

This submission is written to argue **against** the "presumption of share-care" of children post separation of parents.

I have read the full report of the Family Law Pathways Advisory Group (FLPAG) (including the overview and recommendations document.) A number of issues related to these documents are stated below:

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▪ **Tone of the documents**

It is difficult to trust the objectivity of this document. The language reflects an extremely conservative position and the statements made are broad-sweeping and are not backed up by any detailed analysis or references. For example:

"...one million children lived with one natural parent...."

Is there an analysis of why this is the case? What is the actual point being made here?

"...everyone is emotionally distressed at the time of separation".

This is unbelievably general. It ignores those people who are not distressed –who are coping with the separation. It ignores those people who are distressed by remaining in the relationship.

"...this may affect parents' ability to put children's interests first, to access and process information, and to make good decisions".

If the FLPAG believes this to be the case – it is disturbing to think that consideration is to be given to the presumption of 'share-care' immediately post separation of parents.

There is no comment in this document about parents who simply 'never' make good decisions.

"Some men, in particular, feel angry and frustrated, and believe that the system is biased against them".

There is no information in the document regarding evidence or justification of this perception. Has there been an analysis done on the decisions and reasons

▪ **Definition of family**

The use of the term 'family' in the documents suggests that a very conservative definition is being applied.

A number of assumptions and questions arise from the use of this definition:

1. Family considered to be made up of man, woman and children.
2. Family considered to be the 'fabric' of the nation and in the 'child's best interest'.
3. Does this mean that people who are not in a relationship but who have a child are not able to provide for the best interests of that child?
4. Does this mean that same sex couples who have a child are not able to provide for the best interests of the child?

- **‘family’ serves the best interest of the child.**
Does this mean that there will be pressure applied, socially, politically and legally to maintain the ‘family’ – stay together regardless of the damage this causes to children?
- **Critical factors for successful share-care of children (ie for share-care to be in the ‘best interest of the child’).**
The documents of the Family Law Pathways Advisory Group fail to articulate the critical factors for ‘share-care’. The presumption that parents will have the child’s best interest in mind – so will therefore do whatever needs to be done to ensure that conflict is minimised, is unrealistic and potentially very harmful to the child’s well-being. Where there is an extreme lack of trust and respect between parents, and particularly where there remains ongoing anger and aggression – it is naïve (and unhealthy/unproductive) to suggest that this can be overcome to fulfil a share-care arrangement.
- What are the factors for ensuring ‘the best-interests of the child’? Do they include love, respect, honesty, guidance, security, stability? If yes – then children can find these qualities in relationships with many different adults – they are not just the domain of the ‘family’ or they are not necessarily identified in many ‘share-care’ arrangements.

The suggestion in the FLPAG documents for ‘compulsory counselling and mediation’ needs very careful consideration. It would be detrimental to ‘lock’ people into unproductive, intimidating contact – particularly if these sessions are used as a means to ‘drag out’ the separation process.

In relation to the Terms of Reference for the Inquiry into child custody arrangements in the event of family separation:

“Factors to 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.....”.

There must be absolute recognition that every instance of care arrangements will be different. The factors to be taken into account will change depending on the age of the children, the relationship they have with their parent/s and their preference for the amount and type of contact they have, and the type of support they require.

Share-care of children is a very difficult arrangement to achieve effectively – ie “in the best interests of the child”. Whilst there are examples of ‘share-care’ of children working in a very positive and supportive way – this is generally not the norm.

Where the ‘share-care’ arrangement is between parents who respect each others views and who are able to communicate in an open, honest and productive way there is likely to be benefits for everyone.

Where the ‘share-care’ arrangement is between parents who are engaged in ongoing conflict – and where the communication is intimidating, controlling, and dishonest – the consequences for the children are likely to be damaging.

In determining what arrangements – in every instance – are “in the best-interest of the child” – the Family Court must be in a position to undertake a comprehensive assessment of the needs of all concerned. “Share-care” must only be recommended where there is evidence of maturity, respect, honesty and integrity by the adults concerned.

Share-care arrangements should only be recommended where the parents are able to demonstrate they meet the factors considered to be in the “best interest of the child”. This should never be a presumption.