

**8 November 2019**

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To: The Hon Kevin Andrews MP  
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Dear Chair,

**Parliamentary Joint Select Committee on Australia's Family Law System**

This is my submission to the Parliamentary Joint Committee regarding Australia's Family Law System.

First, I remind this committee what Prime Minister Scott Morrison has explicitly stated:

This inquiry will allow the parliament to hear directly from families and listen to them as they give their accounts of how the family law system has been impacting them and how it interacts with the child support system.<sup>1</sup>

As also noted by the Prime Minister:

This isn't about picking sides, it's about listening to Australians. The lawyers have had their say through the Law Reform Commission... But as we consider that, I think it's very important that we go and hear from people directly.<sup>2</sup>

I have served as a Law Reform Commissioner in Western Australia, from 2012 to 2017. During my capacity as a Commissioner, I had the opportunity to conduct, together with my fellow Commissioners, a review process that ultimately led to the enactment of the *Restraining Orders and Related Legislation Amendment (Family Violence) Act 2016* (WA).

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<sup>1</sup> Mimi Nguyen Ly, 'Pauline Hanson Says Some Parents Falsely Claim Domestic Violence To Sway Family Court', *The Epoch Times*, September 18, 2019, at [https://www.theepochtimes.com/pauline-hanson-says-some-parents-falsely-claim-domestic-violence-to-sway-family-court\\_3085906.html](https://www.theepochtimes.com/pauline-hanson-says-some-parents-falsely-claim-domestic-violence-to-sway-family-court_3085906.html)

<sup>2</sup> 'Interview with David Koch, Sunrise', Prime Minister of Australia – The Hon. Scott Morrison MP, September 18, 2019, at <https://www.pm.gov.au/media/interview-david-koch-sunrise-7>

In August 2013, the Law Reform Commission of Western Australia received the final terms of reference from the Attorney General to consider: (a) the benefits of separate family and domestic violence legislation; (b) the utility and consequences of legislation for family and domestic violence restraining orders separate to their current location in the *Restraining Orders Act 1997*; and (c) the provisions which should be included in such legislation were it to be developed (whether in separate legislation or otherwise).

In December 2013, our Commission published a discussion paper presenting 53 specific proposals for law reform, and raising 29 questions for further discussion. This paper was followed by public consultation with more than 150 stakeholders who expressed their concerns about family issues and domestic violence. Both outside and within government the Commission ultimately received 43 written submissions, and we also conducted a considerable number of additional consultations to resolve matters arising from the submissions.

Published in June 2014 and entitled 'Enhancing Family and Domestic Violence Laws', our Final Report comprehensively addressed the effects of legislation dealing with domestic violence. Our report recommended, inter alia, that such laws must necessarily provide a fair and just legal response to domestic violence. It explicitly informed that:

*as Legal Aid confirmed, this does 'not mean that fairness and the protection of individual rights are not important considerations.' In this context, it is vital to acknowledge that not every person who applies for a violence restraining order is a victim of family and domestic violence and not every respondent is a perpetrator.*

*As noted in the Discussion Paper, the current restraining order system is not without its critics in terms of its overuse or abuse. Although it is true that most applications for violence restraining orders are properly made, sometimes they are unmeritorious or otherwise used for tactical purposes in family law litigation. And yet, many lawyers consider that violence restraining orders, in particular those applied for after proceedings have been instituted in a family law dispute, may actually exacerbate conflict and decrease the prospects of the parties reaching agreement, with a consequent impact upon legal costs.*

*Because an interim violence restraining order can be made on the uncorroborated evidence of the applicant, the potential for abuse is very real. One example repeatedly mentioned to the Commission during its consultations is where the person protected by a violence restraining order is the perpetrator and the person bound is the victim. Further, it is important to acknowledge, from the respondent's perspective, the potential consequences of a violence restraining order: exclusion from the family home; prohibition of contact with children; inability to work; and general restrictions on day-to-day activities. Additionally, a respondent is liable to serious consequences under the criminal law for failure to comply with the order (including an interim order).*

*For these reasons, the justice system must ensure that the legal rights of all parties are respected and, in particular, that respondents to violence restraining order applications have a right to be heard within a reasonable time. Additionally, the importance of ensuring that the legal system responds to family and domestic violence in a fair and just manner supports the provision of better and more reliable information to decision-makers at the outset, thus enabling more accurate and effective decisions to be made.<sup>3</sup>*

Besides this contribution, in my capacity as a Law Reform Commissioner in Western Australia, I was directly involved with my fellow Commissioners in the elaboration of the following reports:

1. 'The Intersection of the Family Law & Caveat System in Western Australia', Project 107, Final Report, August 2017.
2. 'The Intersection of the Family Law & Caveat System in Western Australia', Project 107, Discussion Paper, May 2017.
3. 'Enhancing Family and Domestic Violence Laws', Project No.104, Final Report, June 2014.
4. 'Enhancing Family and Domestic Violence Laws', Project No.104, Discussion Paper, December 2013.

I have also authored and co-authored a considerable number of articles that critically examine the family law system. This submission expresses my primary concerns about this system.

Those willing to consider my arguments in any further detail are recommended to read some of these legal writings, in particular the following:

1. 'Child-Support Payments and Parental Alienation', *Quadrant Online*, August 15, 2019, at <https://quadrant.org.au/opinion/qed/2019/08/child-support-payments-and-parental-alienation/>
2. 'Reform the Family Law Act to Protect the Innocent', *Quadrant Magazine*, Volume LXI, Number 11, No 541, October 2017.
3. 'Avoiding Unnecessary Divorce and Restoring Justice in Marital Separations: Review of the Family Law Act 1975 (FLA) (2015) 6 *The Western Australian Jurist* 173-195 (co-authored by Christopher Brohier)
4. 'WA Domestic Violence Laws Pose an Insidious Threat', *The Australian*, September 24, 2016, at <http://www.theaustralian.com.au/opinion/wa-domestic-violence-laws-pose-an-insidious-threat/news-story/959df15ff5103c723d19d349b070b380>

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<sup>3</sup>'Enhancing Laws Concerning Family and Domestic Violence – Final Report', Project N.104, *Law Reform Commission of Western Australia*, June 2014, pp 18-19.

## **1 – Interactions between the Family Law System and the Child Support System**

Originally justified as a method of recovering welfare costs, child-support payments have been transformed into a massive subsidy on unilateral divorce.<sup>4</sup> Contrary to what some may believe, child-support payments have nothing to do with irresponsible parents abandoning their children.

Developed in the late 1980s, according to law professor Patrick Parkinson, the child support scheme ‘was certainly motivated by concerns about growing welfare expenditure’.<sup>5</sup> The support scheme, writes Parker and Harrison, ‘was largely driven by the need to ensure ... that private transfers of money from fathers to mothers reduced the burden of the state in terms of welfare expenditure’.<sup>6</sup>

Regrettably, as Professor Parkinson also points out, the present scheme provides ‘perverse incentives ... for primary caregivers to resist children spending more time with the other parent to avoid a reduction in the child support obligation.’<sup>7</sup> In view of the financial reward acquired, it is no wonder the system actively provides a perverse incentive for parental alienation. Parents holding temporary custody may decide to procrastinate custody litigation in order to prevent the other parent’s access to their children.

When this awful situation occurs, a loving parent may lose access to their children through no fault or agreement of their volition. As a result, a loving parent may be forcibly separated from his or her children, and such child support payments awarded ostensibly and regardless of any reference to “fault”.

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<sup>4</sup> The Child Support Agency was established by Commonwealth legislation in 1988 and legislation passed in 1989 imposed a mandatory formula for all parents who separated. Because in a ‘no-fault’ system nobody can contest a unilateral divorce, these payments are an entitlement to be assessed on parents and even on those who are unwillingly divorced against their will.

<sup>5</sup> Patrick Parkinson, *Family Law and the Indissolubility of Parenthood* (Cambridge University Press, 2011), p 223.

<sup>6</sup> Stephen Parker and Margaret Harrison, ‘Child Support in Australia: Children’s Rights or Public Interest?’, (1991) 5 *International Journal of Law and Family* 24.

<sup>7</sup> Parkinson, above n.5, p 235.

## 2 – The Absurdity of Spousal Maintenance in a “No-Fault” System

During the period when the law regarded marriage as the union between husband and wife to be indissoluble except by death, marriage was fully supported by norms against adultery and other forms of serious misconduct. Under this “fault” system, compensation was available on grounds of matrimonial offence relating to adultery, cruelty and desertion. That being so, a wife possessed a life-long right to be supported by her husband unless that right was forfeited by her own actions.

In this context of “fault”, any award of financial support reflected not only an element of assistance to the innocent spouse unable to support herself, but also an element of punishment of the guilty party. If a man deserted his wife, she was entitled to successfully apply for financial support.<sup>8</sup>

By contrast, an unfaithful wife who committed adultery forfeited her right to spousal maintenance absolutely. In *Adams v Adams* (1964) the Supreme Court of New South Wales (Begg J) said of the woman who violated the marriage vow: ‘In the usual case a wife who has been found guilty of a matrimonial offence will not be awarded maintenance’.<sup>9</sup>

Under the “no-fault” rule introduced in the 1970s, the law went on to remove all considerations of “fault”. Divorce then became a “right” to be available at the decision of one spouse and even against the wishes of the other.

These are insoluble moral difficulties that arise when the conditions of divorce have been removed. Of course, it is not difficult to justify maintenance for a spouse who has been

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<sup>8</sup> Hence, in the 1964 case of *Davis v Davis* Justice (sir) John Barry of the Victorian Supreme Court declared: “The broad notion acceptable to the community is, I think, that if a husband of means irretrievably destroys the reality of a marriage, and it appears that he contemplates marriage with another woman who he prefers to his wife, the court should ensure that he pays to the spouse he is repudiating whatever, having regard to his means and his conduct towards her, and her conduct towards him, is fair and reasonable, recognizing that he is pursuing his own gratification in disregard of obligations he undertook”. – *Davis v Davis* [1964] VR 278 at 282.

<sup>9</sup> *Adams v Adams* (1968) 11 FLR 197 at 200.

abandoned, or such a payment to a woman who leaves the marriage because of her husband's corroborated violence.

However, it is far more difficult, if not simply impossible, to justify spousal maintenance for an unfaithful wife who leaves the marriage contract for reasons such as boredom or because she has decided to form a new relationship outside the marriage bond.

### **3. Evidential Legal Standards and Onus of Proof in Relation to the Granting of Domestic Violence Orders**

For years fathers' groups have complained that unscrupulous pseudo-victims and overzealous courts often misuse domestic violence orders ('DVOs') that should be used as a shield to protect real victims of domestic violence.<sup>10</sup>

This is confirmed by an academic survey of 68 Australian families. Conducted by Sotirios Sarantakos, an Associate Professor of Sociology at Charles Sturt University, this survey found that a significant number of allegations of domestic violence are either false or can't be substantiated. In these cases, he explains,

the initial allegations of DV were modified ... during the course of the study, particularly when [the alleged victims] were faced with the accounts of their children and mothers, admitting in the end that they were neither victims of violence nor acting in self-defence.<sup>11</sup>

The overwhelming majority of magistrates agree with the assumption that false claims are often sought for collateral reasons. These reasons are more often than not directly related to property disputes and custody issues at the family court.

Indeed, a survey of 38 magistrates in Queensland reveals that 74% of them agreed that domestic violence orders are regularly sought for tactical reasons.<sup>12</sup> Likewise, a survey

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<sup>10</sup> 'To battered women's advocates, and to feminists such as Boston Globe columnist Eileen McNamara, grips about the restraining-order system are merely an anti-female backlash. At times, some men in the fathers' groups can indeed lapse into angry rhetoric that smacks of hostility to women. But it is equally true that many women's advocates (who, unlike the divorced dads, have a good deal of influence in the legal system) seem to have a "women good, men bad" mentality that colors their view of family conflict'. – Cathy Young, 'Hitting Below the Belt', *Salon.com*, October 25, 1999, at [http://www.salon.com/1999/10/25/restraining\\_orders/](http://www.salon.com/1999/10/25/restraining_orders/)

<sup>11</sup> Sotirios Sarantakos, 'Deconstructing Self-Defense in Wife-to-Husband Violence', (2004) 12 (3) *The Journal of Men's Studies* 277, 287

<sup>12</sup> Belinda Carpenter, Susan Currie and Rachael Field, 'Domestic Violence: Views of Queensland Magistrates' (2001) 3 *Nuance* 17, 21. See also: Patrick Parkinson, Judy Cashmore and Judith Single, 'The



of 68 magistrates in New South Wales found that 90 per cent of them agree that restraining orders are commonly sought merely as a “tactical device” in order to aid applicants with family law disputes, in particular to deprive former partners of contact with their children.<sup>13</sup>

There is an undeniable correlation between restraining orders, false claims of domestic violence, and parental alienation. According to David Collier, a retired judge from the Parramatta Family Court, such orders have become a “major weapon” in the war between parents willing to secure the sole custody of children.<sup>14</sup>

The problem lies in how these orders are issued and the grounds for which they can be made. There is no doubt that countless applications are unmeritorious and grossly misused.

Timing is a possible sign and it may occur when someone is seeking a restraining order for reasons other than a real concern for physical safety. A common example is when someone seeking a DVO is concomitantly initiating family court proceedings for child custody.

Since a restraining order can be so easily obtained, they can and have been maliciously used by unscrupulous applicants. The strategy is rather simple and it consists in one’s ability to defame his or her former partner with no necessity of actual evidence.

These false accusations can tear entire families apart – all based on the word of a single person and no evidence provided.<sup>15</sup> As noted by Dr Adam Blanch, a clinical psychologist working in Melbourne:

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Views of Family Lawyers on Apprehended Violence Orders after Parental Separation’ (2010) 24 *Australian Journal of Family Law* 313, p 317

<sup>13</sup> J Hickey and S Cumines, ‘Apprehended Violence Orders: A Survey of Magistrates’ (Sydney/NSW: Judicial Commission of New South Wales, 1999), p 37.

<sup>14</sup> Harriet Alexander, ‘False Abuse Claims are the New Court Weapon, Retiring Judge Says’, *Sydney Morning Herald*, July 6, 2013, at [www.smh.com.au/national/false-abuse-claims-are-the-new-court-weapon-retiring-judge-says-20130705-2phao.html](http://www.smh.com.au/national/false-abuse-claims-are-the-new-court-weapon-retiring-judge-says-20130705-2phao.html)

<sup>15</sup> Adam Blanch, ‘Vigilante Justice: Feminism’s Latest Attack on Human Rights’, *On Line Opinion – Australia’s E-Journal of Social and Political Debate*, 22 August 2014, at <https://www.onlineopinion.com.au/view.asp?article=16613>

The more a single parent can restrict the other parent's access to the children the more financial support they receive from the alienated parent and the government, and a restraining order even when based on allegations that have been unsubstantiated is a great weapon in the fight for primary custody and restricted access.<sup>16</sup>

Each year thousands of Australians are issued with restraining orders evicting them from their homes, often alienating them from their children. Since evidentiary standards are dramatically relaxed, such orders can be granted on a "without admissions" basis that have virtually no evidentiary value in themselves.<sup>17</sup>

An analysis of NSW court files reveals that these cases are dealt with in less than three minutes.<sup>18</sup> They are often resolved by "consent without admissions". The information provided is typically brief and it 'tends to focus on one single incident'.<sup>19</sup>

What is more, write legal academics Parkinson, Cashmore and Single, references to "fear" are included in a "routine or habitual manner" in these applications, 'frequently as a bald statement to conclude a complaint without any reasoning or thematic connection to the victim's experience'.<sup>20</sup>

Having a few days to defend against these allegations may not be enough time. This is compounded by the massive distress caused by being thrown out of the home by armed police officers at the behest of a partner.

Of course, an applicant might have spent several months, perhaps even years, planning to file his or her accusation, whereas the accused who then becomes homeless and financially destitute, is given only a couple of days to prepare his or her defence. More often than not, respondents will lose access to their children, and even to joint bank accounts.

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<sup>16</sup> Ibid.

<sup>17</sup> Parkinson et al., above n.12, p 317.

<sup>18</sup> Ibid, p 318.

<sup>19</sup> Ibid, p 318.

<sup>20</sup> Ibid.



Following a final hearing, the accused may be found guilty through a flawed process that is notoriously devoid of due process and the most elementary elements of procedural fairness. They may have lost all their money, property, and even contact with their children, since such an order can make this contact practically impossible.

#### **4. The Unintended Consequences of 'No-Fault' Divorce**

When “no-fault” divorce was introduced through the *Family Law Act 1975*, this was promoted as a way-out for marriages where both spouses agreed it was over. It would protect people from the embarrassment of having to prove any “fault”.

The concept was presented as a humanizing effort to allow marriages that were deemed “irretrievably broken” to be terminated without the need of court trial, painful testimony, and some finding of guilt.<sup>21</sup>

But it soon became clear that “no-fault” would make divorce the general rule.

It is one thing to allow “no-fault” for a marriage where both spouses agree it is basically over. But it is quite another when divorce occurs with no mutual consent – when a spouse unilaterally leaves the marriage for no reason.

Under “no-fault”, the conscientious husband will be treated the same way as the unfaithful husband who deserted his wife and children.

One can hear the testimony of countless husbands whose wives run off and were awarded the custody of their children. As Barry Maley points out, this person has been doubly victimised:

His marriage and its expectations have been destroyed, he has largely lost his children, lost his home and a large part of his income. His prospects of mending his shattered and impoverished life, re-partnering and perhaps having other children, are minimal.<sup>22</sup>

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<sup>21</sup> R Albert Mohler, Jr., *We Cannot Be Silent* (Nashville/TN: Thomas Nelson, 2015), p 23.

<sup>22</sup> Barry Maley, ‘Reforming Divorce Law’, (2012) 33 (1) *The Australian Family* 28, 43.

The fear of losing access to children has trapped many fathers in bullying and coercive relationships. These men have a reasonable fear of losing access to their children after marital separation.

The trend of women “using” children as leverage to threaten their partners into staying in abusive relationship has been fully reported.<sup>23</sup> As stated by a family lawyer, family courts, particularly where children are involved, are quite notorious for supporting women, ‘and women know that and use it and know that their children are a hard-hitting point’.<sup>24</sup>

### **5. The Benefits of Shared Custody**

Canadian sociologist and social worker Dr Edward Kruk explains that, after 40 years of debate, ‘researchers can conclude with confidence that the best interests of children are commensurate with a legal presumption of shared parenting responsibility after divorce’.<sup>25</sup>

Arguing against any margin of discretion for judges to overrule the general rule of shared custody, Dr Kruk authoritatively reminds us that,

without a legal presumption, judges can make decisions based on idiosyncratic biases, leading to inconsistency and unpredictability in their judgements. And with two adequate parents the court really has no basis in either law or psychology for distinguishing one parent as “primary” over the other.<sup>26</sup>

Sanford Braver is psychology professor at the Arizona State University. In a significant academic paper, this leading divorce scholar summarises what the experts in the field have revealed in the course of an international conference on shared parenting. Braver relies on the information provided by those leading experts, to authoritatively conclude that,

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<sup>23</sup> Gabriella Swerling, ‘Rise in Male Victims of Coercive Relationships’, *The Daily Telegraph*, 11 March 2019, p 13.

<sup>24</sup> Ibid.

<sup>25</sup> Edward Kruk Ph.D., ‘Countering Arguments Against Shared Parenting in Family Law’, *Psychology Today*, October 10, 2018, at <https://www.psychologytoday.com/au/blog/co-parenting-after-divorce/201810/countering-arguments-against-shared-parenting-in-family-law>.

<sup>26</sup> Ibid.

on the basis of this evidence, social scientists can now cautiously recommend presumptive shared parenting to policymakers ... shared parenting has enough evidence [that] the burden of proof should now fall to those who oppose it rather than those who promote it.<sup>27</sup>

Held in May 2017, this conference attracted the leading experts on the legal and psychological implications of custody arrangements and parenting plans. Some broad themes dominated those panel discussions, including whether there is persuasive evidence that shared parenting provides real benefits to children whose parents separate. Also addressed in that important event were what specific factors could make shared parenting beneficial; whether there should be a legal presumption in favour of shared parenting, and if so, what factors should make for exceptions.<sup>28</sup>

Attending this event was Dr Linda Nielsen, a professor of adolescent and educational psychology in the Department of Education at Wake Forest University. Nielsen is an internationally recognised expert on the effects of shared parenting. She spoke authoritatively about 52 studies that fully confirm, beyond any reasonable doubt, that shared parenting undoubtedly offers the most beneficial effects on most of the measures of child well-being. Nielsen has recently updated her findings, thus achieving the same conclusion after carefully analysing more than 60 leading empirical studies on the subject.<sup>29</sup>

## 6. Recommendations

This Inquiry provides an opportunity to implement some practical recommendations aiming at the reform of the family law system.

The following recommendations, once implemented, would dramatically improve the current system.

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<sup>27</sup> Sanford L. Braver & Michael E. Lamb, 'Shared Parenting After Parental Separation: The Views of 12 Experts' (2018) 59 (5) *Journal of Divorce and Remarriage* 372-387

<sup>28</sup> *Ibid.*, pp 372-387.

<sup>29</sup> Linda Reutzell, 'It's Time to Align Missouri's Family Courts with Research', *Columbia Daily Tribune*, February 16, 2018, at <https://www.columbiatribune.com/news/20180216/its-time-to-align-missouris-family-courts-with-research>

**Recommendation #1: False accusations of domestic violence should lead to the loss of child custody**

It is deeply commendable that strenuous efforts are being made to ensure real victims of domestic violence are given every possible legal support to ensure their safety. But many in the legal profession and elsewhere take issue with the notion that laws should be tilted to favour alleged victims with no regard for traditional legal protections to ensure fair treatment for the alleged perpetrators.

Indeed, not everyone who applies for a restraining order is a genuine victim, just as not everyone who is subject to such an order is necessarily a perpetrator.

Restraining orders that lack a proper application of due process and are granted on a 'without admissions' basis (which means no evidence needs to be produced) can lead to gross violations of human rights.

Many cases of domestic violence have ended up in courts where these allegations have been disproved, and sometimes many years after the accused found themselves evicted from their homes, and alienated from their children.

Sometimes these victims of false allegations are arbitrarily arrested and they suffer incommensurable damage to their personal and professional reputation. Some are financially bankrupted after facing huge court costs in order to defend themselves from mendacious accusations.

It is time to restore procedural fairness and justice to the system. False accusations of domestic violence should lead to severe penalties, including criminal charges and the loss of child custody.

**Recommendation #2: The link between parental alienation and child support payment must be severed**

Child support payments have been transformed into a perverse incentive to unilateral divorce and parental alienation.

Unfortunately, judges are notoriously reluctant to punish alienating parents and so many continue to get away with it. And yet, it is necessary to punish parents who refuse to let separated partners see their children.

Parents who refuse to let separated partners see their children should have them taken away. The children should be handed over to the full time care of the maliciously alienated parent if the alienator persistently defies court orders.

Once it is possible to testify beyond reasonable doubt that no abuse has occurred, false accusations should be approached as a form of child abuse. Accordingly, they should give rise to the loss of custody in favour of the parent who has been falsely accused.

**Recommendation #3: The immediate end of spousal maintenance**

The payment of spousal maintenance is morally unjustifiable. No reasonable justification under a “no-fault” system can be made for the payment of spousal maintenance.

Although acknowledging the variety of reasons why a marriage could break down, it is not unreasonable to question the fairness of a system which compels people to support their ex-partners who leave the intimate relationship for entirely unilateral and individualistic motivations.

Fairness and equity demand that, under a “no-fault” system, the law compelling the payment of spouse maintenance should be immediately repealed.

**Recommendation #4: The general rule of shared custody must be strictly enforced by the courts**

The courts must be instructed to strictly apply the general rule of shared custody. This specific recommendation seeks to align the law with the best scientific evidence.

As above mentioned, research on post-divorce outcomes for children and families have now established which living arrangements are most likely to support healthy child development.

The conclusion overwhelmingly points to shared parenting as the best scenario for children and society after divorce or separation.

**Recommendation #5: Courts should award damages for breach of the marriage contract which is caused by a partner's gross misconduct**

Marriage is a contract. The law gives a right to claim damages for breaches of contract in the civil and commercial arenas. Why should marriage be the only contract that may be breached with impunity?

Since it does not ascribe legal consequences to serious misconduct, the present system signals that marriage is not considered to be a valuable contractual agreement. As noted by Christopher Brohier,

The law, by means of ascribing consequences to actions, signals to us what we as a community hold important. It is clear that the no-fault revolution, in allowing the marriage contract to be breached without any legal consequences (though ... there are serious and unavoidable consequences in fact) has undermined the value we place on marriage to the detriment of Australian society.<sup>30</sup>

It is time to change this serious legal anomaly. Family courts should have the power to make awards of damages for intangible losses.

To assist in enhancing the binding nature of the marriage contract, once it is ascertained that damages might follow, parties should be more inclined to abide by the marriage contract.

Of course, courts routinely do so in awarding damages for non-economic loss in personal injury claims and damages for loss of reputation in defamation claims.

In this context, the courts should be given the power, on application, to award damages to a party who has seriously breached the marriage contract. This can be done via award for damages or by weighting a division of property to account for the misconduct.

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<sup>30</sup> Christopher Brohier, 'Avoiding Unnecessary Divorce and Restoring Justice in Marital Separations: Review of the Family Law Act 1975 (FLA)', Paper delivered at the National Marriage Day 2014, Parliament House, Canberra/ACT, August 27, 2014.



## **7. Final Comments**

This submission summarises a number of issues concerning the operation of the family law system.

It is important that these issues are taken into serious consideration as they are seriously affecting the lives of countless innocent individuals involved in these court disputes.

The above recommendations are aimed to address these relevant matters. They are likely to receive widespread community support.

I hereby request members of this joint parliamentary committee to take a most careful consideration of the above recommendations.

Please contact me at any time if you would like to receive any further information.

Yours Sincerely,

### **Professor Augusto Zimmermann**

- Professor of Law (adj.), The University of Notre Dame Australia School of Law, Sydney
- Professor and Head of Law, Sheridan College, Perth/WA
- Law Reform Commissioner, Law Reform Commission of Western Australia (2012-2017)
- Associate Dean (Research), Murdoch University School of Law (2010-2013)
- Vice-Chancellor's Award for Excellence in Research (Murdoch University, 2012)
- Elected Fellow, International Academy for the Study of the Jurisprudence of the Family (IASJF)
- President and Founder, Western Australian Legal Theory Association (WALTA)
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