

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
FAMILY COURT OF AUSTRALIA

Question No. 15

Senator Fielding asked the following question at the hearing on 23 February 2009:

Provide the Committee with the 2007-08 statistical data relating to shared parental responsibility.

The answer to the honourable senator's question is as follows:

The reforms to Part VII of the *Family Law Act 1975*, introduced by the *Family Law Amendment (Shared Parental Responsibility) Act 2006* were wide-ranging. Among the most significant of those reforms was the introduction of a rebuttable presumption of equal shared parental responsibility and particular obligations placed on family courts to consider 'equal time' and 'substantial and significant time' arrangements where the presumption applies. Another important change was made to the 'best interest' factors – factors that a court has regard to in deciding what order would be in the best interests of the child who is the subject of a parenting dispute – which as a result of the reforms are now divided into 'primary' and 'additional' considerations.

At the same time that the Government implemented the legislative amendments referred to, it also established Family Relationship Centres around Australia and funded many other non-Government organisations to provide advice, counselling and mediation designed to assist separating parents reach their own agreements.

The aim was to encourage parents to consider, where appropriate, reaching an agreement regarding parenting arrangements in the first instance themselves rather than having the court as a first option. The agreements were intended to be reached having regard to the change of legislation. Given this, it is to be expected that there might be a higher number of shared care or substantial sharing of time cases negotiated outside the courts.

It was axiomatic that if the cases capable of resolution were diverted from the courts then both the Family Court and the Federal Magistrates Court would be dealing with a more difficult class of case.

The Family Court in particular, deals with the most complex family law matters. These include parenting cases that may involve multiple parties, including those that involve a child welfare agency and/or allegations of sexual abuse or serious physical abuse of a child (Magellan cases), family violence, mental health and substance abuse issues and cases where a parent wishes to move interstate or overseas with a child.

In her State of the Nation address in 2006, Chief Justice Diana Bryant acknowledged the increasing complexity of the cases coming to the Family Court:

It is those very cases that will be dealt with in the Family Court – cases of violence, abuse and entrenched conflict, which will, by their nature, be less likely to lead to the cooperative parenting that the government wants parties to have and the kind of orders that would support them.

From the commencement of the legislation the Chief Justice decided that the court would, for the first time, endeavour to keep statistics on the kind of orders that were being made with a view to understand the results that were being obtained by the parties coming to court. In addition to the

cases where Judges were making a decision statistics have also been recorded of matters coming to court but in which the parties reached their own agreement without the necessity of a decision from a Judge.

The collection of and analysis of that data has been a complex one. Parenting orders are not particularly straight forward by their nature and can often involve some complexities which complicate the recording process. Thus it has taken some time for the court to be in a position to be satisfied that the reports are accurate and meaningful. That point has now been reached and an analysis of the 2007-2008 shared parental responsibility statistics are now available.

Please Note:

- The analysis was based on 1448¹ finalised litigated cases² and 2719³ early agreement cases⁴ finalised between the period of 2007 and 2008.
- The data has only been collected in Family Court matters. These figures do not relate to orders made in the Federal Magistrates Court.

¹ A sample of 1448 litigated cases were taken from total of 6992 litigated cases finalised in 2007-08

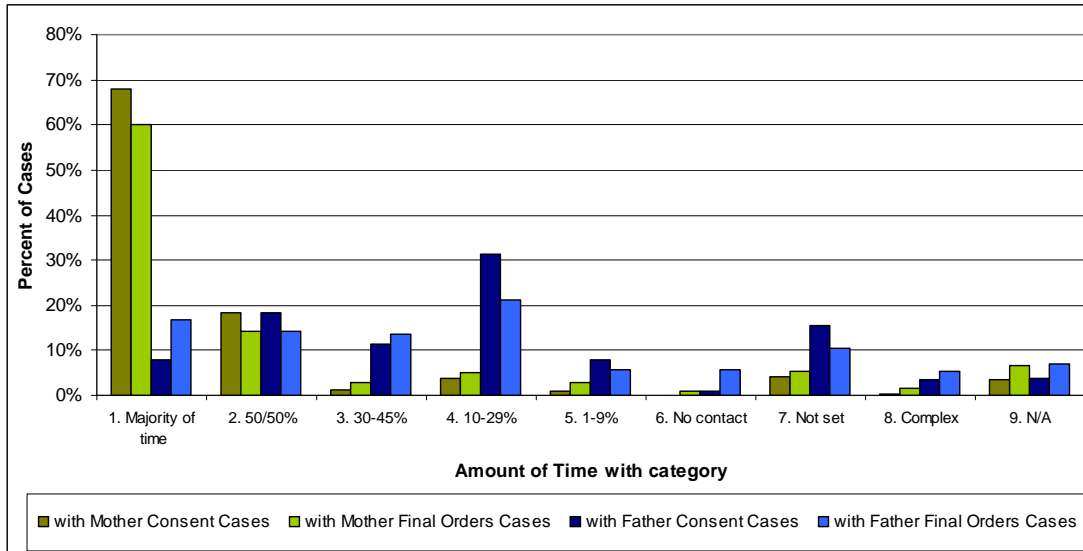
² The term 'litigated cases' includes all Applications for Final Orders finalised, by agreement or judgment, in the Family Court of Australia

³ A sample of 2719 consent cases were taken from a total of 10,575 consent cases finalised in 2007-08

⁴ The term 'consent cases' includes all Applications for Consent Orders finalised in the Family Court of Australia

2007-2008 SHARED PARENTAL RESPONSIBILITY STATISTICS IN CASES CONDUCTED IN THE FAMILY COURT OF AUSTRALIA.

Shared Parental Responsibility - Time Spent with parents



Note: 'Not Set' indicates there is no set rigid arrangement in the time split; Complex indicates where the time arrangement is too difficult to determine, such as for infants and 'hours' rather than days and multiple children with differing time arrangements etc; N/A indicates that the case may not have 2 'parents' and an 'other' party is involved.

Cases where fathers received a majority of time

- In 17% of litigated cases, the Family Court made orders that the children spend more than 50% of time with their father.
- Where parents came to an early agreement, it was agreed in 8% of cases that children spend more than 50% of time with their father.

Cases where mothers received a majority of time

- In 60% of litigated cases, the Family Court made orders that the children spend more than 50% of time with their mother.
- Where parents came to an early agreement, it was agreed in 68% of cases that the child spend more than 50% of time with their mother.

Cases where 50/50 time was awarded⁵

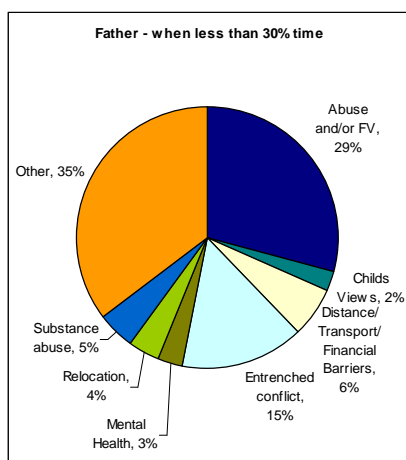
- In 15% of litigated cases, the Family Court made orders for 50/50 care between parents.
- Where parents came to an early agreement, the parents agreed on a 50/50 care arrangement in 19% of cases.

⁵ For data collection purposes 50/50 time was defined as between 45 % and 55% of the time spent with a child or children.

Cases where the father received between 30% and 45% of time

- In 14% of litigated cases, the Family Court made orders that the children spend between 30% to 45% of time with their father.
- Where parents came to an early agreement, it was agreed in 11% of cases that the children spend between 30% to 45% of time with their father.
- In 3% of litigated cases, the Family Court made orders that the children spend between 30% to 45% of time with the mother.
- Where parents came to an early agreement, it was agreed in 1% of cases that the children spend between 30% to 45% of time with their mother.

Cases where the father received less than 30% of time



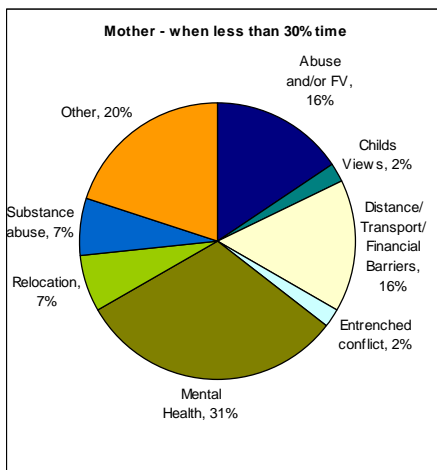
Note: 'Other' includes where the reason is unknown such as; the parties consenting during the litigation process, the reason is not covered by a category, or there is multiple and complex reasons.

In a third of litigated cases, the Family Court ordered that children spend 30% or less time with their father. Of the 100% of **this** category, the **main reasons** for the order included:

Reason	Percentage of cases*
Abuse and family violence	29%
Entrenched conflict	15%
Distance/transport/financial barriers	6%
Relocation	5%
Substance Abuse	4%

* Not all categories are shown in this table therefore it does not add to 100%. 'Other' includes where the reason is unknown such as; the parties consenting during the litigation process, the reason is not covered by a category, or there is multiple and complex reasons.

Cases where the mother receives less than 30% of time



Note: ‘Other’ includes where the reason is unknown such as; the parties consenting during the litigation process, the reason is not covered by a category, or there is multiple and complex reasons.

In 9% of litigated cases, the Family Court ordered that children spend 30% or less time with their mother. The **main reasons** for the order include:

Reason	Percentage of cases*
Mental health issues	31%
Distance/ transport/financial barriers	16%
Abuse and/or family violence	16%
Substance abuse	7%
Relocation	7%

* Not all categories are shown in this table therefore it does not add to 100%. ‘Other’ includes where the reason is unknown such as; the parties consenting during the litigation process, the reason is not covered by a category, or there is multiple and complex reasons.

Cases where the father spent no time with the children

- In 6% of litigated cases, the father was ordered to spend no time with the children.
- Where the parents came to an early agreement, it was agreed in less than 1% of cases that the father have no contact with the children.

The **main reasons** for the order include:

Reason	Percentage of cases
Abuse and family violence	38%
Entrenched conflict	10%
Distance/transport/financial barriers	0%
Relocation	2%
Mental health issues	2%
Other	42%

* Not all categories are shown in this table therefore it does not add to 100%. ‘Other’ includes where the reason is unknown such as; the parties consenting during the litigation process, the reason is not covered by a category, or there is multiple and complex reasons.

Cases where the Mother Spent No Time with the Children

- In 1% of litigated cases, the mother was ordered to have no contact with the children. The **main reasons** for the order include:

Reason	Percentage of cases
Abuse and family violence	15%
Entrenched conflict	0%
Distance/transport/financial barriers	8%
Relocation	8%
Mental health issues	31%
Other	31%

* Not all categories are shown in this table therefore it does not add to 100%. 'Other' includes where the reason is unknown such as; the parties consenting during the litigation process, the reason is not covered by a category, or there is multiple and complex reasons.

Grandparents

- In 8% of litigated cases the Family Court ordered that the child spend time with grandparents.
- In 2% of cases where there was an early agreement it was agreed that the child spend time with the grandparent.
- In 2% of litigated cases the Family Court ordered that the child spend time with an 'other' person.
- In 1% of cases where there was an early agreement it was agreed that the child spend time with an 'other' person.

Additional Information

- In those cases where parents have agreed about arrangements for children to spend time with their father, 15% did not set a rigid arrangement for the father to spend time with the children.
- In those cases that are litigated, 11% did not set a rigid arrangement for the children to spend time with their father.