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Subject: AIFS Submission

House of Representatives Standing Committee
on Family and Community Affairs

Submission No: 1055

Date Received: 19-8-03

Secretary:

AIFS Submission
(662 B)

Please find attached the Australian Institute of Family Studies submission to the Child Custody Arrangements Inquiry.

This Submission draws on a range of work conducted by the Australian Institute of Family Studies during the course of several years around the issues of family separation, child custody, family and children's wellbeing.

The submission includes a comprehensive analysis of the international literature on child custody.

The Institute would of course be delighted to expand on this Submission, or contribute to the work of the Committee, in the future.

Yours sincerely,

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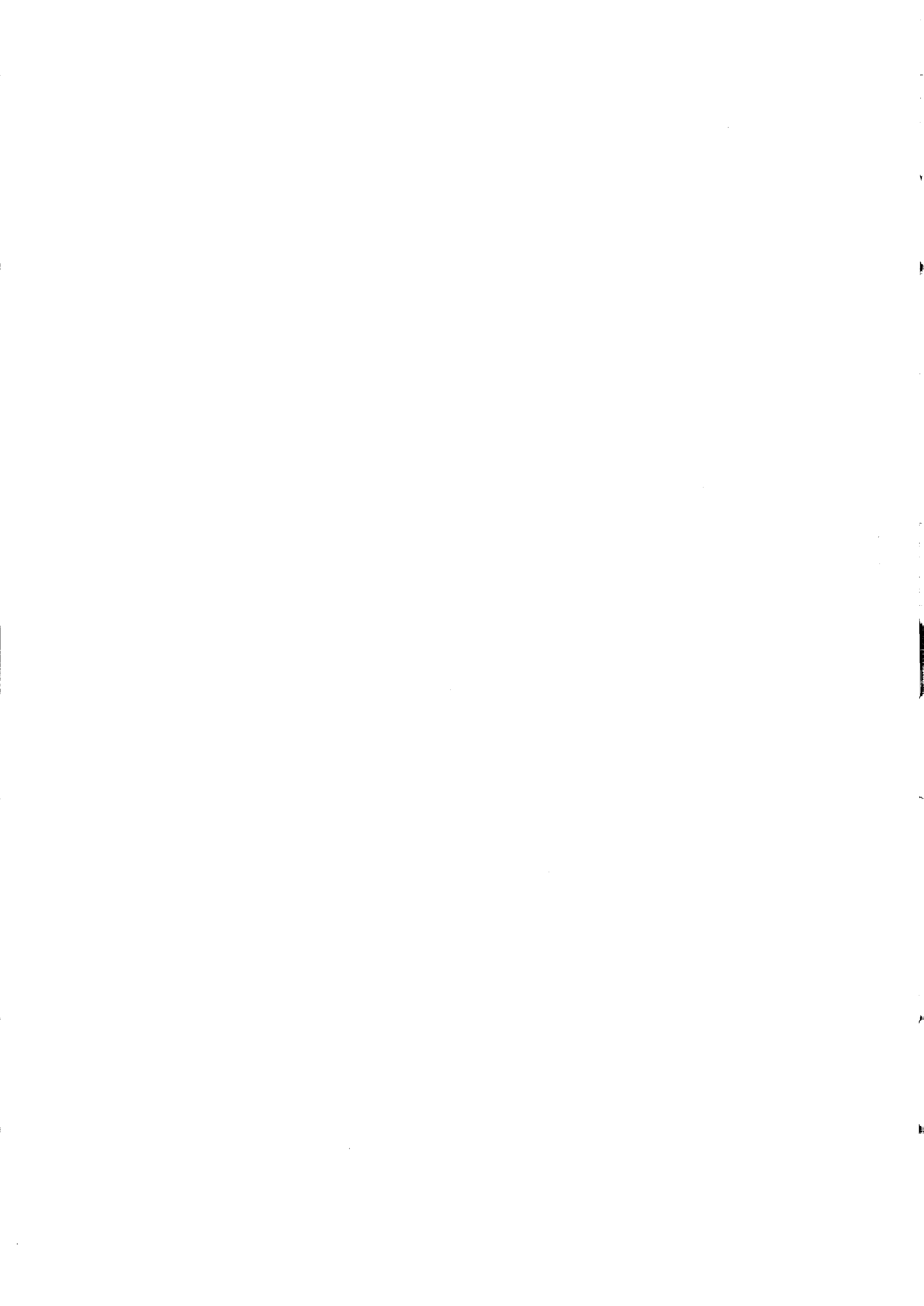

House of Representatives Standing Committee
on Family and Community Affairs

Submission No: 1055

Date Received:

Secretary:

Australian Government

Australian Institute of Family Studies

House of Representatives Standing Committee on Family & Community Affairs

Inquiry into child custody arrangements in the event of family separation

Submission of the Australian Institute of Family Studies

Prepared by:
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Authorised by:
Associate Professor Ann Sanson, Acting Director

18 August 2003

The Australian Institute of Family Studies is pleased to have the opportunity to respond to the Standing Committee on Family & Community Affairs Inquiry into Child Custody in the Event of Family Separation. We welcome the strong support given to the "best interests of the child" as a paramount consideration, and the opportunity for consideration of the best ways of engaging parents, particularly fathers, in the care and support of their children post-separation so as to enhance the wellbeing of children, their parents and other family members. It is the Institute's intention to provide material to inform this discussion.

Since its establishment, the Institute's charter has been *to promote the identification and understanding of factors affecting marital and family stability in Australia.* The Institute's research focus is broad given the numerous factors affecting family wellbeing and stability. The Institute's research agenda over the 23 years of its existence has addressed a wide range of contextual factors contributing to family wellbeing and stability.

The Institute's research seeks to address three broad and overlapping thematic areas where research is needed to inform policy and practice. These areas are diversity, change, and the interactions of the family with broader social institutions.

The Institute's core research is organised into three streams; Children and parenting; Family and Marriage; and Family and Society. There is flexibility so that the same issue can be examine from different perspectives by two or more program areas. Another continuing core responsibility of the Institute is to monitor and disseminate information on trends across all aspects of family functioning and wellbeing.

This body of research provides rich insights into the many complex factors contributing to family strengths and vulnerabilities. Post-separation parenting arrangements will reflect the different circumstances of families and the multiple influences on family dynamics, as previous AIFS studies have demonstrated (Funder 1993; McDonald 1986; Smyth, Sheehan & Fehlberg 2001).

The Institute's work on family transitions has direct relevance to the inquiry and its concern about the nature of post-separation patterns of parenting in a changing social context.

The response to this inquiry thus draws specifically on past and current expertise in the area of children, and aspects of family law processes. Of particular relevance are data derived from the Institute's *Caring for Children after Parental Separation* project (currently in the field), and its predecessors such as the 1997 *Australian Divorce Transition Project.* Data from Wave 1 of the *Household, Income, and Labour Dynamics in Australia* (HILDA) Survey are also germane.

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1. Executive Summary

The Australian Institute of Family Studies is pleased to have the opportunity to respond to the Standing Committee on Family & Community Affairs Inquiry into Child Custody in the Event of Family Separation. This submission takes its structure from the inquiry's Terms of Reference, and is in three parts.

In accordance with the UN Convention on the Rights of the Child, and in line with the Inquiry's own statement, we believe it is critical to keep the best interests of the child paramount, and this submission focuses on this principle while addressing the specific Terms of Reference.

Part I: A rebuttable presumption of joint custody

Given that the best interests of the child are the paramount consideration, what other factors should be taken into account in deciding the respective time each parent should spend with their children post separation, in particular whether there should be a presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption could be rebutted?

A review of the available research literature suggests the following:

- Most studies suggest that the best interests of children post-divorce are best served when children can maintain ongoing and frequent contact with both parents who co-operate and communicate with low levels of conflict.

- More than a third of Australian children do not appear to have any face-to-face contact with their father and many fathers and mothers are not satisfied with the level of contact that occur. Moving to a presumption of "equal physical custody" (or joint residence) is one possible response to this situation. This presumption is assumed to provide a "level playing field" for both parents to fully participate in their children's lives. However, it is crucial that any legislative reform does not compromise the best interests of children.

- Notions about parenting after separation are grounded in attitudes and beliefs about marriage and the roles of men and women as partners and parents. The changing nature of family life and patterns of women's and men's workforce participation has meant that the parenting roles, expectations and responsibilities of mothers and fathers – whether in intact or separated families – are in transition. These social and attitudinal shifts have prompted re-evaluation of the previously accepted post-divorce (maternal) "sole custody" model of parenting towards encouraging co-parenting after separation.

- The term "joint custody" in its various definitional permutations and interpretations is often at the crux of family court deliberations about post-separation parenting patterns. Definitional issues and interpretations of various forms of post-separation parenting thus become vital given their emotional and

practical ramifications. (These definitional issues are discussed in detail in the body of the submission.)

- The assumption that joint custody equals 50:50 division of time remains a vexatious issue, and one that has generated much debate both in Australia and overseas.

- Advocates of joint custody focus on the benefits for children of maintaining a close relationship with both parents. By contrast, opponents of joint custody typically emphasise children's need for stability with a primary caretaker who has key decision-making powers, and the potential harm for children of being exposed to ongoing high levels of parental conflict, parental neglect or psychopathology.

Factors that facilitate cooperative parenting

- There appears to be consensus in the literature about factors – relational and structural – conducive to making shared care a viable option for separated parents. These include:
    - geographical proximity,
    - the ability of parents to get along with each other in terms of a business-like working relationship as parents,
    - child-focused arrangements,
    - a commitment by everyone to make shared care work,
    - family-friendly work practices for both mothers and fathers,
    - a degree of financial independence, and
    - a degree of paternal competence.

Constraints to the presumption of "joint custody"

- In many ways the obvious constraints to joint custody are the reverse of the conditions that facilitate shared care arrangements, although other issues are also pertinent. These characteristics include:
    - the inability of one parent or the other to care for the children – whether mentally, emotionally or physically,
    - significant substance abuse by a parent,
    - physical abuse of spouse or child,
    - families with a severe history of disorganisation,
    - intractable overt hostility between spouses despite the provision of support services (eg., mediation),
    - significant geographic distance – especially in the case of very young children,
    - parents who are unable to differentiate between their needs and their child's needs,
    - expressed desire of parents not to participate in joint custody, and
    - children who are likely to be unresponsive to joint custody arrangements or rebel against joint custody.

Child and parent outcomes

- Studies have reported inconsistent evidence regarding whether or not joint custody than for those in sole custody results in healthier child adjustment post-divorce. However, methodological problems in studies caution against any simple interpretation. Most studies conclude that the most negative consequence for children result from being caught up in continued inter-parental conflict.

- In general, studies demonstrate that a variety of parenting arrangements can have both positive and negative outcomes for children and parents. The fundamental insight of these studies is that the best interests of children is highly connected to parental capacities and skills, and practical resources. This highlights the need to give primacy to process (the "quality of relationships") over structure ("apportionment of time"), irrespective of the parenting arrangement.

Making "shared parenting" workable

- Separation itself disrupts familiar patterns of family life for both parents and children. Even in the best of circumstances, it requires re-evaluations and re-negotiations of routines and responsibilities. Irrespective of the form that post-separation parenting takes, it can provide an opportunity for different, perhaps more positive patterns of involvement for each parent (particularly fathers) and for children.

- Achieving a high level of shared parenting post-divorce, as studies have shown, is demanding and requires both structural and relational resources that appear to be available to only a small, select group of families.

- Legal and mental health practitioners have recommended alternative family court procedures that involve mediation and education processes as a means of minimising parental hostility and conflict that can continue to erupt over the on-going practical details and emotional overlays of post-separation parenting arrangements.

- Like decisions about the presumption of joint custody, theoretical and empirical studies on shared parenting are fraught with challenge and ambiguity. The various definitions, methodologies, and samples employed across studies make it difficult to reach definitive conclusions about which specific arrangements are in the best interests of the child and confer optimal benefits to both parents and children in new post-separation family configurations.

- Parenting arrangements are very varied in both intact and separated families. While the presumption of equal time parenting or "joint physical custody" may be conceptualised as the ideal, it can also be interpreted as a symbolic starting point for encouraging a parenting agreement that fosters clear expectations of high levels of continued parental involvement and responsibility for children by both parents that are in their children's best interests.

- Despite the current focus on "structure" or allocations of parenting time, the research literature documents that it is the quality of relationships between parents, and between parents and children that has the most critical impact on children's wellbeing. These relationships and dynamics are referred to as "process" factors.

- The diversity of families and children's situations reinforces that there is no single post-divorce arrangement that is in the best interests of all children.

Part II. Grandparents and significant others

In what circumstances should a court order that children of separated parents have contact with other persons, including their grandparents?

- The focus of this question should again be on the best interests of the child.

- Some research suggests that emotional closeness to grandparents (particularly maternal) could in some families assist in children's adjustment.

- Where appropriate, decisions should be guided by the desires of the child and the existing quality of relationships between the children and other involved persons, including grandparents.

- There is scant recent empirical data in Australia to inform a response to this question.

Part III. Child support & contact

To what extent does the existing child support formula work fairly for both parents in relation to their care of, and contact with, their children?

- One logical outcome of the various social, economic and policy shifts toward co-parenting is the need to examine closely the relationship between contact and child support. This relationship remains a thorny issue for policy. Any significant shift in the care of children is likely to have far-reaching emotional and economic consequences for both parents, as well as for children.

- The question as to whether "the existing child support formula works "fairly" for both parents in relation to their care of, and contact with, their children" is a complex one, and requires (a) detailed contact and child support data for the general population of separated/divorced parents in Australia, and (b) an analytic approach in which the household financial circumstances of both former partners are considered jointly, as well as in comparison to the general community.

- Even though Australia has been at the vanguard of legislative reform in the areas of child support and contact for over a decade, there are many gaps in our knowledge of contact and child support issues.

Conclusion

- Parent–child contact post-separation, child support, and involvement of grandparents and other family members in children's lives remain vital issues for all involved – children, families, policy makers and Australian society at large. This brief review of the issues reinforces their significance and their complex inter-relationships.

In the words of Elkin (1978: iv):

> Effective parenting cannot be proclaimed by court edict alone nor can desirable human behavior be legislated. But, effective parenting can be encouraged and realized with expert education–counselling help.

2. Background

On 25 June 2003 the Minister for Children and Youth Affairs, the Hon Larry Anthony MP, and the Attorney-General, the Hon Daryl Williams AM QC MP, asked the Standing Committee on Family and Community Affairs to inquire into child custody arrangements in the event of family separation.

Having regard to the Australian Government's recent response to the *Report of the Family Law Pathways Advisory Group*, the committee was directed to inquire into, report on and make recommendations for action on the following Terms of Reference:

(a) given that the best interests of the child are the paramount consideration:

(i) what other factors should be taken into account in deciding the respective time each parent should spend with their children post separation, in particular whether there should be a presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption could be rebutted; and

(ii) in what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents.

(b) whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children.

This submission by the Australian Institute of Family Studies takes its structure from the above terms of reference, and is in three parts.

- Part 1 addresses the issue of "a rebuttable presumption of joint custody".
- Part II considers "in what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents".
- Part III considers whether the existing child support formula works "fairly for both parents in relation to their care of, and contact with, their children".

This submission has as its main focus on the first of the Terms of Reference in the inquiry. In accordance with the UN Convention on the Rights of the Child, and in line with the Terms of Reference themselves, we believe it is critical to keep the best interests of the child paramount, and this submission focuses on this principle while addressing the specific Terms of Reference.

As context for our response, we begin with a brief overview of some of the key issues relating to decisions about the respective time that each parent should spend with their children post-separation.

2.1 Social change

Notions about parenting after separation are grounded in attitudes and beliefs about marriage and the roles of men and women in relationships, parenting roles and responsibilities. The changing nature of family life and patterns of women's and men's workforce participation has meant that the parenting roles, expectations and responsibilities of mothers and fathers – whether in intact or separated families – are in transition. This has led to a softening of the boundaries around sharing the care of children between mothers and fathers.

These social and attitudinal shifts have prompted re-evaluation of the previously accepted post-divorce (maternal) "sole custody" model of parenting towards encouraging co-parenting after separation (Nehls & Morgenbesser 1980; Ricci 1997; Parkinson & Smyth 2003).

The often contentious debates surrounding children's living and care arrangements after separation in family law legislation stem from the inevitable tensions arising between social change and policy reform.

As embodied in the UN Convention and as stated in the Terms of Reference of the Inquiry, the critical issue is to ensure that the focus remains on the best interests of the children to determine the post-separation arrangement(s) which best serves their needs. Questions to be considered include: How do children fare under different post-separation arrangements? What aspects of parental responsibility should be shared? How should these parenting aspects be allocated? And under what circumstances is parental sharing not feasible and/or desirable?

The voluminous and complex body of research on children's wellbeing following divorce reinforces the Inquiry's correct attention on determining what are the best interests of the child.

2.2 Residence and contact

In 1997, around one million children in Australia under 18 were living with one natural parent and had a parent living elsewhere (ABS 1998). For 88% of these children, the parent with whom they lived was their mother. Only a tiny proportion (3%) were in 'shared care' arrangements.[1] Last year, a similar proportion (4%) of cases registered with the Child Support Agency were deemed to have equal (or near equal)[2] care of their children (Child Support Agency 2003).[3]

Data from the 1997 Family Characteristics Survey (ABS 1998) indicate that over one-third (36%) of children with a natural parent living elsewhere, rarely or never see their

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[1] Defined by the ABS as 30% of nights per year.

[2] Defined by the Child Support Scheme as 40-60% of nights per year

[3] Data from Wave 1 of the HILDA Survey collected in 2001 indicate that around 6% of households containing either a resident mother or non-resident father have at least one child under 18 who stays with each parent at least 30% of nights each year (Parkinson & Smyth 2003). This estimate of "shared care" increases to around 10% when daytime-only contact is included.

other parent (typically their father). Of those who do, a significant minority (34%) never stays overnight (Smyth & Ferro 2002).
Aside from these broad empirical brush strokes, however, little is known about the way that parent–child contact is currently structured in Australia. For instance, it is commonly assumed that parent–child contact typically comprises alternate weekends and half school holidays (see, for example, Bowen 1994; Dewar & Parker 1999). No nationally representative data are available, however, to clarify this.[4]

To this end, the Institute is currently conducting a large-scale investigation into patterns of parenting after separation.[5] Data from the *Caring for Children after Parental Separation* study will provide detailed contact and child support data. These data will also serve as a useful benchmark on which to begin modelling the implications of contact for parents (see Section 5).

2.3 Levels of parental satisfaction with residence and contact

A study begun in 2001 of 1,024 separated non-resident fathers and resident mothers from the Household, Income and Labour Dynamics in Australia (HILDA) survey found that a significant proportion of separated parents in Australia – especially non-resident fathers – would like to see more contact occurring (40% of resident mothers; 75% of non-resident fathers) (Parkinson & Smyth 2003). Non-resident fathers with overnight contact report significantly higher levels of satisfaction with their relationship with their children than fathers who have daytime-only contact (Parkinson & Smyth 2003). Parents with "shared care"[6] (although they are the tiny minority) are the most likely group to be satisfied with their parenting arrangements (Parkinson & Smyth 2003).

A 1997 AIFS study of patterns of parenting post-divorce (Smyth, Sheehan & Fehlberg 2001) found significant differences between resident mothers and non-resident fathers in their desire to change children's living arrangements. Few resident mothers (3%) wanted any change compared to 41% of non-resident fathers. Around two-thirds of these fathers preferred children to reside with them while the remaining third desired equal care.

These studies illustrate the significant level of dissatisfaction around post-separation parenting – especially for non-resident fathers. The diverse levels of satisfaction and dissatisfaction apparent in these families attest to the difficulties inherent in allocating parenting time parameters to meet the diverse desires and needs of all family members.

While there is little Australian data on the views of children about their post-separation arrangements (but see, for example, Funder 1996; Parkinson & Cashmore, forthcoming), this is an area of increasing concern to legal and mental health professionals. Such information would make an important contribute to the outcomes of this Inquiry.

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[4] To date, no large-scale Australian study has distinguished between contact arrangements during holiday and non-holiday periods. It is likely that a different pattern of care occurs during holidays than during non-holiday periods.
[5] These data should be collected by early October 2003.
[6] Defined at the 30% of nights per year threshold.

2.4 Definitional issues

The term "joint custody" in its various definitional permutations and interpretations is often at the crux of family court deliberations about post-separation parenting patterns. Definitions, and their interpretations, intrude into the practical ramifications of the interplay between time and responsibilities. Definitional issues and interpretations of various forms of post-separation parenting thus become vital.

It should be noted at the outset that the inquiry itself refers to "joint custody", which is no longer the terminology used in the Family Law Act 1975.

The Family Law Reform Act 1995 (the "Reform Act") outlines the principles underpinning the law relating to children. These include that "children have the right to know and be cared for by both their parents ..." and that "parents share duties and responsibilities" in relation to the care of their children. The amendments removed the proprietorial connotations of the terms "custody" and "access" with the more neutral terms of "residence" and "contact". In addition, the right to make day-to-day decisions regarding the child was no longer the sole province of the custodial parent. Thus the present situation is that both parents now retain an equal level of "parental responsibility" following separation except insofar as this is modified by an order of the court. "Parental responsibility" as defined in s 61B of the Act includes the power to make day-to-day *and* long-term decisions regarding the child.

The nomenclature of parenting arrangements varies markedly in other countries. Although joint custody is the dominant paradigm in the US, it has two quite distinct interpretations: "joint *legal* custody" relates only to the sharing of the decision-making role regarding children and could be said to be the equivalent of "shared parental responsibility" under the Australian Act. "Joint *physical* custody" in the US context entails the child spending roughly equal time (anywhere from 35–50% of the time) with both parents. A legislative presumption or preference for joint *legal* custody operates in a majority of US state jurisdictions. To add to the complexity a number of state laws in the US employ a range of different terms.[7]

Definitions of allocated parenting time and its emotional and economic consequences may overshadow considerations of the best interests of children and impact on decisions about how time is spent with either parent. The connections between time, relationships and money have been conceptualised in many ways – as evidenced in the myriad of descriptions of parenting pattern terms used in the literature, some of which are briefly summarised below.

- ***Joint physical custody*** (or ***shared or residential custody***) – the situation in which "both parents have responsibility for the child for 'significant' periods ... with the child typically spending four or more overnights in a two-week with each parent" (Mnookin et al. 1990: 40).

[7] For example, legal terms include: "shared physical custody responsibility" (New Jersey); "natural guardianship, charge and custody" (New York); "joint parental custody" (Oregon); and "joint managing conservators" (Tennessee) (http://www.gocrc.com/research/ legislation.html).

- ***Divided custody*** (or ***alternating custody***) – allows each parent to have the child for a part of the year or every other year with reciprocal visitation rights, and each exercises exclusive control over the child while in his or her custody. No clear line exists between "sole custody" with summer visitation rights and "divided" custody (Folberg 1991: 6).

- ***Joint legal custody*** – involves parents sharing legal parental rights and obligations, with major decisions regarding children made jointly by the parents (Arendell 1996).

- ***Parenting partnerships*** – parents who collaborate and share parenting responsibilities after divorce (Arendell 1996).

- ***Physical shared parenting*** – where there is no primary residence, with children moving between households (Benjamin & Irving 1989).

- ***Parallel parenting*** – whereby "mothers and fathers maintain separate and segregated relations with their children and have a tacit agreement not to interfere in each others' lives" (Furstenberg & Cherlin 1991: 40; see also Ricci 1997: 116).

- ***Positive exclusive parenting*** – where one parent assumes the major responsibility for children but both parents nonetheless work well together, and the children have frequent and ongoing contact with the parent with less responsibility for their care (Ricci 1997: 117).

- ***Shared parenting*** – a "structured businesslike working relationship" in which parents work together to raise their children; children are kept out of relational issues between parents (Ricci 1997: 118).

- ***Cooperative parenting*** – which goes a step further than "shared parenting", as defined by Ricci (1997), in that there is give-and-take in the parental relationship; parents help each other and give clear primacy to children's wellbeing (Ricci 1997: 118).

- ***Co-parenting*** – "apportioning" a child on a 50-50 time-share basis (Smart, Neale & Wade 2001: 125)

  – "the collaborative efforts of parents who live apart" (Furstenberg & Cherlin 1991: 39)

  – "the involvement of both parents with their children after divorce, irrespective of the level of cooperation which can range from minimal to high levels of parental interaction specifically about their children" (Ahrons & Wallisch 1987a: 235).

The central thread running through these definitions is the idea of the importance of both parents participating in their children's lives. As Emery (1988:131) cautions: "in

general, we are reminded that parenting, not legal custody status, is the real issue in terms of facilitating children's adjustment to divorce".

Definitions of joint physical custody take on added importance in Australia as they are applied in other policy contexts. For example, "shared care" is defined in terms of the Family Tax Benefit as non-resident parents exercising contact with their children for more than 10 per cent of nights per year. The Child Support Scheme, on the other hand, defines "shared care" as 40–60% of nights per year.

Considering the range of these definitions, the main focus of the Institute's further comments below is on reviewing some of the key factors considered in deciding the combinations of time and engagement incorporated into negotiated agreements, and the optimal parenting arrangements that contribute to the wellbeing of children.

3. Joint residence ("custody")

This part considers the three key issues set out in the first of the Terms of Reference:

Given that the best interests of the child are the paramount consideration:

- *what other factors should be taken into account in deciding the respective time each parent should spend with their children post separation?*
- *should there be a presumption that children will spend equal time with each parent?*
- *if there is a rebuttable presumption of joint custody, in what circumstances should such a presumption be rebutted?*

In the following discussion, the presumption of equal time with each parent (point 2), and the rebuttable circumstances (point 3) will be considered within the parameters of the other factors influencing decisions regarding the respective time each parent should spend with their children (point 1).

3.1 Joint custody – the literature

As mentioned earlier, more than a third of Australian children do not appear to have any face-to-face contact with their father and where many fathers and mothers are not satisfied with the level of contact that occurs (Parkinson & Smyth 2003). Moving to a presumption of "equal physical custody" (or joint residence) is one possible response to this situation. This presumption is assumed to provide a "level playing field" for both parents to fully participate in their children's lives.

The assumption that joint custody always equals 50:50 division of time is a misunderstood and contentious issue. There has been much debate in Australia (Moloney, in press; Rhoades 2002) and overseas (e.g., Bauserman 2002; Irving & Benjamin 1995) about the benefits and disadvantages of equal custody (physical residence).

Parent–child contact issues – particularly in relation to violence and abuse (and allegations thereof), relocation disputes, and the enforcement of contact orders – have presented significant challenges to family law for some time (see, for example, Family Law Council 1987; Commonwealth of Australia 1992; Australian Law Reform Commission 1995).

Advocates of joint custody focus on the benefits for children of maintaining a close relationship with both parents (Bauserman 2002; Lee 2002). By contrast, opponents of joint custody typically emphasise children's need for stability and a primary caretaker with key decision-making powers, and the potential harm for children of being exposed to ongoing high levels of parental conflict, parental neglect or psychopathology (Bauserman 2002; Brotsky et al. 1991; Pryor & Daly-Peoples 2001).

The following comments drawn from the literature over the past few decades further illustrate the ambivalent and contrasting views surrounding shared parenting – particularly 50:50 care.

Arguably one of the first contributions to this debate was in Goldstein, Freud and Solnit's (1980: 31) widely cited conclusion that the best interests of the child are best met by "continuity of relationships, surroundings and environmental influence". A number of researchers have interpreted this to mean that the child's relationship with one parent, the custodial parent, should not be "interrupted", and even that the non-custodial parent does not possess the legal right to visit the child (Kelly 1997; Nehls & Morgenbesser 1980: 122).

Adding another dimension to Goldstein et al.'s (1980) argument, Kelly (1997) observes that psychological and developmental concepts, such as *continuity, stability,* and *parental involvement,* have been applied differently in terms of pre- and post-divorce parenting. *Continuity* has been typically defined as the child's need to maintain their relationship with their primary caretaker (usually the mother) and therefore does not consider the child's need for continuity with *both* parents after separation, assuming adequate parenting and parent–child attachment. *Stability* has typically been defined geographically in terms of "one home" ("one bed, one toothbrush, and one route to school") rather than emphasising the "equally (if not more) important aspect of stability that is provided by a continuing relationship with a loving parent who no longer lives in the child's home" (Kelly 1991: 58).

Other views on joint custody are generally less definitive. For example, Braver and O'Connell (1998: 223-224) point out that:

> there is simply not enough evidence available at present to substantiate routinely imposing joint residential custody... Just because there is no evidence to recommend it, should it be opposed? After all, there was limited scientific evidence to support a great many policies that have turned out, once adopted, to work well, according to the evidence that later became available.
>
> While it is recommended that the children have substantial contact with both parents...it is not necessary that this time be split exactly down the middle.... Joint *legal* custody and *substantial* contact – though not necessarily exactly equal – with both parents appears to be an ideal solution for most children (emphasis in original).

Elkin (1991: 11-12) observes:

> for those who are chained to tradition and are opposed to joint [physical] custody, it is worth noting that sole custody has not worked very well and that it seems to work best when, in fact, it is akin to joint custody.... By its very nature, joint custody eliminates the demeaning, alienating concept of "visitation" from the divorced family's vocabulary and feelings. The child has two functioning homes – not one home and a visitor.

According to Ricci (1997), the way that parents relate to each other as parents is crucial to how well children adjust to family transitions and change. She argues that:

> if a pattern is destructive, neither equal time nor a traditional every-other-weekend visitation arrangement can protect a child. But when a parenting pattern is constructive, many arrangements can work (Ricci 1997: 115).

Thus, for Ricci (1997: 118), the "prize" is not a particular timeshare arrangement, such as 50:50 care, but a healthy pattern of parenting since this is more important for children's optimal adjustment. Johnston (2003) too argues that the issue is not how blocks of time are divided or apportioned but how well parents can work together.

And there are many other views.

Gardner (1991: 93) goes so far as to say:

> Joint custody is a terrible compromise for warring parents. When recommended in such situations what may actually result is a *no-custody* arrangement that is merely called joint custody. Neither parent has power or control, and the children find themselves in a no-man's land exposed to their parents' crossfire and available to both as weapons.

Roman and Haddad (1978: 104) maintain that joint custody:

> unlike sole (generally maternal) custody ... does not banish the father or over burden the mother and, just as important, it does not sever ties between one parent and the children.

The Family Law Council's (1992: 1) investigation into patterns of parenting after separation concluded:

> Most children want and need contact with both parents. Their long term development, education, capacity to adjust, and self-esteem can be detrimentally affected by the long term or permanent absence of a parent from their lives. The wellbeing of children is generally advanced by their maintaining links with both parents as much as possible.

There is some research evidence to suggest the importance of contact from the perspective of children. Children of divorce report as young adults a yearning for more time with their fathers (Fabricius & Hall 2000; Laumann-Billings & Emery 2000). The research also indicates that where fathers not only have contact but engage actively in post-separation parenting, there are significant benefits for children (Amato & Gilbreth 1999).

Studies of children's views of joint custody, however, point to some children's ambivalence about this arrangement. For example, while most children desire to have contact with both parents, at times, issues of loyalty and fairness to each parent can be burdensome (Smart et al. 1999). Smart et al. (1999: 371) observe that "parents as adults had a duty to lighten their children's burden by adopting an ethic of care themselves" – in other words, to take responsibility for these emotional and practical dilemmas and not involve their children.

These sometimes polarised views on joint physical custody are put into a more moderate perspective by Steinman (1983: 761):

> Joint custody is a process, not a panacea. The goal of the process is the development by divorcing parents of a reorganized family structure to best support the children's growth while allowing the adults to move on to a more satisfying life for themselves.

Of interest is that even proponents of joint custody, such as Irving & Benjamin (1991: 127), recommend that:

> all couples enter into shared parenting for a trial period of between 6 and 12 months. At the end of that their experience with shared parenting would be reviewed and shared parenting either made permanent, modified, or abandoned all together in favour of sole custody.

Likewise, Gardner (1991: 91) suggests that given the high levels of tension at the time of separation and parenting decision-making, some hostilities can be reduced:

> by making joint custody arrangements temporary, and finalizing only after the parents have had an opportunity to prove for six to nine months whether or not they can truly handle it.

3.2 Factors that facilitate cooperative parenting – including joint custody

In this submission, we provide a thumbnail sketch of some of the key empirical studies, mainly from the US but including recent Australian work, that relate directly to joint physical custody. *It should be noted that, in these studies, joint physical custody rarely means 50:50 timeshare arrangements.* In the US context, for example, Kelly (2003, personal communication) notes that all research looking at joint physical custody and child adjustment defines joint physical custody as between 30% or 35% and 50% with each parent, whereas parents themselves define timeshares as between 25% and 50% for the lesser time parent.

Interpretation of the joint custody literature, much of it conducted in the 1980s in the US, is a complex undertaking given the various methodologies and small, ad hoc, convenience samples employed in most studies (Bauserman 2002; Benjamin & Irving 1989), and sporadic conflation between joint physical and legal custody.

A number of studies have explored the conditions under which versions of joint physical custody (in its various time configurations) are most conducive to positive outcomes. In general, the evidence does not reveal that any particular post-separation parenting arrangement is more advantageous than another for children (Lye 1999).

In one of the earliest examinations of joint physical custody, Abaranel (1979) conducted intensive case studies of four families with split care arrangements. She found that 50:50 care arrangements could work well under certain conditions: (a) commitment; (b) flexibility; (c) mutual co-parental support; and (d) the ability to reach agreement on implicit rules. In addition to these relational factors, other factors that tempered the workability of shared care included: geographical distance; the age, number, and age range of children; the temperament of children; and the presence of step-parents and step-siblings.

Arendell (1996) identified four broad factors that facilitate "co-parenting": (a) resources; (b) motivation; (c) planning; and (d) communication and conflict-avoidance.

Steinman (1983: 745), drawing on her own work and that of others, concluded that successful joint custody required parents who were able to:

- make clear distinctions between major decisions that were always the result of consultation, and daily decisions that each parent made independently,
- limit frequency and content of communication to those essential to joint child rearing decisions and to separate these from personal emotional concerns about the divorce,
- share basic child rearing values so they were able to tolerate minor differences in child-rearing ideas,
- avoid being critical of the other parent;
- be able to contain their anger and hostility and divert it away from the children,
- respect the privacy and autonomy of the other parent and maintain a strict policy of non-interference in the other home, and
- be flexible and accommodating, rather than rigid in thinking or behavior.

She emphasised that these parents were able to maintain a "conflict free sphere" around the children. Nevertheless, Steinman (1983:749) concluded that "it may be that a cooperative smooth running co-parenting relationship is a necessary but not sufficient condition for children to do well", and that consideration needs to be given not only to which parents, but which children, benefit from joint custody.

Irving and Benjamin's (1995: 292) criteria include:

- low to moderate levels of pre-separation conflict,
- child-centered orientation to parenting,
- mutuality with respect to the decision to end their marital relationship, and to select shared parenting, and
- motivation in both parents to accept and overcome the day-to-day exigencies and complications invariably associated with shared parenting.

In addition, Irving and Benjamin (1995) found that the majority of children with shared parenting in their study moved between residences on a pre-arranged schedule (the detail of schedules was not stated). Overall, the parents were "middle-class". Many lived only a "short walk" apart. The arrangements were done without a third party. Both parents reported a high level of involvement with children before the separation, with fathers reporting a marked increase after separation.

More recently, and in the Australian context, Smyth, Caruana and Ferro (2003) found that 50:50 residential care arrangements are often logistically complex, and that those who opt for shared care appear to be a relatively distinct subgroup of separated parents. Virtually all of the 12 parents in their sample adopted a shared care arrangement from the outset, and set-up this arrangement without any involvement with the legal system.

They hypothesised that a number of factors – relational and structural – appear to be conducive to making shared care a viable option for separated parents. These factors include:

- geographical proximity,
- the ability of parents to get along with each other in terms of a business-like working relationship as parents,
- child-focused arrangements (with children kept "out of the middle", and with children's activities forming an integral part of the way in which the parenting schedule is developed),
- a commitment by everyone to make shared care work,
- family-friendly work practices for both mothers and fathers,
- a degree of financial independence, and
- a degree of paternal competence.

This profile was essentially replicated using the most recent nationally representative data on economic and family-functioning issues available in Australia – data from Wave 1 of the *Household, Income, and Labour Dynamics in Australia* (HILDA) Survey. These data show that parents with "shared care" are a relatively small but select group of parents (Table 1, Appendix A).

Co-parents (both mothers and fathers) were more likely than parents who reported no contact or mid-range contact to: (a) have a tertiary education, (b) be home owners or purchasers; (c) live near their former partners, and (d) be single rather than repartnered. While most parents were unable to work from home, co-parents were more likely to be able to do this than the other parents.

In addition, co-parent mothers were more likely than the other mothers to be in full-time employment and to have higher incomes, while co-parent fathers were slightly more likely than the other fathers to have a larger home in terms of the number of bedrooms. Socio-economic resources (as reflected in education, home ownership, and mothers' income and employment) thus appear to be a critical facilitator of shared parenting arrangements. The practical issue of being able to live near the children's other parent seems to be another critical factor, which itself may be related to financial resources.

It is noteworthy that co-parenting was more likely to occur with children aged between 5 and 11 years (i.e., of primary-school age) than with younger or older children. This pattern makes sense: infants and pre-school age children are likely to have a stronger psychological attachment to one parent, while teenagers' needs for close ties and activities with their friends may work against dual-residence living.[8]

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[8] The extent to which these findings reflect a cohort effect is currently unclear. That is, it may be that primary-aged school children today are more likely than similarly aged children in previous years to live in a shared care arrangement. Should such a cohort effect exist then future teenagers would be more likely than today's teenagers to experience shared care – all things being equal. A unique feature of longitudinal datasets, such as HILDA, is that they are able to clarify the presence of such effects. However, it is necessary to await further waves of HILDA to test for such effects.

Issues surrounding the resolution of income support thus become critical to avoid financial matters becoming a reason for limiting one parent's involvement (Fisher & Pullen 2003). For the majority of parents, such income considerations can have a negative impact on their ability to negotiate their parenting agreements. The various components of family income (including employment, child support, government income supplements) all need to be reviewed during the decision-making process. We are aware that this issue is addressed by the third of the Terms of Reference (see Section 5).

These then are some of the key factors that have been identified in the conceptual and empirical literature as appearing to facilitate shared parenting. This brief review points to the need to distinguish between "structure" (blocks of time) and "process" (quality of relationships). This distinction cuts to the heart of much of the debate around definitions of shared care.

3.3 Constraints to the presumption of "joint custody"

The previous section briefly summarised the debates surrounding joint physical custody and outlined some of the factors that appear to contribute to successful joint custody arrangements, whether or not defined as 50:50 timeshare. The following section briefly examines some of the literature delineating the circumstances that may constrain physical joint custody parenting arrangements post-separation.

In many ways the obvious constraints to joint custody are the reverse of the conditions that facilitate shared care arrangements (as outlined earlier). However, some additional factors have also been identified.

In the context of current Australian family law, the Family Court must take into consideration the best interests of the child when making decisions involving post-separation parenting arrangements. In essence, these principles set out possible conditions that could be grounds for rebutting joint physical custody arrangements.

Under s 68F and s 65E of the Family Law Act 1975, the Court must consider the following issues when deciding what is in the child's best interests:

- the child's relationship with both parents,
- the wishes of the child and factors which might affect the weight given to those wishes, for example how old the child is,
- the effect on the child of any separation from a parent or other child,
- the practical difficulty and cost of the child having contact with a parent,
- the ability of each parent to care for the child,
- the age, sex and cultural backgrounds of the child (including any need to maintain contact with Aboriginal or Torres Strait Islander culture),
- the need to protect the child from any physical or psychological harm caused by any abuse or violence,
- the attitude of the parents to the child and to their parenting responsibilities,
- any violence or violence order in the family,
- whether the Court order will lead to further applications, and
- any other factors the Court thinks relevant.

Steinman (1983) lists the following special problems that would contra-indicate successful outcomes:

- emotional disturbance of a parent,
- alcoholism,
- history of physical violence or other spousal abuse,
- very intense parental hostility and conflict and the inability to divert this away from the children,
- extreme lack of respect for the other parent or lack of self esteem as a parent,
- extreme differences in child rearing values, and
- denial of the reality of the divorce.

These characteristics are similar to those cited by Elkin (1987):[9]

- the inability of one parent or the other to care for the children – whether mentally, emotionally or physically,
- significant substance abuse by a parent,
- physical abuse of spouse or child,
- families with a severe history of disorganisation,
- intractable overt hostility between spouses despite the provision of support services (eg., mediation),
- significant geographic distance in the case of very young children,
- parents who are unable to differentiate between their needs and their child's needs,
- expressed desire of parents not to participate in joint custody, and
- children who are likely to be unresponsive to joint custody arrangements or rebel against joint custody.

Pryor and Rodgers (2001: 210), in their summary of the factors predicting fathers' involvement with children after separation, mention the following factors:

- relationships with their former partner,
- geographical distance,
- socio-economic factors,
- payment of child support,
- children's age, gender, temperament and motivation, and
- marital status and living arrangements.

Pryor and Rodgers' review of US and Australian studies, however, indicated mixed findings on the impact of each of these issues on the amount of father contact after separation. For example, parental cooperation and communication generally appeared to facilitate on-going contact. However, the level of conflict did not always predict the amount of contact. Similarly while geographical distance tended to lower the frequency of contact, overnight stays were more likely to occur.

With appropriate mediation and counselling assistance to parents, except in the most extreme situations, some of these constraints may be ameliorated or modified to

[9] See also Coller (1988).

enable some degree of shared parenting of children (Emery 1994; Kelly 2003; Moloney & Smyth 2003).

3.4 Child and parent outcomes

The previous discussion briefly summarised the constraining circumstances that could be taken into consideration when decisions about joint physical custody are made. The critical focus and aim of all such deliberations is to determine the parenting arrangement that is in the best interests of the child and fosters optimal outcomes for children (and parents).

This section examines some of the findings in the literature regarding positive and negative consequences for children and parents associated with various degrees of shared parenting arrangements.

Studies on child and parent adjustment to post-separation arrangements is typically based on comparisons between sole versus joint custody (and its many variants) and do not tend to consider the broad spectrum of time and responsibilities that these arrangements can encompass. Methodological problems (such as small samples, different definitions of joint custody, and non-normative samples) mitigate against simple interpretations of the research evidence.

In general, studies have reported inconsistent evidence regarding whether or not joint custody than those in sole custody results in healthier child adjustment post-divorce (for reviews, see Bauserman 2002; Lee 2002).
Bauserman's (2002: 91) meta-analytic review of 33 studies comparing child adjustment in joint- versus sole-custody parenting arrangements found that children in joint custody (physical and/or legal):

> were better adjusted than children in sole-custody settings, but no different from those in intact families.... The results are consistent with the hypothesis that joint custody can be advantageous for children in some cases, possibly by facilitating ongoing positive involvement with both parents.

Bauserman (2002: 97) concluded that overall "children in joint custody are better adjusted, across multiple types of measures, than children in sole (primarily maternal) custody".[10] While there were few differences found between outcomes from joint legal and joint physical custody, the majority of children in joint legal custody spent substantial amounts of time with fathers.

A number of studies point out that parental conflict is typically a confounding variable in comparative work across different types of parenting arrangements since most parents who opt for shared care are likely to be self-selected for low conflict. Most studies (Amato & Gilbreth 1999; Bauserman 2002; Lee 2002; Pryor & Daly-Peoples 2001) conclude that the most negative consequences for children result from being caught up in continued inter-parental conflict.

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[10] It should be noted that 22 of 33 studies reviewed by Bauserman (2002) were unpublished thesis (thus not peer-reviewed), many of which did not control for socio-economic status. Socio-economic status has been shown to be a confounding variable influencing outcomes.

The absence of a control for level of conflict in many studies makes it difficult to conclude whether "structure" (i.e., the pattern of care) or "process" (e.g., the level of conflict) is responsible for the group differences (see Amato & Gilbreth 1999; Bauserman 2002; Pryor & Daly-Peoples 2001). In other words, children's outcomes appear to be dependent strongly on level of inter-parental conflict pre- and post-divorce.

Amato and Rezac (1994) posit that children in dual residence arrangements may be more exposed to parental arguments, which can result in loyalty conflicts and other emotional concerns (see also Lee 2002). On the other hand, Luepnitz (1986) proposed that in comparison to sole custody, joint physical custody facilitated relationships with both parents, lowered re-litigation rates, gave children greater access to financial resources and adequate child care and provided both parents with time-off from parenting responsibilities.

In their meta-analytic review of non-resident fathers and children's wellbeing, Amato and Gilbreth (1999) maintain that it is how fathers interact with their children rather than how often they see them that is central to children's wellbeing. Their data suggest that children who have contact with their father that encompasses closeness and authoritative parenting have better behavioural outcomes. However, others (Green 1998; Pryor & Rodgers 2001; Smyth & Ferro 2003) imply that in order for this more appropriate parenting style to have an opportunity to occur. fathers need adequate time with their children, which implies some form of shared care.

These studies, along with numerous others (eg., Funder 1996; Maccoby & Mnookin 1992; Wallerstein & Blakeslee 2003), demonstrate that a variety of parenting arrangements can have both positive and negative outcomes for children and parents. The fundamental insight of these studies is that the best interests of children are strongly connected to parental capacities and skills, and practical resources. This highlights again the need to give primacy to "process" (quality of relationships) over "structure" (apportionment of time), regardless of the parenting arrangement.

The concept of parental involvement has usually emphasised hours spent in physical care taking rather than, as Kelly (1991: 382-383) points out:

> the many social, psychological, and intellectual components of parenting that contribute to children's healthy development.... Many of these forms of involvement cannot be counted in hours but in the quality of experience.

The impetus behind the current inquiry centres on determining the parenting arrangement that is in the best interests of the child. A key objective of the inquiry is to explore ways of increasing the involvement of both parents – particularly fathers. The next section examines those processes that may facilitate the broad aim of shared parenting.

3.5 Making "shared parenting" workable

The words "presumption" and "rebuttal" themselves have inherent connotations of an adversarial process – with overtones of the old "finding fault" basis of negotiation. Highlighting the importance of language, Irving and Benjamin (1986: 102) contend that words such as "shared parenting", "negotiated agreements", and "co-parental

cooperation", imply a shift away from "an adversarial to a cooperative model of judicial action, and from an individualistic to a relational model of the family".

The support of alternative interventions to litigation, such as mediation and conciliation, and parent education, may facilitate reaching and implementing the most appropriate parenting arrangement in the best interests of the child. While these alternative processes are already provided under the Family Law Act 1975, Fisher and Pullen (2003) note that the tensions that may arise in ascertaining and balancing children's and parents' needs and interests may be better served if these interventions become more child-focused and child-inclusive.

As with the various interpretations of joint custody, interventions come in many forms. In the US context, several innovative processes have been described.

- ***Co-parenting counselling and arbitration*** – the provision of ongoing help from an experienced health or legal practitioner (a "Special Master", "Custody Commissioner", "Wise person") to help divorced parents coordinate their parenting practices, and respond flexibly to the changing needs of their children. This intervention, which always includes the child, may be for a specific critical period or for the entire growing up years of their child (Johnston 2003).

- ***Collaborative law*** – the collaborative law process is a collaborative conflict-resolution process, which commits both lawyers and parents to avoiding adversarial proceedings, particularly litigation. A defining feature of collaborative law is that "in the event that either party insists on litigation both attorneys are fired, and neither attorney can then assist either client in litigation". Other experts and consultants (eg accountants, appraisers, therapists) may be brought in to help reach creative and amicable solutions (International Academy of Collaborative Professionals 2003).

In Australia, as elsewhere, mediation is a common form of intervention to help divorcing parties reach agreement.

- ***Mediation*** – the use of a neutral, trained, third-party with no decision making power, to assist parents define issues and needs, set priorities, and create their own mutually acceptable settlement. It is usually time-limited and generally does not involve children directly.

- ***Co-mediation*** – in another variation of mediation, the process can involve two people: a counsellor and a mediator, two mediators or two counsellors, a counsellor and a lawyer, or a mediator and a lawyer (Moloney & Smyth 2003; Gold 1982, 1984, 1988; Johnston 2003).

- ***Therapeutic mediation*** – the involvement of one or two counsellors, therapists and mediators to assist parents resolve the underlying psychological as well as practical family issues that contribute to impasses in settling disputes leading to a parenting agreement (Benjamin & Irving 1995; Moloney & Smyth 2003; Schwebel et al. 1994).

- ***Child-inclusive mediation*** – adds a child-therapist to the mediation process. This specialist can get a sense of the child's view, independently of parents, and communicate this to parents during their mediation sessions to help them make decisions (Beck & Biank1997; Children in Focus 2003; McIntosh 2000).

In Australia, variations on these interventions are continually being refined and evaluated for their effectiveness and practical utility (e.g., Jaffe 2003; Moloney & Smyth 2003; McIntosh 2000).

The existence of such interventions, as provided for in the Family Law Act 1975, recognises the emotional and practical complexities inherent in evolving positive post-parental caring arrangements.

Fifty–fifty care, as well as other forms of shared care, can in practice embody many variations in actual time and responsibilities (Smyth et al. 2003), and can present many opportunities for parental conflict.

As Benjamin and Irving (1990: 25) note:

> Shared parenting is a logistically complex custody arrangement – including the movement of children between residences, variations in scheduling and the sharing of parenting responsibilities – which invariably places great demands on parents who share parenting.

All forms of shared parenting arrangements involve some of these practical considerations in addition to the emotional components that accompany more prosaic concerns.

For children, adjustment to joint custody includes: adapting to living in two households; adapting to different parental routines, expectations, and rules; negotiating loyalty issues, keeping track of their possessions; establishing separate but equal relationships with both parents; and maintaining peer and school activities from two homes (Smart et al. 1999). While these challenges especially apply to 50:50 joint physical custody, some of them apply to all shared care arrangements.

<u>Flexibility</u>

Successful joint custody arrangements appear to work best where they are flexible (Ahrons & Wallisch 1987b) and able to accommodate to the needs of children and both parents. For example, parents may need to alter their parenting time patterns according to children's changing needs. Very young children may need shorter periods of time away from each parent in order to maintain a secure relationship with both parents, while teenagers are likely to need flexibility in time spent with both parents in order to maintain peer-group involvements and the need for autonomy (Friedman 1994; Kelly 2003, cited in Moloney, in press).

Not only do children's needs change over time, but so do parents' circumstances (Wallerstein & Blakeslee 2003). As Steinman (1984:126) observes:

> Achieving a workable joint custody arrangement requires each parent to make a lengthy commitment to be continually rational, to cooperate, to trust, and to compromise, and to adjust to child-rearing (e.g. changing developmental needs

of the child, entrance into school, adolescence, remarriage, birth of a new baby, geographical moves, illness and adjustment problems of the child).

Parental competence
Depending on the shared parenting arrangements pre-separation, some parents may have had less intense, day-to-day involvement in decisions and handling of their children's daily activities or in resolving some of their problems which cooperative parenting would now require.

While it is generally assumed that it is mothers who are more involved in parenting of children and have more child rearing knowledge and practice, Belsky and Volling (1987) argue that it is necessary to distinguish between what fathers *can* do ("competence"), and what they *actually* do on a routine daily basis ("performance").

Resources for parents
Separation itself disrupts familiar patterns of family life for both parents and children (Funder 1996). Even in the best of circumstances, it requires re-evaluations and re-negotiations of routines and responsibilities. Irrespective of the form that post-separation parenting takes, it can provide an opportunity for different, perhaps more positive, patterns of involvement for each parent (particularly fathers) and for children (Smyth et al. 2003).

For parents who are unable to negotiate their own parenting agreements, child-focused mediation and other child-focused interventions (therapeutic or educative) can clarify needs and responsibilities, help attune parents to their children's desires and requirements, and develop and strengthen capacities to enable effective co-parenting (Kelly 2003; Ricci 1997).

Brotsky et al.'s (1991) study of different outcomes[11] among parents who shared physical custody of their children illustrates the potential utility of interventions that enhance parenting capacities and skills. Families were provided with: a six-week education program; up to 12 mediation sessions aimed at the development of a parenting plan; a child assessment to help individualise the parenting plan; and 6 and 12 month follow-up sessions. While some of the highly conflicted families in Brotsky et al.'s (1991) study failed in their joint custody attempts despite these intensive interventions, a majority of parents who had experienced stressful negotiations improved 18 months later to the point where they approximated the profile of families who had few difficulties in making parenting decisions.

On the basis of research findings, a number of legal and mental health practitioners have recommended alternative family court procedures. These procedures incorporate mediation and education processes as a means to minimising parental hostility and conflict – dynamics that can continue to erupt over the on-going practical details and emotional overlays of post-separation parenting arrangements (Brotsky et al. 1991).

[11] At 12-month follow-up, families were classified into one of three outcome categories: "successful" (*n*=12); "stressed" (*n*=20); or "failed" (*n*=15).

3.6 Summary

Like decisions about the presumption of joint custody, theoretical and empirical studies on shared parenting are fraught with challenge and ambiguity. The various definitions, methodologies, and samples employed across studies make it difficult to reach definitive conclusions about which specific arrangements are in the best interests of the child and confer optimal benefits to both parents and children in new post-separation family configurations.

Parenting arrangements are very varied in both intact and separated families (Ahrons & Wallisch 1987b). Achieving a high level of shared parenting post-divorce, as studies have shown, is demanding and requires both structural and relational resources that appear to available to only a small, select group of families (see Appendix A).

For the most part, studies suggest that the best interests of children post-divorce are best served when children can maintain ongoing and frequent contact with both parents who co-operate and communicate with low levels of conflict. While the presumption of equal time parenting or "joint physical custody" may be conceptualised as the ideal, it can also be interpreted as a symbolic starting point for encouraging a parenting agreement that fosters clear expectations of high levels of continued parental involvement and responsibility for children by both parents, that are geared towards their children's best interests.

While the majority of parents would appear to organise their post-separation without litigating, it is the inability of some parents to negotiate post-separating parenting arrangements that brings them into the ambit of the Family Court. Legal and mental health professionals comment on the adversarial nature and "win/lose" mindset of this process and how it does not ameliorate ongoing parental conflict, and may often be counter-productive to a working relationship between parents for the wellbeing of their children (Marlow 1985; Moloney 2003).

The debate about joint custody has focused on a particular parenting arrangement – that of 50:50 physical custody. The empirical evidence, however, suggests that there is no single post-divorce arrangement that is in the best interests of all children. In a recent review on post-divorce parenting and child wellbeing research, Lye (1999) concludes:

Comment: bib

> The lack of clear and compelling evidence from currently available scholarly research to support any particular scheme of post-divorce parenting arrangements suggests the following policy considerations: (i) "One size fits all" approaches such as legal presumption in favor or certain specified arrangements are likely to be harmful to some families.

The broad thrust of the arguments presented in this submission may be captured in Folberg's (1991: 9) observation that:

> parental cooperation cannot be easily ordered or legislated, but it can be professionally, judicially and statutorily encouraged and endorsed.

4. Other persons

This part examines the question set out in the second of the Terms of Reference: In what circumstances should a court order that children of separated parents have contact with other persons, including their grandparents?

4.1 The legislative framework

Under the Family Law Act 1975, there has always been a provision for grandparents, or "any other person concerned with the care, welfare or development" of a child, to make an application to the court for the residence of, or contact with, the children involved. Amendments to the Act in 2000 strengthened the legal position of grandparents by listing them specifically, along with the parents of the child and the child him- or her-self, as a person who may apply for a parenting order (see s 65C). Unlike grandparents in the United Kingdom, they do not require the leave (i.e., permission) of the court to do so (*Children Act* 1989).

Grandparents are also specifically listed at s 66F of the Family Law Act 1975 as persons who may apply for child maintenance orders and at s 69C, to institute any other proceedings under the Act in relation to the child.

By elevating the status of grandparents in this way, it could be argued that the legislature is acknowledging the (potentially) pivotal role that grandparents can play in children's lives.[12]

4.2 Empirical data

While there is a plethora of literature in the US associated with grandparents as primary caretakers of grandchildren, mainly in situations of parental neglect (whether pre- or post- parental separation), this discussion confines itself to continued post-separation contact between children and grandparents.

Limited Australian data are available to inform the issue of grandparent–grandchild contact following divorce, with the exception of work conducted at the Institute by Weston (1992).

Weston (1992) surveyed 511 divorced parents some five to eight years after their marriage ended, and asked, among other things, about grandparent–grandchild contact. Grandparents were for the most part involved in their grandchildren's lives, with more than 80 per cent of parents reporting that their children had contact with at least one set of grandparents weekly or monthly.

However, children's living arrangements appeared to influence the amount of contact they had with each set of grandparents. Children living primarily with their mother were much more likely to have frequent (i.e., weekly or monthly) contact with their maternal grandparents than with their paternal grandparents. Over a third of resident

[12] However, the relationship between grandchild and grandparent is not so singled out in s 68F, the section that lists the criteria for determining what is in a child's best interests. Thus, in determining residence and contact issues, grandparents come under the general category of "other person".

mothers reported that their children rarely or never had contact with their paternal grandparents, but this was dependent on whether or not contact between the non-resident father and his children was occurring. In other words, paternal grandparent contact mirrored paternal contact.

In cases where children were living with their father (n=56), the situation was reversed: children were more likely to have contact with their paternal rather than maternal grandparents. Weston concluded that non-resident parents play an important role in the maintenance of contact between their parents and their own children.

Parents were also asked a direct question about whether the divorce affected relationships between children and their grandparents. While the majority of parents did not believe this to be the case, a substantial minority (~40%) felt that the divorce had a damaging effect on the children's relationship with their grandparents on the non-resident parents' side of the family.

In a recent exploration of the impact of divorce on the role of grandparents, Douglas and Ferguson (2003) interviewed 144 members of 44 families who had experienced parental separation, including, where possible, a child, both parents and both sets of grandparents. Their small scale, qualitative study conducted in the UK, found a similar pattern to Weston (1992). They found that resident mothers were more likely to describe the maternal grandparent–child relationship as close and involving frequent contact. This was less likely to be the case for the relationship between children and their paternal grandparents. The paternal grandparents in this study tended to rely on fathers to facilitate contact between them and their grandchildren. Dunn and Deater-Deckard (2001) found that emotional closeness to grandparents (particularly maternal) could in some families assist in children's adjustment.

Comment: bib

The question, "in what circumstances should a court order that children of separated parents have contact with other persons, including their grandparents?" should again be focussed on the best interests of the child. The answer should be guided by, where appropriate, the desires of the child and the quality of extant relationships between the children and other involved persons, including grandparents. There is scant recent empirical data in Australia to inform a response to this question.

5. Child support

This part addresses the question set out in the third of the Terms of Reference: To what extent does the existing child support formula work "fairly" for both parents in relation to their care of, and contact with, their children? This question, of course, is closely related to clause (a) in the first of the Terms of Reference ("should there be a rebuttable presumption of joint custody?"), since any significant shift in the care of children is likely to have far-reaching emotional and economic consequences for both parents, as well as for children.

5.1 Some context

The Child Support Scheme remains a significant government initiative designed to ensure that (a) children of separated or divorced parents receive adequate financial support; (b) both parents contribute to the cost of supporting their children according to their respective capacities to do so; and (c) government expenditure is restricted to the minimum necessary to attain these objectives (Joint Select Committee 1994: 4-5).

The Scheme was introduced to address the problem that, following separation, most non-resident parents were providing little (if any) financial support to their children even if court orders had been made, with consequent high levels of child poverty and high costs to the public purse (Harrison, Snider & Merlo 1990). Central to the Scheme is the administrative assessment of child support liability via the application of the child support formula, removing the need for parents to have recourse to court-based discretionary assessment which typically produced low (and varied) child maintenance amounts which did not adjust for inflation.

While the Child Support Scheme's conceptual basis remains sound, since its implementation in 1988-89 the Scheme has been subject to a considerable amount of criticism, evaluation (in particular, Harrison, Snider & Merlo 1990; Harrison, Snider, Merlo & Lucchesi 1991; Child Support Evaluation Advisory Group 1990, 1992; Joint Select Committee 1994), and amendment.

Several issues continue to attract concern – most notably formula-related inequities (e.g., the costs of contact to non-resident parents, and subsequent family cost considerations), which have been at the core of the most recent round of proposed changes to the Scheme (see, for example, the Child Support Amendment Bill 2000 No. 2).

5.2 The 1994 Joint Select Committee recommendations

In its examination into the operation and effectiveness of the Child Support Scheme, the Joint Select Committee on Certain Family Law Issues (JSC 1994) recommended, among many other things, that:

- "the Government, as a matter of priority, commissions the next evaluation of the Child Support Scheme to be carried out by an independent research organisation under the guidance of a three person supervisory committee" (Recommendation 158; JSC 1994: 516)

- "the impact of the Child Support Scheme be regularly evaluated over time" (Recommendation 161; JSC 1994: 517), and
- that "all future modelling of the impact of the Child Support Scheme be conducted by an independent party" (Recommendation 163; JSC 1994: 519).

Specifically, in considering future evaluations of the Scheme, the Committee wrote:

> The Joint Committee considers it critical that a comprehensive evaluation of the impact of the Scheme on custodial parents, non custodial parents and their families be commissioned by the Government urgently. This evaluation should examine the financial impact of the Scheme on its clients including an analysis of the relative household income, debt, and asset levels of custodial and non custodial parents....
>
> [T]he Joint Committee considered the wider social impact of the interaction of the social security, child support, family law and taxation legislation on the behaviour of custodial and non custodial parents both within and outside the Scheme. In particular, the Joint Committee is concerned that the interaction of this broad range of legislation may be creating serious work disincentives for both custodial and non custodial parents, putting intolerable pressure on existing relationships and discouraging the formation of new relationships generally. However, the Joint Committee is not able to make a proper assessment of the impact of this broad range of legislation due to the lack of detailed research in this crucial area....
>
> Over the $6^1/_2$ years that the Child Support Scheme has been in existence, there have been five reports which have examined its impact. These reports have led to some fine tuning of both the legislation for, and the administration of, the Scheme. The Joint Committee considers it imperative that this evaluation process is continued on a regular basis in the future (pp. 515-517).

In 1997, the Government responded to the Committee's recommendations (Recommendation 161) as follows:

> The government agrees that the impact of the Scheme on parents and their families should continue to be evaluated. However, the nature and extent of a formal future evaluation will need to be determined in the context of the environment at the time (Commonwealth of Australia 1997: 71).

In respect to the Committee's recommendation that all future modelling of the impact of the Child Support Scheme be conducted by an independent party (Recommendation 163), the Australian Government responded by stating that:

> while the Government does not accept this recommendation as it stands, it is acknowledged that modelling could be carried out on current available data by any organisation that has a detailed understanding of the interrelationships between social security and taxation systems and the Child Support Scheme (Commonwealth of Australia 1997: 72).

Since its 1997 response, and despite the Committee's urgent plea for ongoing, regular, independent evaluations, such evaluations have not been forthcoming. During this time, social and attitudinal shifts have prompted a re-evaluation of the more common post-divorce (maternal) "sole custody" model of parenting towards encouraging co-parenting after separation. In addition, the Scheme is now operating in an inherently more complex legislative and policy environment than when it was first implemented,

which includes the introduction of the Goods and Services Tax (GST), Family Tax Benefit, Parenting Payment (Single), and the Youth Allowance. The availability of current data on the effectiveness of the Scheme for children's wellbeing, and on the respective financial "balance points" for each parent would clarify the extent to which the Scheme may not be working fairly – especially in relation to parent–child contact.

5.3 Contact and child support

One logical outcome of the various broad shifts toward co-parenting is the need to examine closely the relationship between contact and child support. This relationship remains a thorny issue for policy.

There is ongoing debate in Australia and overseas about the links between parent–child contact and the payment of child support (Arditti, 1992; Kitch, 1991; Seltzer, McLanahan, & Hanson, 1998; Veum, 1993). On the one hand, a core philosophical underpinning of the Child Support Scheme is that contact and child support should not be linked because such a link is unlikely to be in the best interests of children (Joint Select Committee 1994: 383).[13] On the other hand, there is increasing emphasis on the need to recognise the costs of contact to non-resident parents who have ongoing and regular contact with their children (Family and Community Services, 2000). The extent to which the Scheme currently factors in the costs of mid-range[14] contact to non-resident parents is unclear (Fehlberg & Smyth 2000).

The question as "to what extent the existing child support formula works "fairly" for both parents in relation to their care of, and contact with, their children" is a complex one, and requires (a) detailed contact and child support data for the general population of separated/divorced parents in Australia, and (b) an analytic approach in which the household financial circumstances of both former partners are considered jointly, as well as in comparison to the general community.

Bearing in mind the paramount concern of the best interests of the child, and the clear research evidence that growing up in poverty has detrimental consequences for children's wellbeing (eg., Ambert 1998; Duncan 1994), the challenge is to balance "fairness" for parents with ensuring adequate financial support for children.

5.4 Summary

Even though Australia has been at the vanguard of legislative reform in the areas of child support and contact for over a decade, there are many gaps in our knowledge of contact and child support issues.

The Institute, through its *Caring for Children after Separation* study, is currently in the process of collecting some of the detail around parent–child contact and child support.[15] These data will serve as a useful benchmark on which to begin modelling the economic implications of contact for parents – non-resident parents, resident

[13] For example, where child support is not paid, a resident parent may curtail a non-resident parent's contact with their children.
[14] Mid-range contact is defined as up to 29% of nights per year.
[15] These data will not be available until October this year.

parents and co-parents. *Growing Up in Australia*, the longitudinal study of Australian children, will also, in time, provide rich data for addressing these complex issues.

6. Conclusions

Parent–child contact post-separation, child support, and involvement of grandparents and other family members in children's lives remain vital issues for all involved – children, families, policy makers and Australian society at large. This brief review of the issues reinforces their significance and their complex inter-relationships.

This inquiry has focussed on the most intractable post-separating situations where parents have been unable to arrive at an amenable working parenting arrangement. The processes to assist parents that are likely to arise out of this inquiry may have broader applications that could have a beneficial impact for all families confronting the best way of organising post-separation parenting in the best interests of the children.

Any insights from this inquiry that can be used to help promote agreements that enhance parental involvement should be widely promulgated so that other parents can consider these in their voluntary agreements.

As this submission has illustrated, a number of gaps in our knowledge about post-separation parenting will inevitably emerge from this Inquiry. These can be used to set a forward-looking research agenda. The Institute's research directions anticipate contributing to filling the knowledge gaps in this area.

7. References

Abarbanel, A. (1979). Shared parenting after separation and divorce: A study of joint custody. American Journal of Orthopsychiatry, 49(2), 320-329.

Ahrons, C. R., & Wallisch, L. (1987). The relationship between former spouses. In D. Perlman, & S. Duck Intimate Relationships: Development, dynamics, and deterioration (pp. 239-269). Newbury Park, Calif: Sage.

Amato, P. R., & Gilbreth, J. G. (1999). Nonresident fathers and children's well-being: a meta-analysis. Journal of Marriage and the Family, 61, 557-573.

Amato, P. R., & Rezac, S. J. (1994). Contact with nonresident parents, interparental conflict, and children's behavior. Journal of Family Issues, 15(2), 191-207.

Ambert, A. (1998), The Web of Poverty: Psychosocial Perspectives. Haworth Press: New York.

Arditti, J. A. (1992). Factors related to custody, visitation, and child support for divorced fathers: An exploratory analysis. Journal of Divorce & Remarriage, 17, 23-41.

Arendell, T. (1996). Coparenting: A review of the literature. Philadelphia, PA: National Center on Fathers and Families.

Australian Bureau of Statistics. (1998). Family characteristics survey 1997. Canberra: AGPS.

Bauserman, R. (2002). Child Adjustment in Joint-Custody Versus Sole-Custody Arrangements: A Meta-Analytic Review. Journal of Family Psychology, 16(91-102).

Beck, P. & Biank, N. (1997). Broadening the scope of divorce mediation to meet the needs of children. Mediation Quarterly, 14(3), 179-199.

Belsky, J., & Volling, B. (1987). Mothering, fathering and marital interaction in the family triad during early infancy: Exploring family systems' processes. P. Berman, & F. e. Pederson Men's transition to parenthood: Longitudinal studies of early family experience . Hillsdale, NJ: Lawrence Erlbaum Associates.

Benjamin, M., & Irving, H. H. (1989). Shared parenting: Critical review of the research literature. Family and Conciliation Courts Review, 27(2), 21-35.

Bowen, J. (1994). Child Support: A practitioner's guide. Law Book Company: Sydney.

Braver, S., & O'Connell, D. (1998). Divorced Dads: Shattering the myths. New York: Tarcher/Putnam.

Brotsky, M., Steinmen, S., & Zemmelman, S. (1991). Joint custody through mediation: A longitudinal assessment of the children. In J. Folberg (Ed), Joint Custody and Shared Parenting (pp. 167-176). New York: Guilford Press.

Child Support Agency. (2003). Child Support Scheme Facts and Figures 2002-03. Canberra: CSA.

Child Support Evaluation Advisory Group. (1992). Canberra: Australian Government Publishing Service.

Child Support Evaluation Advisory Group . (1990). The Child Support Scheme: adequacy of child support and coverage of the sole parent pensioner population. Canberra: Australian Government Publishing Service.

Children in Focus (2003). see http://www.childreninfocus.org/

Coller, D. R. (1988). Joint custody: Research, theory, amd policy. Family Process, 27, 459-469.

Commonwealth of Australia. (1997). Government response to the report of the joint selection committee on certain law issues: child support scheme- an examination of the operation and efectiveness of the scheme. Canberra: Australian Government Publishing Service.

Dewar, J., & Parker, S. (1999). The impact of the new Part VII Family Law Act 1975. Australian Journal of Family Law, 13(2), 96-116.

Douglas, G., & Ferguson, N. (2003). The role of grandparents in divorced families. International Journal of Law, Policy and the Family, 17(1), 41-67.

Duncan, S.W. (1994), Economic impact of divorce on children's development: current findings and policy implications, Journal of Clinical Child Psychology, 23, 444-457.

Dunn, J. & Deater-Deckard, K. (2001). Children's views of their changing families. JRF: York.

Elkin, M. (1991). Joint custody: In the best interests of the family. J. Folberg (Ed), Joint Custody and Shared Parenting (pp. 11-18). New York: Guilford Press.

Emery, R. (1994). Renegotiating Family Relationships - Divorce, child custody and mediation. New York: The Guildford Press.

Emery, R. E. (1988). Mediation and the settlement of divorce disputes. In E. M. Hetherington, & J. D. Arasteh (eds), Impact of divorce, single parenting, and stepparenting on children (pp. 53-71). Hillsdale, N.J.: Erlbaum.

Fabricus, W. V., & Hall, J. A. (2000). Young adults' perspectives on divorce: Living arrangements. Family and Conciliation Courts Review, 38(4), 446-461.

Family and Community Services. (2000). Family Tax Benefit, 1 July.

Family and Community Services. (Supporting fathers in families [Web Page]. URL http://www.facs.gov.au/internet/facsinternet.nsf/vIA/supporting_fathers/ [2002, September].

Family and Community Services. (2000). The Portfolio Budget Statements 2001-01. Canberra: Australian Government Publishing Service.

Family Law Council, A. (1992). Patterns of parenting after separation report. Canberra: Family Law Council.

Fehlberg, B., & Smyth, B. (2000). Pre-nuptial agreements for Australia: why not? Australian Journal of Family Law, 14(2), 80-101.

Fisher, T., & Pullen, J. R. (2003). Children and the shadow of the law: a resource for primary dispute resolution professionals. Journal of Family Studies, 9(1), 81-105.

Folberg, J. (1991). Custody overview. J. Folberg (ed), Joint Custody and Shared Parenting (2nd ed., pp. 3-10). New York: Guilford Press.

Friedman, R. (1994). Joint physical custody really can work. Michigan Bar Journal, 73(7), 650-653.

Funder, K. (1989). Exploring the access-maintenance nexus: non-resident fathers' post-separation involvement with children. Paper presented at the Third Australian Family Research Conference .

Funder, K. (1996). Remaking families. AIFS: Melbourne.

Furstenberg, F. F. Jr., & Cherlin, A. J. (1991). Divided families: What happens to children when parents part. Cambridge, Mass: Harvard University Press.

Gardner, R. A. (1991). Joint custody is not for everyone. J. Folberg (Ed), Joint Custody and Shared Parenting (pp. 88-96). New York: Guilford Press.

Gold, L. (1982). The psychological context of the interdisciplinary co-mediation team model in marital dissolution. Conciliation Courts Review, 20.

Gold, L. (1984). Interdisciplinary team mediation. Mediation Quarterly, 6(27-46).

Gold, L. (1988). Lawyer and therapist team mediation. J. Folberg, & A. Milne ((eds)), Divorce mediation: Theory and practice (pp. 209-224). New York: Guilford Press.

Goldstein Joseph, Freud, A., & Solnit, A. J. (1980). Beyond the best interests of the child. London: Burnett Books.

Harrison, M., Snider, G., & Merlo, R. (1990). Who pays for the children? Melbourne: Australian Institute of Family Studies.

Harrison, M., Snider, G., Merlo, R., & Lucchesi, V. (1991). Paying for the Children. Melbourne: Australian Institute of Family Studies.

International Academy of Collaborative Professionals. (Collaborative practice: Collaborative law and collaborative divorce working together [Web Page]. URL www.collabgroup.com [2003].

Jaffe, R. (2003). Partnership project to improve post-se[paration assistance to families – The therapeutic mediation model.

Johnston, J. R. Developmental threats for children in high conflict separated families: What mediators, mental health and legal professionals need to know. Family Mediation Centre winter school .

Joint Select Committee on Certain Family Law Issues. (1994). Child Support Scheme: An examination of the operation and effectiveness of the scheme. Canberra: AGPS.

Kelly, J. B. (1991). Examining resistance to joint custody. J. Folberg (Ed), Joint Custody and Shared Parenting (2nd ed., pp. 39-46). New York: Guilford Press.

Kelly, J. B. (2003). Parents with enduring child disputes: focused interventions with parents in enduring disputes. Journal of Family Studies, 9(1), 51-62.

Kelly, J. B. (1997). The best interests of the child: A concept in search of meaning. Family and Conciliation Courts Review, 35(4), 377-387.

Kitch, A. (1991). Conditioning child support payments on visitation access: a proposal. International Journal of Law and the Family, 5(3), 318-350.

Laumann-Billings, L., & Emery, R. E. (2000). Distress among young adults from divorced families. Journal of Family Psychology, 14(4), 671-687.

Lee, M.-Y. (2002). A model of children's postdivorce behavioural adjustment in maternal and dual residence arrangements. Journal of Family Issues, 23(5), 672-697.

Lye, D. (1999). Scholarly research on post-divorce parenting and child wellbeing. Report to the Washington State Gender and Justice Commision.

Luepnitz, D. A. (1986). A comparison of maternal, paternal, and joint custody: Understanding the varieties of postdivorce family life. Journal of Divorce, 9(3), 1-11.

Marlow, L. (1985). Divorce mediation: Therapists in their own world. American Journal of Family Therapy, 13(3), 3-10.

McDonald, P. (ed.) (1986). Settling up: Property and income distribution on divorce in Australia. Australia: Prentice-Hall.

McIntosh, J. (2000). Child-inclusive divorce mediation: Report on a qualitative research study. Mediation Quarterly, 18(1), 55-69.

Mnookin, R. H., Maccoby, E. E., Albiston, C. E., & Depner, C. E. (1990). Private ordering revisited: What custodial arrangements are parents negotiating? In S. D. Sugarman, & H. H. Kay (eds), Divorce reform at the crossroads (pp. 37-74). New Haven: Yale University Press.

Moloney, L. (In press). Bargaining over children: From presumptive practice to child-focused litigation. Family Matters.
Moloney, L., & Smyth, B. (2003). Therapeutic Divorce Mediation: What is it, does it work and where might it take us? Out of the Maze: Steps towards an Integrated Family Law System .
Nehls, N. M., & Morgenbesser, M. (1980). Joint custody: An exploration of the issues. Family Process, 19, 117-125.
Parkinson, P., & Cashmore, J. (forthcoming). An analysis of the children's data from the Australian Divorce Transition Project.
Parkinson, P., & Smyth, B. (2003). When the Difference is night & day: Some empirical insights into patterns of parent-child contact after separation. 8th Australian Institute of Family Studies Conference.
Pryor, J., & Daly-Peoples, R. (2001). Adolescent attitudes toward living arrangements after divorce. Child and Family Law Quarterly, 13(2), 197-208.
Pryor, J., & Rodgers, B. (2001). Children in changing families. Oxford: Blackwell.
Rhoades, H. (2002). The 'no contact mother': Reconstructions of motherhood in the era of the 'new father'. International Journal of Law, Policy and the Family, 16(1), 71-94.
Ricci, I. (1997). Mom's house, dad's house: Making two homes for your child. New York, NY: Simon & Schuster.
Richards, C. A., & Goldenberg, I. (1985). Joint custody: Current issues and implications for treatment. American Journal of Family Therapy, 13(4), 33-40.
Roman, M., & Haddad, W. (1978). The case for joint custody. Psychology Today, Sept, 96-105.
Schewebel, A. I., Gately, D. W., Renner, M. A., & Milburn, T. W. (1994). Divorce mediation: Four models and their assumptions about change in parties' positions . Mediation Quarterly, 11(3), 211-227.
Seltzer, J. A., McLanahan, S., & Hanson, T. L. (1998). Will child support enforcement increase father-child contact and parental conflict after separation? (Working Paper No. #98-27). Princeton, N.J: Princeton University.
Smart, C., Wade, A., & Neale, B. (1999). Objects of concern? – Children and divorce. Child and Family Law Quarterly, 12(4), 365-376.
Smart, C., Neale, B., & Wade, A. (2001). The changing experience of childhood: Families and divorce. Blackwell: Maiden, MA.
Smyth, B., Caruana, C., & Ferro, A. (2003). Some whens, hows and whys of shared care: What separated parents who spend equal time with their children say about shared parenting. Australian Social Policy Conference 2003 .
Smyth, B., & Ferro, A. (2002). When the Difference is night & day: Parent-child contact after separation. Family Matters , (63 Spring/Summer 2002), 54-59.
Smyth, B., Sheehan, G., & Fehlberg, B. (2001). Patterns of parenting after divorce: a pre-Reform Act benchmark study. Australian Journal of Family Law, 15(2), 114-128.
Steinman, S. B. (1983). Joint custody: What we know, what we have yet to learn, and the judicial and legislative implications. University of California at Davis Law Review, 6, 739-762.
Veum, J. R. (1993). The relationship between child support and visitation: Evidence from longitudinal data. Social Science Research, 22(3), 229-244.
Wallerstein, J. & Blakeslee, S. (2003). What about the kids? Hyperion Book: New York.

Watson, N., & Wooden, M. (2002). The Household, Income and Labour Dynamics in Australia (HILDA) Survey: Wave 1 Survey Methodology.
Weston, R. (1992). Families after marriage breakdown. Family Matters , 32, 41-45.

Appendix A: Supplementary analysis of HILDA data

This appendix describes a supplementary analysis of data extracted from the Household, Income and Labour Dynamics in Australia (HILDA) Survey. The aim of this supplementary analysis was to profile separated parents with "shared care" arrangements (defined here as at least 110 of nights per year: see Section 5), and compare this group with separated parents who report no father–child contact taking place (less than once per year face-to-face contact) or mid-range levels of face-to-face contact (up to 110 nights per year). These data are currently being analysed for work to be published later this year.

Data

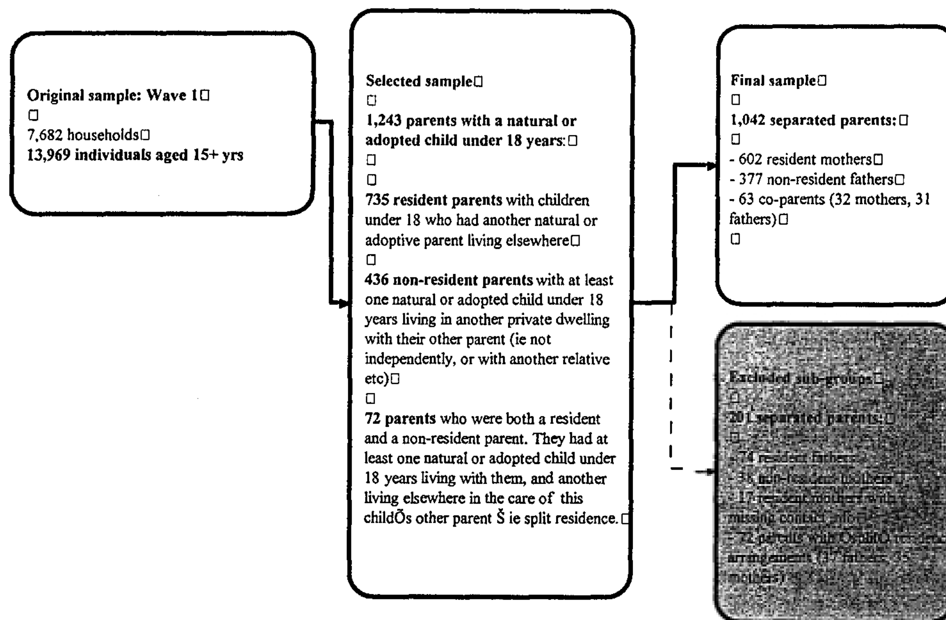
The HILDA survey collects information related to three broad domains: (a) economic and subjective wellbeing; (b) labour market dynamics; and (c) family dynamics. The first wave of the survey was conducted in the latter half of 2001, and examined a range of issues, including marital history, family (re)formation, and patterns of parental care for children under 18 years whose parents live apart.

The power of this dataset for research into parent–child contact is that it enables national estimates to be obtained across the spectrum of the separated parent population (including parents who have never married or never lived together). These data currently provide the most recent national estimates available of separated parents' parenting arrangements and personal circumstances.

Sample

The sample on which this analysis is based comprises 1,041 parents. These parents had at least one natural or adopted child under 18 years at the time of interview, but were not living with that child's other parent. This sample was derived from a large representative sample of households across Australia (described overleaf, and shown in Figure 1).

Figure 1. Sampling strategy



The initial sample for Wave 1 comprised 12,252 households from around Australia, of which 11,693 were identified as in-scope. Interviews were successfully conducted with 13,969 members of 7,682 households – yielding a household response rate of 66 per cent. (See Watson & Wooden 2002 for more detailed information on sampling issues.)

Of the original 13,969 household members interviewed, we selected a sample of 1,336 separated parents who (a) had at least one child under 18 years in their care for at least 50 per cent of the time (i.e., resident parents), and that child's other parent lived elsewhere, and/or (b) had at least one child under 18 years in their care for less than 50 per cent of the time (i.e., non-resident parents), and that child usually lived with their other parent. See Figure 1 for sample selection.

Given the small number of respondents in some of the less common groups (e.g., resident fathers, non-resident mothers), this analysis focuses on reports of 602 resident mothers, 377 non-resident fathers, and 63 co-parents.

Comment: LQ N for co-parents and RM & NRD

It should be noted that prior to analysis, the data were weighted using the responding person population weight.[16] In addition, to address HILDA's stratified cluster design, estimates of the variance were adjusted for the design-effect using Stata 7.

Caveats

[16] This weight – the inverse of the probability of selection – is adjusted for the probability of response to household and person level benchmarks (see Watson & Fry 2002).

Two caveats warrant mention. The samples of separated men and women are independent. That is, the men and women had not been married to each other. This analysis thus focuses on the characteristics and perceptions of one parent – the parent who was interviewed – in comparison of profiles of parents with different contact arrangements. Second, for reasons of economy, where respondents had more than one child under 18 potentially in their care, the HILDA methodology required respondents to focus on the *youngest* natural or adopted child.

Results

Table 1 presents the demographic profile of each group of interest ("no contact", "mid-range contact", and "shared care", separately for resident mother and non-resident father respondents. Around six per cent of resident mothers and non-resident fathers reporting sharing the care of their children.

Co-parents appeared to differ with other parents on the following demographic dimensions:

> ***Employment & work hours.*** "Shared parenting" mothers (i.e., those shared care arrangements) were significantly more likely to be in paid employment than the two groups of resident mothers (75% vs 47-51%). Shared parenting mothers were also more likely to be in full-time work compared with both groups resident mothers (47% vs 23-25%).[17]
>
> ***Education.*** Mothers with shared care arrangements tended to have higher education than the two groups of resident mothers (degree or higher: 45% vs 13-16%). A similar pattern emerged for fathers (20% vs 8-14%).
>
> ***Age of child.*** In relation to the age of children, a disproportionate number of co-parents had a child aged 5-11 in their care in comparison with the other groups of parents. This difference, however was not statistically significant.
>
> ***Geographical proximity between former partners.*** Geographical proximity and parent–child contact are strongly linked. Co-parents were more likely to live within 10 km distance from their former partner than resident or non-resident parents (mothers: 62% vs 12-31%; fathers: 69% vs 13-30%).
>
> ***Repartnering.*** Co-parents were the least likely of the various groups of parents too have repartnered (repartnered mothers: 24% vs 31-42%; repartnered fathers: 18% vs 40-61%).
>
> ***Income.*** Co-parent mothers had significantly higher average annual incomes than the other two groups of mothers ($30,000 p.a. vs <$20,000 p.a.).
>
> ***Housing.*** Co-parents were more likely to be purchasing or owning their own homes than the resident or non-resident parents (mothers: 67% vs 39-

[17] In the case of fathers, significant differences in employment emerged between the no contact group and the two groups where contact was occurring (65% vs 78-82%). However, the shared care fathers were more likely to have flexible work hours than the other two groups of fathers (45% vs 24-27%).

46%; fathers: 74% vs 35-51%). In addition, co-parent fathers were slightly more likely to have a larger home in terms of the number of bedrooms than the non-resident father groups.

Relationship with former partner. It appears that shared-parenting mothers were more likely to report being satisfied in their relationship with their former partner than the other two groups of mothers (47% vs 30-34%).

The pattern for fathers was a little more complicated. Of the three groups of fathers, the "no contact" group was the most likely to report being dissatisfied with their relationship with their former partner (62% vs 25-38%) while the co-parent group was most likely to report mixed feelings (53% vs 14-31%). One possible explanation for this is that co-parents are likely to have a working business-like relationship as parents. Other parents may be more enmeshed in their prior intimate relationship (Ricci 1997).

Table 1. Characteristics of separated parents by care arrangements of their children [a]

	Mothers			Fathers		
	Resident mothers: No contact (n=246)	Resident mothers: Some contact (n=356)	Mothers with shared care arrangement [b] (n=32)	Non-resident fathers: No contact (n=117)	Non-resident fathers: Some contact (n=260)	Fathers with shared care arrangement [c] (n=31)
Employment status						
Full time	24.8%	23.4%	46.6% *	60.5%	75.0%	67.5% **
Part time	22.2%	27.7%	28.2%	4.1%	7.3%	10.4%
Not employed	53.0%	48.9%	25.1%	35.4%	17.7%	22.1%
Working hours per week (employed)						
<35 hours	47.2%	54.3%	37.7%	6.3%	8.8%	13.4%
35-48	41.4%	38.8%	54.0%	58.7%	56.9%	50.1%
49+	11.3%	6.9%	8.3%	35.0%	34.2%	36.6%
Whether or not able to work at home (employed)						
Yes	18.8%	24.9%	34.7%	24.3%	27.0%	44.9%
No	81.2%	75.1%	65.3%	75.7%	73.0%	55.1%
Whether or not self-employed						
Yes	8.0%	4.5%	12.5%	26.8%	20.9%	34.7%
No	92.0%	95.5%	87.5%	73.2%	79.1%	65.3%
Education attainment						
Degree or higher	12.8%	16.0%	45.0% **	7.5%	13.9%	20.3% **
Other qualification	37.6%	39.1%	21.2%	32.8%	52.4%	56.1%
No qualification	49.6%	44.9%	33.8%	59.7%	33.7%	23.5%
Age of child (years)						
0-4	26.6%	28.8%	16.9%	22.0%	19.5%	24.0%
5-11	38.3%	41.4%	60.1%	49.4%	42.7%	59.1%
12-14	14.6%	13.7%	12.1%	14.0%	20.7%	10.3%
15-17	20.5%	16.1%	11.0%	14.5%	17.1%	6.5%
Distance between parents						
<10 km	12.4%	30.5%	62.3% **	12.7%	30.2%	69.0% **
10-49 km	21.1%	35.0%	23.8%	20.6%	30.5%	29.6%
> 49 km	66.5%	34.5%	13.9%	66.7%	39.3%	1.4%

Table 1 continued ...

	Mothers			Fathers		
	Resident mothers: No contact (n=234)	**Resident mothers: Some contact (n=356)**	**Mothers with shared care arrangement [b] (n=32)**	**Non-resident fathers: No contact (n=117)**	**Non-resident fathers: Some contact (n=260)**	**Fathers with shared care arrangement [c] (n=31)**
Whether or not living with a partner						
Yes	41.7%	30.9%	24.3% *	60.8%	40.0%	17.5% **
No	58.3%	69.1%	75.7%	39.2%	60.0%	82.5%
Age (years)	34.8	36.5	37.4	36.1	39.6	38.6
Housing tenure						
Fully own/purchasing	39.2%	46.0%	67.4% *	35.1%	51.3%	74.1% **
Rent	60.8%	54.0%	32.6%	64.9%	48.7%	25.9%
Number of bedrooms in HH	3.13	3.26	3.06	2.89	2.84#	3.33
Income ($)	17892#	19081#	29794	26147	37019	34130
Relationship with former partner [d]						
Satisfied (0-3)	29.7%	34.1%	47.4%	24.3%	31.0%	22.5% **
Mixed feelings (4-6)	20.3%	25.8%	20.1%	13.5%	31.1%	53.0%
Dissatisfied (7-10)	50.0%	40.1%	32.5%	62.3%	37.9%	24.6%

Source: HILDA Wave 1 (2001)
Notes: weighted data; analysis adjusted for the design effect
[a] Shared care = 30% overnight thresholds used by ABS;
[b] Includes both resident mothers and non-resident mothers;
[c] Includes both resident fathers and non-resident fathers
[d] Rating of satisfaction with relationship with former partner is on 0-10 point scale (0=completed dissatisfied; 10=completely satisfied).
** $p < 0.01$ level (χ^2 test)
* $p < 0.05$ level (χ^2 test)
# Different from shared care group at 0.05 significance level