



Shared care time

An increasingly common arrangement?

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Just how common is shared care time for all children under 18 years of age, regardless of their parents' timing of separation? Is this arrangement becoming increasingly common?

One of the objectives of the 2006 changes to the family law system was to encourage greater involvement of both parents in children's lives following separation, provided that the children are protected from family violence, child abuse or neglect (see Kaspiew et al., 2009). Parental involvement entails such matters as: (a) taking primary or immediate care of children for significant periods of time (care time), including overnight stays where possible;¹ (b) making a significant contribution to decisions affecting children's general lifestyle and welfare; and (c) providing financial support for the children.

While the changes were designed to encourage parental involvement generally, they were also specifically designed to encourage shared care time where such arrangements are reasonably practicable and in the child's best interest (see Box 1). The term "shared care" typically refers to circumstances in which children spend a

Box 1

The aim of encouraging greater parental involvement is reflected in the 2006 changes to the *Family Law Act 1975* (Cth) (*FLA*), including the introduction of a presumption in favour of "equal shared parental responsibility" (*FLA* s61DA(1)), with a nexus between the application of the presumption and considerations in relation to time arrangements (*FLA* s65DAA). The presumption may be rebutted by evidence satisfying a court that it would not be in a child's best interests for both parents to have equal shared parental responsibility (*FLA* s61DA(4)), and it is not applicable where there are reasonable grounds to believe that a parent has engaged in child abuse or family violence (*FLA* s61DA(2)). Where orders for shared parental responsibility are made pursuant to *FLA* s61DA(1), the courts are obliged to consider whether making orders for children to spend equal or substantial and significant time with each parent, would be reasonably practicable and in the child's best interests (*FLA* s65DAA).

similar number of nights with each parent. In the new Child Support Scheme, introduced in 2008, shared care is defined as the child spending 35–65% of nights with each parent. This threshold of time is used in the present article and is called “shared care time” to emphasise the fact that caring involves more than just spending time with children. For example, supporting children financially and making decisions affecting them are clearly important aspects of parental care. Prior to the 2008 changes, shared care time was usually taken to represent at least 30% of nights with each parent.²

The 2006 reforms to the family law system were introduced in the context of the changing roles of parents in intact families, with mothers increasing their participation in paid employment and many fathers playing a more active role in their children’s lives. For example, among parents with a child under five years old, the time fathers spent on child care increased between 1992 to 2006, although the time they spent on domestic tasks such as shopping, cleaning and laundry did not change (Craig, Mullan, & Blaxland, 2010).

This article examines the extent to which there have been changes in the proportion of separating families experiencing shared care time since 1997. Given that the question of the impact of equal or near equal care on children’s wellbeing has been hotly debated, especially for very young children (see Burrett & Green, 2008; McIntosh & Chisholm, 2008), particular attention is given to trends in *equal* care time for children of different ages (here defined as the child spending 48–52% of nights with each parent). Addressing this question entails

the challenge that there are few comparable datasets covering different periods.

Data sources

There is now a small number of datasets that can be used to address the question regarding changes in shared or equal care time. These include survey data collected by the Australian Institute of Family Studies (AIFS) and the Australian Bureau of Statistics (ABS), administrative data from the Child Support Agency (CSA), and from court files.

Data on the care-time arrangements developed by parents who separated after the 2006 law reforms were collected in the first wave of the Longitudinal Study of Separated Families, undertaken by AIFS in 2008 (LSSF 2008).³ This survey was conducted as part of the AIFS evaluation of the changes to the family law system.

The Australian Bureau of Statistics collected data on care time in its Family Characteristics Surveys, undertaken in 1997 and 2003, and its Family Characteristics and Transitions Survey in 2006–07 (for details, see ABS, 2005; 2008). The 1997 and 2003 surveys were conducted prior to the 2006 changes to the family law system, and the 2006–07 survey at around the time the changes took effect or shortly after. The care time data derived from the three ABS surveys are comparable with each other, but are not directly comparable with the information derived from the LSSF 2008. For example, the ABS surveys focused on children under 18 years old whose parents were not living together, regardless of how long they had experienced this situation, whereas the LSSF 2008 focused on parents who had separated after the introduction of the reforms.⁴

Trends in shared or near-shared care time (30–70% of nights with each parent) (Smyth, 2009)—based on the CSA administrative dataset for the period 2003 to 2008—are reported below. Finally, rates of different care-time arrangements apparent in court files for children’s matters that were initiated and finalised pre-reform and those that were initiated and finalised post-reform are compared.⁵

Trends apparent in the datasets

The Longitudinal Study of Separated Families (Wave 1)

Children who stayed overnight with each parent for 35–65% of nights per year were classified as experiencing shared care time. However,



this classification includes children who spend considerably more time with one parent than the other, as well as those who spend close to half the nights with each parent. The experiences of children with these two arrangements may differ markedly. We therefore also examined trends in the proportion of children spending 48–52% of nights with each parent (here called “equal care time”).

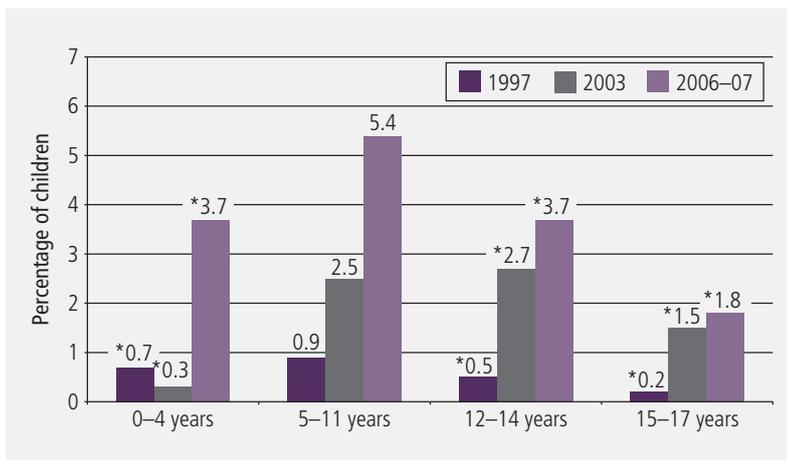
Parents in the LSSF 2008 had been separated for an average of 15 months at the time of the interview. In total, 16% of the children were in a shared care-time arrangement, with 7% experiencing equal care time.⁶ Children were, on average, relatively young: 59% were under 5 years old and only 5% were 15–17 years old. Equal time was most commonly experienced by children aged 5–11 years and 12–14 years (11–12%), followed by those aged 3–4 years (9%), then teenagers aged 15–17 years (6%). Equal time was in place for only 2% of children under the age of 3 years.

The ABS Family Characteristics surveys

The three ABS Family Characteristics surveys conducted between 1997 and 2006–07 are the only national surveys in Australia with comparable samples, thereby allowing assessment of change. They suggest that the proportion of children experiencing shared care time was increasing before the reforms were introduced, albeit from a very low base (from 3% in 1997 to 8% in 2006–07). Indeed, a much higher proportion of children in each survey rarely or never saw one parent than experienced a shared care-time arrangement.⁷

Figure 1 shows the proportion of children in four different age groups with equal care-time arrangements in 1997, 2003 and 2006–07. The proportions with equal care time in the 1997 survey were very low, with negligible differences apparent across the age groups (all less than 1%). The largest increase in equal care time between 1997 and 2003 was for children aged 5–11 years (from 1% to 5%) and the smallest was for children aged 15–17 years (from less than 1% to 2%). In other words, equal care-time arrangements, although very uncommon, appeared to be increasing before the 2006 reforms were introduced.

Between 2003 and 2006–07, there was overall a relatively small increase in the proportion of children with equal care time, with a greater increase being apparent for children aged 0–4 years (0.3% to 3.7%) and children aged 5–11 years (2.5% to 5.4%).



Notes: Percentages marked with an “*” are based on a small number of cases and should therefore be interpreted with caution.

Sources: Customised tables provided by the ABS based on the Family Characteristics Survey, conducted in 1997 and 2003, and the Family Characteristics and Transitions Survey, conducted in 2006–07.

Figure 1 Proportion of children in different age groups who experienced equal care-time arrangements, by age of children, 1997, 2003 & 2006–07

As noted above, these trends refer to all separated families with a child under the age of 18 years, some of whom may have been separated for many years. The parents of the vast majority of children represented in the 2006–07 survey would have been separated prior to the 2006 changes. However, the younger the child, the shorter would have been the duration since the parents’ separation. Indeed, parents of children under 12 months old would have been separated post-reform (assuming they had been living together when their child was born).

The Child Support Agency administrative database

Using the CSA’s earlier and broader definition of shared care time (30–70% of nights with each parent) and data provided by the CSA, Smyth (2009) found that the proportion of existing cases entailing this care-time arrangement increased by one percentage point each year from June 2002 (6%) to June 2008 (12%), while the proportion of *new* cases with shared care-time arrangements increased by one to two percentage points each year (from 9% by June 2003 to 17% by June 2008). Specifically, Smyth derived the following proportions of new cases in the CSA system entailing the child being in the care of each parent for 30–70% of nights: 9% in June 2003, 11% in June 2004, 13% in June 2005, 14% in June 2006, 16% in June 2007, and 17% in June 2008.⁸

A higher proportion of children's matters cases resulted in orders for shared care time post-reform than was the case pre-reform.

These results suggest that, during the period in which the reforms were rolled out (from July 2006 to June 2008), there was no evidence that the increase in such care-time arrangements had gained momentum. It remains possible, of course, that a lagged effect becomes apparent in the future—that is, the effect may be slow to develop.

Court data

The vast majority of parents organise their arrangements without using the court system. Only 3% of parents in the LSSF 2008 sample who had sorted out their arrangements nominated courts as the main pathway used to make their parenting arrangements (Kaspiew et al., 2009, p. 66). Indeed, another key aim of the reforms was to encourage parents to come to an agreement themselves on the best arrangements for the children, perhaps with the support of family relationship services if they could not achieve this alone.

Table 1 shows the prevalence of different care-time arrangements apparent in two samples of court files for children's matters: those initiated and finalised prior to the 2006 reforms and those initiated and finalised after these reforms were introduced.⁹ It should be noted that some of court files had no reference made to the number of hours that the child was to spend with the other parent, while arrangements were unclear in some other files (e.g., the file notes containing the specification, "live with mother—time spent with father as agreed"). Given this lack of clarity, two sets of statistics were derived for each dataset: (a) the number of children who were allocated shared care time as a proportion of all children whose time with each parent was clearly specified; and (b) the number of children who were allocated shared care time as a proportion of all children.

A higher proportion of children's matters cases resulted in orders for shared care time post-reform than was the case pre-reform. When calculated as a proportion of cases where

Table 1 Care-time arrangements for children subject to proceedings with final arrangements, pre- and post-reform

	Pre-reform		Post-reform (all sampled registries)	
	Care-time arrangements (% of cases where contact hours specified)	Care-time arrangements (% of all cases)	Care-time arrangements (% of cases where contact hours specified)	Care-time arrangements (% of all cases)
	%		%	
Number of contact hours specified				
Live with mother—spend 0–34% with father	72.2	42.5	66.1	41.2
Live with father—spend 0–34% with mother	12.2	7.2	11.0	6.9
35–65% time with each parent	15.5	9.1	22.9	14.2
Total	100.0		100.0	
Number of contact hours not specified				
Live with mother—time with father as agreed	–	27.3	–	24.4
Live with father—time with mother as agreed	–	5.6	–	4.3
Live with mother—no information on time with father	–	6.9	–	8.0
Live with father—no information on time with mother	–	1.5	–	1.1
Total	–	100.0	–	100.0
Number of children	667	1,188	867	1,416

Notes: Time arrangements based on future arrangements in last order or judgment on file. Weighted percentages. Pre-reform figures are sampled from the Melbourne and Perth registries. Post-reform figures are sampled from the Melbourne, Perth, Brisbane and Sydney registries. Percentages may not total 100.0% exactly due to rounding.

Source: Court files from Family Court of Australia, Federal Magistrate Court and Family Court of Western Australia

contact hours were specified, shared care time increased from 16% pre-reform to 23% post-reform and, when calculated as a proportion of all cases, increased from 9% to 14%.

However, court files on children's matters include cases in which the parents agree on parenting arrangements and are seeking a consent order (here called "pure consent"), cases in which parents come to an agreement after proceedings have commenced, and cases requiring judicial determination. Some judicially determined cases may involve two otherwise well-functioning and involved parents being unable to agree about care-time arrangements. On the other hand, the AIFS evaluation suggested that parents who enter the court system are more likely than other parents to allege violence and other dysfunctional behaviours and are more likely to be in high conflict (Kaspiew et al., 2009). It seems reasonable to assume, therefore, that shared care time would be less commonly appropriate for cases requiring judicial determination than for cases in which the parents reach agreement by consent ("consent cases").

A key question, then, is whether the increase in shared care time applies more to consent cases than judicially determined cases. In fact, the data suggest that a greater increase in shared care time has occurred for judicially determined cases than for those in which parents reach agreement by consent.

The proportion of judicial determination cases resulting in shared care time increased from 4% pre-reform to 34% post-reform, when calculated as a proportion of cases where contact hours were specified. When calculated as a proportion of all judicial determination cases, shared care time increased from 2% pre-reform to 13% post-reform.

When calculated as a proportion of consent cases in which contact hours were specified, shared care time increased from 17% pre-reform to 22% post-reform, and when calculated as a proportion of all consent cases, shared care time increased from 10% to 15%.

Conclusions

Several sources of data suggest that the prevalence of shared care-time arrangements, including equal care time, has been increasing, although such arrangements remain the minority. According to administrative data from the CSA, among parents who have registered with the CSA, shared care-time rates increased slightly but progressively between 2002 and 2008, and the increase did not gain momentum after the 2006 reforms were introduced. In



addition, surveys conducted by the ABS suggest that such arrangements, including equal care time, had been increasing since the late 1990s (when equal care time in particular was rare).

Future monitoring of trends will throw light on whether the increase in shared care time has begun to gain momentum since these sets of data were collected and whether the reforms have led to changes in the proportion of children who never see one parent.

A comparison of pre- and post-reform court files concerning children's matters suggests that the proportion of children who are allocated shared care time has increased considerably. This increase has been greater where the orders have been judicially determined than where they have been made by consent. Given the small, incremental increases in shared care time among the separated population at large, this legislatively driven trend may have significant implications for the children in such arrangements. To date, shared care time appears to be mostly, but by no means

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entirely, selective of families for whom such arrangements work well. This could change. Although most parents who choose shared care time believe that it worked for them, this arrangement does not work for some families (Weston et al., 2011; Cashmore et al., 2010).

It is important that such trends and their associated implications for children continue to be scrutinised, so that policies can be established or modified to protect and promote the wellbeing of children.

Endnotes

- 1 In this article, the term "care time" is used to describe the face-to-face contact that separated parents have with their children and includes both overnight stays and daytime-only contact.
- 2 For details, see "2.2.1 Basics of care" in the online guide of the Child Support Agency (CSA; 2011): <http://guide.csa.gov.au/part_2/2_2_1.php>.
- 3 This survey involved telephone interviews with 10,002 parents (with a child under 18 years old) who separated between July 2006 and September 2008 (with only 4% having separated in 2008). Interviews took place between August and October 2008, up to 26 months after separation (average duration of separation = 15 months). The sampling frame for the survey was parents who were registered with the Child Support Agency and included both agency collect and private collect customers.
- 4 Additional differences between the ABS and LSSF surveys included the following: (a) unlike the ABS samples, the LSSF sample was drawn from the CSA database; (b) the parents in the ABS surveys indicated the care-time arrangements of all their children under 18 years who were in their household, whereas the LSSF parents focused on one child only, regardless of the living arrangements of this child; (c) the ABS surveys involved face-to-face interviews whereas the LSSF involved a telephone interview; and (d) the questions used in the surveys differed slightly from each other.
- 5 The pre-reform sample covered the two-year period prior to the implementation of the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth) (*SPR Act 2006*) (739 files), while the post-reform sample covered matters filed and determined after 1 July 2006 (the date the amendments came into effect) (985 files).
- 6 Where parents had more than one child, they were asked to indicate the care-time arrangements of the first child listed in the CSA database (here called the "focus child"). The ABS surveys, on the other hand, derived information about the arrangements in place for all children living in the household.
- 7 According to the three ABS surveys, the proportion of children who never saw one parent (or saw this parent less frequently than once per year) ranged from 27% (in the 2003 survey) to 30% (in the 1997 and 2006–07 surveys), and there was no evidence of consistent change over the ten-year period.
- 8 The percentages for 2004–07 were provided by Associate Professor Bruce Smyth through personal communication. We are grateful to him for providing these data.
- 9 The pre-reform figures are from cases sampled from the Melbourne and Perth registries. The post-

reform figures are from cases sampled from the Melbourne, Perth, Brisbane and Sydney registries. The sensitivity of the estimates to the inclusion of the additional registries for the post-reform estimates has been tested by comparing the pattern of care-time arrangements from just the Melbourne and Perth registries with the patterns when arrangements from all registries are considered. The estimates from the restricted number of samples are broadly similar to those derived when all of the registries are used. Therefore the data from all of the registries were used when examining the extent to which care-time arrangements had changed.

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