adverse outcome would result if the matter was adjudicated (Kaspiew et al., 2009, pp. 101-102; 219-221).

The descriptions of parents in our sample consistently suggested that the 2006 shared parenting changes have led professionals (including both FDR practitioners and family lawyers) and parents to expect that courts are now more likely to order shared care (as is in fact the case, as noted in our introduction; see also Kaspiew et al., 2009, pp. 132-133; Chisholm, 2010, p. 121). For example, in one contested parenting dispute in our sample, the mother said that the father had sought 50-50 shared care of their 3-year-old child. The mother had been the child's primary carer prior to the contest. After unsuccessful mediation, the case went to court, and the mother was deeply upset and angered by the legal process. She said she had felt bullied by her ex-husband, his lawyers and her own lawyers to agree to equal care. The mother only felt she had been listened to after a psychologist's report opposing equal care was prepared. The federal magistrate took the report into account and ruled that the mother was to have 70% care, although this meant that the father, who lived several hours' drive away from the mother, was still awarded substantial time with the child.

More than half our shared carers ($n=17$) reported violence by the other parent toward them, mostly prior to separation. Mothers described physical, sexual, psychological, verbal and financial abuse and fathers described verbal and financial abuse of a less serious nature (this is a gendered pattern consistent with Kaspiw et al., 2009, pp. 27–29; Bagshaw et al., 2010, pp. 3–4). Mothers in our sample who described family violence and who went to court were consistently advised not to raise it by their solicitors. One mother, for example, described an equal shared care arrangement agreed to by consent. Her husband had mental health problems and had been physically violent during their marriage. She said she had sought court orders for “full custody” because she was concerned about the emotional and physical wellbeing of her children while with their father, but had agreed to equal shared time after her solicitor advised her that unless she could establish that he was violent towards the children rather than her, there was “not a whole lot I can do” and that “even if I had reported it, it probably would not have made much of a difference anyway, because the courts want that shared care”. Thus, the combined effect of the lawyer’s emphasis on the need for concrete supporting evidence of harm (e.g., police reports) and the priority being attached by courts to shared care post-2006 meant that she felt silenced and helpless. This mother’s observations are consistent with observations made in the AIFS Evaluation (Kaspiw et al., 2009, pp. 247–248) as well as the Chisholm Review (2010, pp. 47–49) and more recent reports (Bagshaw et al., 2010, p. 6; Laing, 2010, pp.10–11).

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Descriptions of shared parenting arrangements

The majority of our shared care sample described their relationship at the time of interview as cooperative (ranging from amicable to businesslike). However, a substantial minority did not, with about one third ($n=11$; 7 substantial carers and 4 equal carers) describing their relationship with the other parent as being hostile.

The most positive shared care experiences among our sample were reported by parents who described their relationship with the other parent as cooperative and child-focused. One mother, for example, described her and her ex-partner’s substantial shared care arrangement of their preschool-aged daughter as follows:

It’s good. If she misses [her father] and she wants to see him then we pop over and see him and have dinner or something there. He’ll come over here if he wants to see her. So it’s really flexible, and it’s about her.

Parents in this group worked hard at maintaining communication with the other parent and avoided exposing children to parental conflict. Among our sample, positive shared care arrangements post-separation were more likely to be described in cases where fathers’ active

involvement in children’s care pre-separation was also described. These patterns are consistent with pre-2006 research (e.g., Smyth et al., 2004; Smyth & Weston, 2004).

Most mothers and fathers in our sample said mothers were the main carers of children before separation. Many parents therefore struggled to adapt to shared care, as this involved mothers’ sense of loss of their primary role and fathers taking on a largely unfamiliar role. In our sample, mothers usually remained the main managers and facilitators in children’s lives, even in equal shared care arrangements:

I am the one who does all the driving around during the week to school and back. I feed them dinner on Friday night before he picks them up, and bath them and all of that, and give them breakfast and all of that when he drops them back off. He is really only providing for them for two days [per week] in regards to food.

While many mothers were, on both mothers’ and fathers’ reports, supportive of the father–child relationship, many were also anxious about the parenting skills of their ex-partners and worried that young children were not cared for adequately by fathers. Some said that fathers were less committed than the mothers were to maintaining children’s daily routines; for example, making sure children did their homework and went to bed on time. Some mothers said this was due to fathers’ inexperience, while in other cases the father appeared unwilling to follow the mother’s advice. Although some fathers had concerns about the mother’s lack of organisation or competence, this was always in cases where the father was the primary carer due to the mother’s mental health or substance abuse issues (none of which were shared care cases).

Mothers seemed to feel more keenly than fathers that shared care arrangements led to significant disruption, emotional stress and lack of adaptation for their children, particularly where there was ongoing parental conflict. Fathers focused less on these issues, although some spoke of emotional difficulties for their children after parental separation and said that counselling had taken place:

It was very upsetting for the children at first. Both of them ended up seeing the school counsellor at various times—my youngest son displayed physical signs of distress ... he became aggressive and angry ...

Some mothers were concerned about children’s health when children were with their father (diet, medical treatments or medicines, and amount of sleep) and some worried about physical safety if fathers were drinking alcohol, were depressed or had been violent in the past.

Some of the mothers’ heightened concerns may relate to differences in parenting styles between mothers and fathers—there is certainly research suggesting that fathers can be more “authoritarian”, “permissive” or “disengaged” than mothers and these parenting styles can have some adverse effects (see Wake et al., 2007; Russell et al., 1998). According to psychologists, these parenting styles differ in terms of strictness and amount of punishment given; levels of indulgence or leniency; and levels of responsiveness and communication, which can sometimes lead to neglect (Cherry, 2010). However, the maternal concerns over pre-separation paternal violence and depression probably go well beyond differences in parenting styles.

Several shared-care parents in our sample, especially but not only mothers, were also concerned that a third party (for example, the other parent's new partner or the other parent's mother) was looking after their children when the children were with the other parent:

Their Dad would just get every Tom, Dick and Harry to pick them up, drop them off. He was never around.

What was happening was that she'd employ nannies to look after them because she wasn't around; she'd be overseas or interstate or whatever.

Such concerns were usually raised by parents who had been the primary carer before separation. They were also more likely to arise when fathers juggled full-time paid work and substantial shared care of their children. Some mothers also described fathers as having new partners who asserted their authority over children and failed to consult the children's mother about important matters, such as ear piercing and haircuts.



Parents in our sample consistently suggested that the 2006 changes have led professionals and parents to expect that courts are now more likely to order shared care.

Generally, our research was consistent with recent research by Jennifer McIntosh and colleagues (2010, p. 13), which suggests that fathers with shared care arrangements are more satisfied than mothers with shared care. Previous research has suggested that shared parenting may well be viewed by fathers as "fairest" to them (Smyth & Weston, 2004, p. 8), and our study also provides support for that view. Mothers, on the other hand, were more likely to focus on the impact of shared care arrangements on their children's daily lives, and in high-conflict cases were likely to feel that shared care arrangements allowed their ex-partner to control them and left them no autonomy in decision-making:

So currently it either has to be on a weekend or after 5:00 pm, which is just so inconvenient. After 5:00 pm, activities just do not fit our life—the children get too tired ... but he has booked activities on the weekends, and if I don't take them to those activities he withholds them from things in his week.

Conclusions

Following the 2006 family law changes, the *FLA* includes a presumption of *equal shared parental responsibility* (*FLA* s61DA), which does not apply where there is a risk of family violence or child abuse, or where it is not in the child's best interests. It is only when court orders provide that the parents are to have equal shared parental responsibility that the court must also consider ordering shared time (*FLA* s65DAA). However, there are several cases in our data that illustrate observations in the AIFS Evaluation (pp. 207–210) and the Chisholm Review (p. 8) concerning community and professional misunderstanding about what the *FLA* actually says. Our sample includes several cases in which mediators and lawyers were described as advising mothers that shared care is now virtually inevitable. It included cases where fathers who worked full-time and had not been very involved in their children's lives prior to separation were described and described themselves as being encouraged to seek shared care, and cases where mothers (but not fathers) described themselves as feeling pressured into shared care. There were also several examples of mothers who described violence in their relationships with their partners, and said they were discouraged from raising it due to the increased emphasis on maintaining the children's relationships with both parents, in combination with the perception post-2006 that family courts will order shared care regardless of circumstances. These instances add depth to some key findings of the AIFS Evaluation, the Chisholm Review and other recent reports (Bagshaw et al., 2010; Laing, 2010), and provide support for current federal government moves to amend the *FLA* to better address family violence (Family Law Amendment (Family Violence) Bill 2010).

The diversity of our sample (for further information, see Fehlberg, Millward, & Campo, 2009) also suggests that shared parenting arrangements are entered into by a more diverse group of parents now than was the case prior to the 2006 changes. Most obviously, our shared carers did not consistently describe cooperative arrangements—one-third reported a hostile relationship with the other parent at the time of interview. The utilisation of shared care in high-conflict separations and the harm to children arising from this is a clear theme in McIntosh and colleague's

Sample

The sample of 32 interviews were taken from a wider sample of 60 interviews with volunteer parents, separated or divorced, who were resident in Victoria, Australia.

Our sample is rich and varied but is not statistically representative of separated families in Australia.

Table 1 Summary of childhood and early adulthood indicators used in the study

Characteristics of the 32 shared-care parents	No. with characteristic
Substantial shared carers (≥ 30–44% of time each)	18
Equal shared carers (≥ 45% of time each)	14
Fathers	12
Mothers	20
Age of parent	
20–39 years	10
40–49 years	19
50+ years	3
Previously married	22
Not previously married	10
Ages of children	
2–11 years	25
12–16 years only	7
Location	
Victorian rural/regional area	8
Inner Melbourne suburbs (inc. Northern suburbs)	10
Outer Melbourne suburbs (inc. Eastern/Southern suburbs)	14
Employment	
Full-time (3 men, 5 women)	8
Part-time (7 men, 10 women)	17
Not employed/studying (2 men, 5 women)	7
Attended mediation/FDR	16
Parenting orders from a court (7 consent, 3 contested)	10
Abuse/violence during previous relationship (3 financial only)	17
Current relationship with ex-partner is hostile	11

research post-2006 (McIntosh & Chisholm, 2008; McIntosh et al., 2010), but does not emerge as clearly in the AIFS Evaluation, which the authors suggest may result from methodological differences (Kaspiew et al., 2009, p. 273; see also Social Policy Research Centre, 2010, p. xi).

In our sample, it seemed that differences between mothers' and fathers' experiences and perceptions of shared care were related to patterns of care pre- and post-separation—most of our shared care mothers took the main responsibility for children's schooling, medical and other needs both before and after separation. Our fathers seemed generally more satisfied with shared care arrangements than mothers, but were also more focused on time allocations and viewed shared time as being the fairest outcome for them

Method

- Interviewees were recruited in early 2009 via newspaper and online advertisements (the majority); brochures left at a major provider of mediation and FDR services; and mail-outs accompanying final orders from the Family Court of Australia and the Federal Magistrates Court.
- In-depth qualitative interviews; 3-year longitudinal design (2009, 2010, 2011).
- Eligibility criteria of parents:
 - a. at least one child under 16 years of age from a previous relationship;
 - b. separated from their child's other parent after June 2006 (most had been separated for 1–3 years; a few longer, but around two years on average); and
 - c. not currently involved in family law court proceedings.

Interviewees included non-Australian born parents, but all interviews were conducted in English.

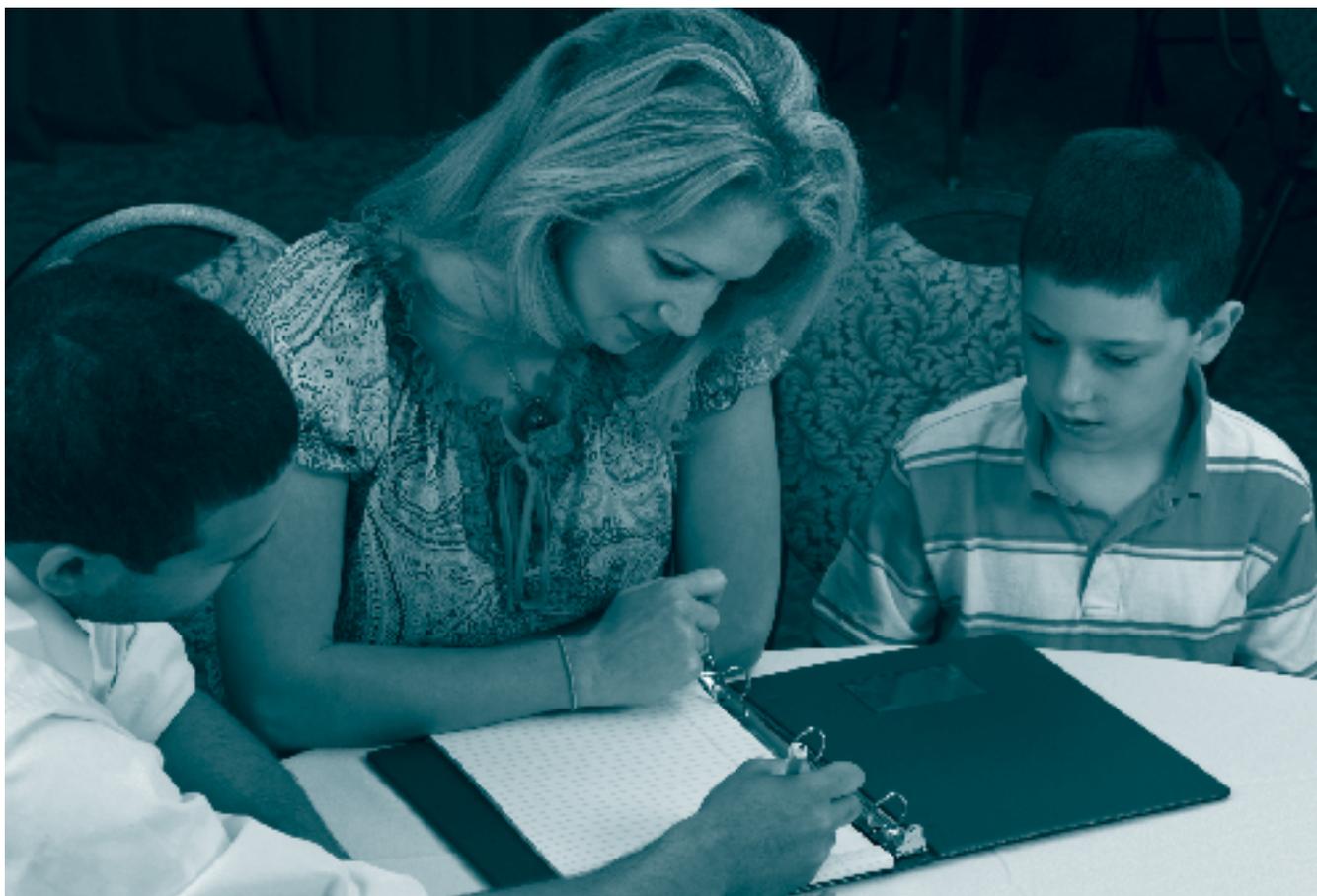
Only one parent was interviewed per family, mainly for reasons of confidentiality and sensitivity. Children were not interviewed, mainly due to ethical and sampling challenges, including obtaining parental consent.

and the children. In contrast, our mothers acknowledged the importance of fathers being active in children's lives, and promoted ongoing contact with fathers, but were more obviously focused on children's best interests and safety. A similar pattern emerged in previous research (e.g., Rhoades et al., 2000), and in the recent AIFS Evaluation (pp. 217–219, 267–273) and other recent studies (McIntosh et al., 2010).

Mothers' concerns for children included, in a minority of cases, the risk of physical and psychological harm due to fathers' past violence, mental illness, substance misuse or neglect, and, as noted above, this seemed to go beyond different parenting styles. More often, mothers were concerned that children's social participation and recreational activities could be disrupted and emotional instability result from constant re-adjustment to two homes. Fathers were less inclined to express concerns for children's wellbeing when the children were with their mothers.

The range of concerns expressed by mothers in our qualitative sample did not necessarily amount to the "safety" concerns that were found to be associated with poor outcomes for children's wellbeing in the AIFS Evaluation (Kaspiew et al., 2009, Chapter 11). However, we would argue that they are nevertheless significant as they suggest that, from the point of view of those who have usually been and remain children's main carers, shared care arrangements caused significant upheaval and uncertainty for their children and affected their capacity to parent well.

While our sample described a highly diverse range of experience and levels of satisfaction with shared care arrangements, the cases in which shared care operated most smoothly were those in which the law seemed to have played no role in dictating arrangements. This group



appeared very similar to those who utilised shared care before the changes. Our data also provided examples of parents who were utilising shared care in circumstances that did not appear suited to this model and it was clear that the shape and interpretation of the current law had influenced these arrangements.

While caution must be taken in drawing conclusions from very small samples such as ours, our data suggest the value of re-focusing on what works best for each child when making post-separation parenting arrangements.

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Professor Belinda Fehlberg is a Professor of Family Law and Chief Investigator, **Dr Christine Millward** is a Senior Research Fellow and **Monica Campo** is a Research Assistant, all at the University of Melbourne Law School. Monica is also a PhD candidate at La Trobe University.

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