

House of Representatives Standing Committee  
on Family and Community Affairs

Submission No: 717

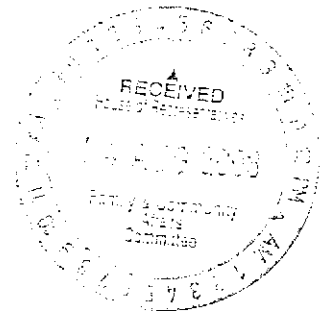
Date Received: 14-8-03

Secretary: .....

**A SUBMISSION TO  
Standing Committee on Family and Community  
Affairs**

**In Response to the  
Child Custody Arrangements Inquiry**

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ABN 23 000 543 788  
August 2003

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# **Submission to the Inquiry into Child Custody Arrangements in the Event of Family Separation**

**from the**

**Australian Psychological Society**

## **Executive Summary**

The Australian Psychological Society does not support a legal presumption of equal amounts of time that children should spend with each parent after parental separation. Careful assessment of the child's needs and parents' abilities and availability to parent are essential in making a decision about the relative amounts of time that the child should spend in the care of each parent. Such decisions cannot be made based on set formulae specifying a division of time.

## **Introduction**

The Australian Psychological Society is the peak professional body representing Psychologists in Australia, and has made several submissions and representations concerning family law matters. This submission to the Inquiry into child custody arrangements in the event of family separation directly addresses the questions posed in (a) in the Terms of Reference of the Standing Committee on Family and Community Affairs. We have chosen to respond to these questions in four parts, as follows:

- Given that the best interests of the child are the paramount consideration:
- I. What factors should be taken into account in deciding the respective time each parent should spend with their children post separation?
  - II. Should there be a presumption that children will spend equal time with each parent?
  - III. In what circumstances should a presumption of equal time with each parent be rebutted?
  - IV. In what circumstances should a court order that children of separated parents have contact with other persons, including their grandparents?

The Australian Psychological Society does not consider that it has the expert knowledge in child support formulae to answer the question posed in (b).

**I) What factors should be taken into account in deciding the respective time each parent should spend with their children post separation?**

Proposed changes to the law to do with custody of children are made in the context of changing assumptions about mothers' and fathers' roles, rights and abilities. It is not only reasonable, but very desirable, for both parents to have an expectation of an ongoing and meaningful relationship with their children following separation, and to be involved in nurturing and supporting the children as they grow and develop. More importantly, however, effective parenting is about meeting the best interests of each child, and it is in this light that such proposals need to be reviewed.

Currently, the majority of children from separated families reside with their mothers and see their fathers on weekends, or occasionally during the week. There is clear evidence that child adjustment and quality of relationships are better when non-custodial parents (usually fathers) are involved in meaningful activity (not just weekend entertainment) in their children's lives post parental separation (Amato & Gilbreth, 1999). Significant numbers of children and young people would like to have more contact with their fathers after their parents have separated (Fabricius & Hall, 2000; Laumann-Billings & Emery 2000; Smith & Gollop 2001), and a significant proportion of both mothers and fathers would like to see more contact with fathers occurring (40% of resident mothers and 75% of non-resident fathers) (Smyth & Parkinson, 2003).

Fathers' increased contact with children in isolation from other factors, however, is not thought to produce better outcomes for children (Wallerstein & Lewis, 1998). Other factors need to be considered when deciding the respective time each parent should spend with their children post separation.

A decision on what is in the best interests of the child needs to be grounded in evidence-based research. It must prioritise the needs and rights, and especially the best interests of the child, over the needs and rights of the parents. Decisions should also acknowledge the different needs of children depending on their age and developmental stage. Finally, these decisions must take into account the impact of factors involved in the parent's ability to parent the child.

Research on children's optimal development suggests that children's best interests are met with a combination of different factors including:

**1. Provision of love and nurturance.** Children require loving care from caregivers who are able to be responsive to their needs and sensitive to their feelings. Then, children are able to grow and develop with a concept of themselves as worthy of care and attention.

**2. Secure attachment to a primary caregiver.** Children who are well-attached to a primary caregiver feel more secure and are better able to develop a view of the world as safe and predictable and are able to interact with others with more confidence. They are then better placed to develop subsequent relationships that are nurturing and healthy. It is of paramount importance that infants have reliable, predictable attachment with a primary caregiver during the critical period of their first year.

Well-managed transitions between carers are extremely important to the feeling of safety and security for children.

**3. Quality parenting that nurtures and stimulates the child's development.**

Children's social and cognitive development is enhanced when parents are able to provide a stimulating mental and social environment for their children (e.g., reading to children, playing with children, actively listening to children, answering questions and helping children make friends).

**4. Good physical care.** Children's physical development is enhanced when caregivers are able to provide them with adequate nutrition, exercise and rest, and appropriate care and/or help-seeking when the child is unwell.

**5. Provision of a reliable and predictable environment.** Children thrive with regularity and routine, and tend to be happier and better adjusted when their environment is predictable. A familiar routine also gives a child a sense of control which is an important precondition of psychological well-being. A reliable and predictable environment includes the child's physical home, daily or weekly routines, as well as consistent family rules that the child is expected to respect.

**6. A significant and actively involved relationship with both parents.** Children benefit from a good and meaningful relationships with both parents, as part of which each parent spends substantial amounts of quality time with the child.

**7. A co-parental relationship that is low in conflict and high in cooperation.** The way that parents relate to each other as parents is crucial to how well children adjust to family transitions and change such as separation and divorce. Being caught in the middle of parents' battles is very deleterious for children.

**8. Preservation of the child's relationship with both parents.** Children benefit from parenting that is respectful of the child's relationship with the other parent.

**9. Access to other family members and social support networks.** Children who are separated from their immediate and extended family, who are victims of absent or dislocated social networks, benefit from contact with other caring and concerned adults and also from a supportive school and community environment.

**10. Access to friends, school and the child's own community.** Usual and regular social opportunities such as peer socialization, play, sport, regular schooling etc are important prerequisites for children's normal development and the development of resilience.

The respective ability of each of the parents to fulfil these needs is the critical factor in determining the amounts of time that the child spends with each parent. Parents require a high level of parenting knowledge, skills and self-confidence about their parenting ability to be able to meet children's needs. Obviously, each parent's ability and availability is also influenced by factors such as other commitments (e.g., work, other family responsibilities if re-partnered), financial capacity, geographical location, and their mental and physical health.

Children's developmental needs change over time, and parents need to be able to provide care that is age and developmentally appropriate. At different times during the child's life, one parent or the other might be more suited to providing the care that is needed. Six-month old babies, for example, are likely to need substantially more time with their mother, especially if the mother is breast-feeding. Their needs will be different when they are aged two, then five, then ten or fifteen. Flexible arrangements that can change over time are the best way of meeting the changing needs of children over the separation and divorce transition, and in the longer term.

The child's own wishes are also an important consideration in determining amounts of time that the child should spend with each parent. It is widely accepted within the Family Court that it is important for children to be allowed to express their concerns and wishes. However, it needs to be stressed that children's wishes must be understood within the context of the entire family dynamics. It is essential that a child's verbally expressed wishes are distinguished from the child's assessed needs and best interests. Furthermore, it is important that children's wishes be evaluated alongside consideration of issues of contamination of wishes (pressure from one parent, child striving to please both parents, prevailing sociocultural norms) and the developmental, cognitive and emotional status of the child.

Clearly, there are many variables that need to be considered in making a decision about the amounts of time that a child should spend with each parent after separation. The child's best interests are met by being cared for by parents or caregivers who are able to provide for the child's needs as outlined above. When both parents are able to provide this care, then the child should be able to spend substantial amounts of time with each parent in order to form a good and meaningful relationship with each parent. Careful consideration of the child's needs and parents' abilities and availability are essential in making a decision about the relative amounts of time that the child should spend in the care of each parent.

## **II) Should there be a presumption that children will spend equal time with each parent?**

It is the view of the Australian Psychological Society that a legal presumption of equal shared care is not the best way of meeting children's needs following parental separation. Set formulae based on pre-determined parenting time cannot possibly consider the factors outlined in I) above, as they exist in a particular family, and the post separation ability of each parent to meet the child's needs. Outlined below are the reasons as to why this model may not fulfil the underlying premise that child custody arrangements should meet the best interests of the child.

**Shared care is relatively rare in Australia and there is little information, to date, about how well these arrangements work.**

Few families in Australia have a genuine shared parenting arrangement even *within* intact families, let alone after parental separation. Less than three percent of children with a biological parent living elsewhere had 'shared care' arrangements in 1997

(ABS, 1998). Less than four percent of parents registered with the Child Support Agency last year were deemed to have equal (or near equal) care of their children (Child Support Agency, 2003).

Little is known, therefore, about parents who opt for shared care of their children, how these arrangements are structured, and how well they 'work'. There is also very little information about children's views of shared care arrangements. In all, little information is available on the long-term outcomes for children and parents in shared care arrangements following parental separation.

One study that has been done on children in shared parenting arrangements in the UK showed that children often carried the burden for shared care and found it emotionally straining not to upset the balance between their parents (Smart, 2001). Children were reported to feel the responsibility for ensuring 'fairness' between their parents and sometimes put their own interests below the interests of their parents. The research showed that shared care was more likely to be organised to suit parents than to suit children.

A recent study into shared care from the perspective of the parents suggests that these arrangements are often logistically complex, and that those who opt for shared care appear to be a relatively distinct subgroup of separated parents. Smyth, Caruana and Ferro (2003) conducted a qualitative study of 12 separated parents who shared equally in the care of their children. They identified a number of conditions – relational and structural – that appear necessary to make shared care a viable option for separated parents. These conditions include:

- Geographical proximity
- The ability of parents to get along 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 – especially for fathers
- A degree of financial independence – especially for mothers
- Reasonable paternal competence

Typically, families who choose arrangements of equally shared care in Australia do so from the outset of separation, and without any involvement from the legal system. Similarly in the US, studies have shown that where shared residence couples make these arrangements they do so voluntarily, often without legal assistance and irrespective of legislative provisions. These studies have also shown that relationships between shared residence parents are commonly characterised by cooperation between the parties and low conflict prior to and during separation (Bauserman, 2002).

Bauserman points out that parental conflict is typically a confounding variable in comparative studies across different types of parenting arrangements. He conducted a meta-analytic review of 33 studies comparing child adjustment in joint versus sole-custody parenting arrangements (many of which were unpublished theses mainly from North America). He found that children in joint custody were better adjusted than

children in sole-custody settings, but most of the studies he reviewed did not control for conflict, and parents who opt for shared care are likely to be self-selected for low conflict.

The scant research into the impact of shared care on children and families is one important consideration in reviewing the proposed changes to the law. The second important consideration that can be drawn from the research concerns the type of parenting relationship that is necessary for shared care to i) be chosen by the family as the best arrangement for the children, and ii) to work in practice. These parenting relationships are exceptional rather than typical of parents who are separating. It is argued, therefore, that many, perhaps the majority of parents do not have the quality of relationship (high cooperation between the parties and low conflict prior to and during separation) together with the practical means that would make equal shared care a viable option that would be in the best interests of the child.

### **Children's rights and interests are not necessarily central in a model of equal care**

Many separating parents become very protective of their 'rights' and if difficulties regarding arrangements for their children arise, they quickly seek solutions that will redress their 'wrongs' and give them their 'rights'. A legal presumption of equal shared care after parental separation puts parents' needs into the centre, and prioritises their needs over their children's needs. Furthermore, a formula of 50:50 care runs the risk of children being seen as owned and as possessions that can and should be divided between parents following separation, along with the house, finances and chattels. Such models invite parents to become overly concerned that they see the child exactly the same amount of time as the ex-spouse, which inevitably shifts attention from the needs and well-being of the child, to 'rights' and 'fairness' with regard to the parents' needs. The rights of custodial and non-custodial parents can be highly competitive, and any legal model that plays into this area risks pushing the children's rights and interests even further out of the equation. For this reason, the current family law terms 'residence and contact' are preferred to the formerly used terms 'access and custody'.

It is important that legislation moves people away from a focus on parental rights, and in particular, that it represents the child's individual needs as separate to the parents' needs. Legislation needs to recognise that the child's best interests are the priority, and that the emphasis should be on maintaining and developing a significant and appropriate relationship between the child and each parent over time. Whilst cohabitation is one important way in which parent-child relationships can be promoted, it is not the only way. Rather, legislation should be directed towards helping parents find flexible ways of promoting the relationship between the child and each parent. Set formulae of shared care arrangements do not necessarily achieve this outcome.

### **Families need flexible arrangements.**

Flexibility is an important criterion to have in order to meet the changing life circumstances of children (developmental changes, social exigencies etc.). Family arrangements might need to be idiosyncratic, emphasising the particular aspects of parenting that are important to the parents and the children, or omitting things that are less central in the minds of the family members concerned. To achieve this flexibility is difficult when legal presumptions regarding shared care are imposed on families.

Another point that should be considered when changing laws to policies of presumption is that of individual differences in families' preferences regarding parenting arrangements. Currently, there are about 30% of non-custodial parents who do not have any contact with their children at all, and who have chosen these arrangements for themselves. Unfortunately, little is known about these parents' views about shared parenting post separation. This area is obviously important for future research. These parents make up a significant number of separated parents, and their views, together with those of their separated families, ought to be considered prior to any changes in family law.

### **Social change lags behind changes to family law**

Equally shared care is not common in intact families in present times, let alone after separation. If the Family Court was to institute a change to the law that presumes parents should equally share the care of their children post separation, then the law is preceding social change. One of the problems of driving social change from a change in the law is that society lags behind in its support. There are three important ways in which this lag will impact on families if the Family Court rushes through a law presuming 50:50 shared care for children following separation.

Firstly, current social norms in the gendered division of parenting and domestic labour are, perhaps regrettably, not conducive to parenting time being shared equally between fathers and mothers in intact families. Post separation, many fathers report a steep learning curve as they assume proportionally greater 'quality' contact time with their children than was the case prior to separation. Conversely, other fathers who were already significantly involved with their children are distressed by the reduction in such time post separation. Yet others opt for minimal or no contact, for a range of reasons that require further research. Given how complex the notion of shared care is, and how much it relies on good parenting, imposing a normative expectation of equal time (as opposed to equal responsibility) would preempt a long-term social shift in parenting norms. Such large-scale change might usefully be promoted by, for example, an expectation of these norms in joint postnatal parenting classes, or even earlier, in the education of boys and girls for flexible careers and shared family responsibility. But it is difficult to see the wisdom of introducing this change at the most difficult juncture in a family's developmental history.

Secondly, work-family policies are not yet at a stage where parents are fully supported with family-friendly workplace environments. Studies of shared care arrangements show that many of these parents are engaged in part-time work, in family-friendly work environments. One cannot presume, however, that all parents considering 50:50 care of their children after separation will be in this situation, or are able to make the transition from full-time work to part-time or flexible hours. Parents



may be seeking family friendly work policies in an environment that has not yet implemented such policies.

Parents seeking shared care arrangements who are not able find family friendly workplace policies are therefore going to require increased long day-care, before- and after-school care and vacation care. Until such increased services are in place, it seems inadvisable to be changing the law around contact and residence for children post separation and pre-empting changes in current social norms, work-place policies and provision of child care services.

### **Parental conflict has a negative impact on children.**

Parental conflict is usually a significant factor during and after separation. Conflict may or may not involve violence, and some conflict is a normal part of parenting after separation (King & Heard, 1999). Acrimonious parent divorce with high levels of conflict make up about one third of separations. About 8-12% of parents remain at impasse (Ayoub, Deutsch & Maraganore, 1999).

Persistent conflict between parents has been reported to undermine the quality of their parenting, their affective response to their children and styles of discipline (Krishnakumar & Beuhler, 2000). Frequent contact with both parents in the context of high parental conflict has been found to be risky for children (Buchanan & Heiges, 2001). If levels of conflict between the parents continue at very high levels after separation, and children are caught up in the conflict, then transitions may have a negative effect on the children's well-being (Lamb, Sternberg & Thompson 1999; Grych & Fincham, 2001; Kelly, 2000), and a considerable negative impact on child development (McIntosh, 2003). There is no age, stage or gender immune to the negative impact of entrenched parental discord associated with separation (Buchanan & Heiges, 2001).

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." (p. 115).

Parental conflict has been found to have an even greater negative impact on the child's development when conflict co-occurs with other risk factors including parents' mental problems or ill health, substance use, poverty, unemployment and low education (Crockenberg & Langrock, 2001). All of these factors have the potential to compromise a parent's awareness of their child's needs, and confound the achievement of the child's core psycho-developmental tasks (McIntosh, 2002; Levendosky & Graham-Bermann, 2001). These factors are considered in more detail in section III.

Consideration of these factors suggests that, in the many situations in which parental conflict is entrenched and ongoing after separation, shared care might not be in the best interests of the child. Johnston (2001) argues that more consideration should be

put to how well the parents get along and are able to co-parent, rather than the relative amounts of time spent with each parent. To this end, an emphasis on greater support for parents to resolve conflict and learn cooperative styles of parenting post separation would be highly desirable.

### **Adversarial context potentially increases conflict**

In discussing parental conflict and its implications on shared parenting, it is useful to differentiate between parents who are capable of, or willing to, cooperate or communicate to the degree necessary to enable them to draw up their own parenting arrangements, with those who require the help of the court, thereby entering into an adversarial system in their search for a resolution.

By their nature, most cases which proceed to a judicial hearing are those which are commonly described as complex or difficult in that they commonly reflect entrenched disputation between the parties which will not be easily overcome and where a 'consent order' (i.e. one agreed between the parties) is unlikely. There is also a higher incidence of a history of partner violence and/or child abuse in the small percentage of cases that proceed to a hearing, in comparison with noncontested cases. They are also commonly the cases where residence and contact are in bitter dispute.

Furthermore, the adversarial context may actually diminish the parents' capacity to communicate and to cooperate, two essential components of a successful shared care arrangement. In the majority of family law cases the adversarial system tends to maintain and aggravate conflict between parents. This system brings the parties together within a context designed to defend positions rather than seeking to find common ground, therefore it is bound to polarise them further. The parties are likely to become entrenched in hostilities and reach a point from which it is difficult to retreat.

Under these circumstances, a legal presumption of the child spending equal amounts of time with each parent is being made in the context of high conflict and hostility. Legislation itself has little impact on actual behaviour and attitudes. It is more than likely that this hostility and conflict will be carried from the court into the shared parenting environment, if the need to rebut the default assumption draws more families into the adversarial domain than is currently the case.

A better policy would aim to develop primary dispute resolution interventions that provide better ways of handling conflict, and which facilitate the process by which parents make flexible arrangements, and at different ways of allocating time. According to Braver and O'Connell, (1998), "It is not necessary that this time be split exactly down the middle... A parent overly concerned that he sees his child exactly the same amount of time as his ex-spouse becomes more of an accountant than a parent. ... Joint legal custody and substantial contact – though not necessarily exactly equal – with both parents appears to be an ideal solution for most children (pp. 223-224)."

### **Financial issues**

Poverty is considered a risk factor in cases of abuse and neglect of children and needs to be considered in models of shared care after separation. There will be very little decrease in costs for the current custodial parent under shared care arrangements, and a significant increase in costs for the other parent. The financial stress that many families face after separation is likely to be greater, therefore, for parents with shared care arrangements when there is a need to set up two homes and usually purchase at least two sets of everything. Tensions over money often increase conflict within co-parent relationships after divorce, thus reducing the capacity of the parents to participate in co-operative co-parenting arrangements.

### **III) In what circumstances should a presumption of equal time with each parent be rebutted?**

The Australian Psychological Society does not support a presumption of equal time with each parent after separation for reasons outlined in the previous sections. In the event, however, that such an ill-advised change to the law were instituted, the society stresses the importance of the presumption being rebutted under the following circumstances. As is always the case, whether in family law or social welfare law, parenting must first assure the child of adequate conditions for growth and development, safety and protection from violence.

#### **Infancy**

An equally shared care arrangement for infants is unworkable and clearly not in the best interests of the child. Infants require stability of person and place, and the impact of frequent transitions can lead to anxiety and insecure attachment. There is nothing that predicts a child's well-being better than the quality of attachment in the first year (Thompson, 2000). Infants require a high level of attunement from their caregiver in the critical period from birth to 12 months whilst they are laying down the neurological system, developing affect regulation and an understanding of cause and effect (Schore, 2001a; Schore, 2001b; Schore, 2001c).

This need for reliable, consistent and predictable attunement from a caregiver is the central requirement for infants. A care-giving environment that is compromised in this respect will have a significantly negative impact on the psychological well-being and neurological development of the child (Seigel, 2001; Sroufe, Carlson, Levy, & Egeland, 1999).

Infants form attachments that are unique to each parent. Predictability of attunement, and continuity of attunement, can only be achieved by parents in highly cooperative parenting relationships. It is not possible to presume that parents can achieve this, particularly in the context of separation and the breakdown of the couple relationship. For this reason, and the central importance of consistency of care and infants' need for stability of person and place, infancy should be a condition under which a presumption of equal time with each parent should be rebutted.

### **Older infants and pre-school aged children**

From the age of 12 months to 30 months, infants can develop two or three attachments and cope with more change in caregiving, as long as the basis of the relationships is predictable attunement, and the emotional stability of the parents is not disrupted by their mental state (e.g. depression), inter-spousal conflict, or other factors.

In the most formative years between birth and four, attachment disruption has a profound negative impact on the development of the child. During this period, the child's needs are best met by caregivers to whom the child is securely attached, and who can provide the continuity of emotional care that the child is used to.

### **Children at risk of neglect or disinterest**

It is undesirable for children to be ordered into the care of a parent who is disinterested in, or unwilling to, take on the parenting role with all its implied care and responsibility. The risks to the child include lack of physical care and safety, inadequate nutrition, poor stimulation and diminished development.

### **Life threatening situations and children at risk of child abuse**

A life threatening situation (family violence, threats to kill), is an obvious case in which rebuttal of shared care should occur. Under circumstances of family violence where there are protective concerns for the children, or allegations of child abuse, a presumption of shared care could and should be rebutted on the basis of the argument that it is detrimental to children to be placed in the care of an abusive parent (Jones & Parkinson, 1995). Previous violence is the best predictor of later violence.

### **Children witnessing violent situations**

An increasing body of research evidence documents the detrimental effects on children of witnessing domestic violence (Jaffe & Suderman, 1996; Robertson & Busch, 1994; Osofsky, 1995), even if they have not been the direct victim of the violence. Careful consideration needs to be placed on the extent of the violence, the nature and type of the violence, and the risk of ongoing violence between the separated parents, which may be related to the continuous contact and regular exchanges of the child that are a necessary part of shared care arrangements.

The court also needs to carefully consider the risk of children becoming a victim of direct violence when in the care of a parent who has a history of violence and low impulse control towards others (e.g., the spouse). Under these circumstances, a rebuttal presumption of shared care is critical.

## **Risks for women in abusive relationships**

A rebuttal presumption should also be made to protect women in abusive relationships. Fear of violence, reprisal and retribution is widespread amongst women who have previously experienced violence in their relationships. Ongoing contact with an abusive ex-spouse around shared parenting arrangements could put women in danger of further abuse. It should be noted that women are more likely to be murdered by a violent partner post separation than while they are living together. There is a risk, too, that the threat of having to comply with shared parenting arrangements following separation could disempower women from getting out of abusive relationships. Women may choose to stay in an abusive relationship because they fear losing their children to an abusive ex-spouse under a shared care arrangement. Separation could come to be seen no longer as a way of securing a safer base for the children.

For these reasons, a rebuttal of shared care in the context of domestic violence could be a component of the law. However a preferable rebuttable assumption in cases where there is a history or suspicion of violence is that residence and contact arrangements should be in place and prioritise the safety of the victim, most commonly female, and her children. Placing the onus on the victim to rebut an assumption of equal time represents another obstacle to her safety and a potential structural facilitator of further violence. Such structural and cultural facilitators of violence are the target of other federal and state government initiatives in combating domestic violence, and hence the proposed assumption works against such commendable initiatives.

## **Children's physical and mental health, and temperament**

There are a several circumstances pertaining to the children's physical and mental health and temperament that may make it undesirable for them to be in an equally shared care arrangement. It may be impractical or unadvisable for children with certain medical illnesses to be moving from one parent to another in terms of continuity of care and related issues. Children with psychological problems, for example Autism or Asperger's syndrome, or with other emotional and behavioural problems, may also require the routine and constancy of being in the care of only one parent with one set of rules and routines. Children's temperament and resiliency may be another consideration. Some children are clearly not able to cope with changes to the same extent as other children, and a presumption of shared care would clearly not be in their best interests.

## **Children's wishes**

Some children also resist or refuse contact with one parent post separation, for a variety of reasons that are sometimes blamed too simplistically on the influence of the other parent (Johnston, 2001; Jones & Parkinson, 1995). According to longitudinal researchers, Wallerstein, Lewis and Blakeslee (2000), court interventions that are largely coercive or punitive in nature have a dim prognosis for transforming family

relationships. In fact they can serve to entrench the family disputes and foster long-term contempt for the legal system. Children should not be coerced into a parenting arrangement that is against their expressed wishes. This situation is obviously a circumstance in which rebuttal of the 50:50 presumption should be made.

It is important to note the considerable stress that is placed on children under a presumption of shared care, if this is contrary to their wishes. If a child in a shared care arrangement is not coping with the stress of moving between two homes and parents, there is a risk that a presumption of shared care puts the child in a situation in which she or he has to *rebut* the presumption. The child may then have to argue *not* to be with one or the other parent, not because he or she doesn't want to be with them, but because the stress of moving between two homes week after week is too great for the child. Changes to the law need to improve the safety, well-being, and empowerment of children, not increase the stress. No child should be put in a situation where he or she has to rebut a presumption of being cared for by both parents, but this is what may happen if a legal presumption of equally shared care is established.

### **Parents' physical and mental health.**

When a parents' physical or mental health is poor, it is often the case that their capacity to function in a supporting role for their children is diminished and their parenting suffers. Under these circumstances, careful consideration of the parent's ability to meet their children's needs would be required, and in the event where this would be compromised by the parent's physical or mental health, a rebuttal presumption of equal shared time should be made.

### **Substance Use**

Similarly, parental substance use can lead to a diminution of the parent's capacity to parent in a supportive and caring way. Under these circumstances, there should be a rebuttal of the equally shared care presumption.

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

It is the view of the Australian Psychological Society that children have a need to be connected with their extended family and community, which includes their parents and siblings, grandparents and other relatives, friends, as well as the wider community of school and neighbourhood. In the absence of at-risk factors such as abuse or neglect, children should be supported in maintaining these relationships.

In the case of a child who has formed a secure attachment with a primary caregiver who is not their biological parent, the continuation of this relationship is of great importance to the child's psychological well-being. Under these circumstances, the court should order that the child have ongoing contact with that person.

## **Conclusion**

It is the view of the Australian Psychological Society that a legal presumption that children should spend equal amounts of time with each parent after parental separation is not necessarily in the best interests of the child. Children's needs are best met when they have meaningful relationships with parents with the ability and availability to provide a caring and stimulating environment that is developmentally appropriate. Parents should be supported to develop cooperative co-parenting arrangements after separation that are flexible to suit the changing needs of growing children and responsive to the particular needs of their own children. It is not possible to presume that all children's needs can be met by fixed a formula of time spent with each parent.

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