

Submitted by: DADS ON THE AIR, AUSTRALIA

The world's longest running radio program on father's issues:

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5th June 2011

Committee Secretary,
Senate Legal and Constitutional Affairs Committee,
PO Box 6100,
Parliament House,
CANBERRA. ACT. 2600.

Dear Sir/Madam

Re: Inquiry into international child abduction to and from Australia

We thank the Senate Legal and Constitutional Affairs Committee for inviting **Dads on the Air, Australia** to make a submission to the Inquiry into International Child Abduction to and from Australia.

While the main focus of this enquiry is on how to solve the problems of dealing with the horse after it has bolted, it is important to understand how and why so many children find themselves abducted by one of their parents, and removed to foreign countries without any consideration being given to their rights as a child.

Most of how we deal with the problems surrounding the implementation of the Hague convention, relates back to how the problem of child abduction is dealt with, within the relevant jurisdictions of each of the signatory countries to the convention.

Because of the continuing refusal by Governments to properly recognize and broaden the definition of child abduction within their own national borders, it makes it relatively easy for parents to abduct their children across international borders.

With an inability or unwillingness to legally recognize and correctly define what constitutes child abduction, the root causes and remedies will not be found. It is irrelevant whether the abductor is a parent or a stranger, as the definition of abduction is legally considered to be the criminal act of taking someone away by force or cunning. Abduction is also legally considered to be the criminal act of capturing and carrying away by force a family member.

If the committee is serious about finding a solution to resolve the impotence of the Hague Convention to prevent International child abductions, it would do well to do a little research and discover how widespread the incidence of parental child abduction is within our own borders.

This happens because our Family Laws do not consider it a case of child abduction, when a parent removes the children to another street or suburb and prevents those children from having any further contact with other members of their family. This effectively removes the protection of checks and balances for those children, and leaves the abducting parent in total control over every aspect of those children's lives.

Parents can also be permanently removed from their children, when false allegations of Domestic Violence and Child Abuse are made, as this immediately removes an alleged abuser and provides a malicious parent with the time to manipulate the children into turning against the temporarily removed parent.

It matters not if those allegations are later found to be false, as by then the children have been indoctrinated to hate the removed parent, and because the perjuring parent will not be punished for their criminal act of perjury. Abducting parents also know that this process is usually followed by favorable directions made by the Family Court Judiciary, who generally consider it best to leave the children in the care of the abducting parents who have perjured themselves in order to achieve such outcome.

It must also be noted that our Family Court Judiciary, in the vast majority of cases, will award custody to one parent and make the other parent a visiting parent. This again provides one parent with total control over every parenting aspect of the children, particularly where the child will live, and if they will have any further contact with the other parent. Additionally, there are no effective compliance provisions, further making a mockery of the worthiness of any court orders obtained, often at great financial and emotional cost.

Our current Family Laws and the Family Court's administration of such loophole filled, meaningless legislation, makes it a totally unworkable and destructive Government instrumentality which inflicts enormous harm on our communities.

Incredibly, the only time we actually recognize it as child abduction, is when a desperate, marginalized and illegally dispossessed parent, doesn't return his or her children back on time, to the original abducting parent.

It is a common misconception to suggest that because only 5% of cases end up in the Family Court, the other 95% of separating parents work it out amicably. This is a myth which has grown legs and is often quoted by those who stand to benefit most by maintaining the status quo. The available data in fact shows the complete opposite is true, and gives great cause of concern for the welfare of so many of the nation's children.

ABS census statistics show that in 2006 there were just over one million children who had one parent living elsewhere. Approximately 700,000 of those children had little or no more meaningful contact with their non-custodial parents and half of their biological family. It also showed there were approximately 312,000 non-custodial parents who had little or no more meaningful contact with their children.

This means only 30% or [3 out of 10] Australian children from broken homes, continue to remain in some form of meaningful contact time of 20% or better, with their non-custodial parents.

It also indicates that the 5% of cases that end up in the Family Courts are simply the tip of the iceberg, because as can be seen from the data provided, for the vast majority, **70% or [7 out of 10]** of all separating parents and children, the outcome is a life changing catastrophic event.

These children, who are suffering the trauma and stress of having been illegally abducted by Government sanctioned parental abductors, are being left to fend for themselves in the care of the most dysfunctional of their parents. It happens within our own borders and unfortunately no-one gives a damn.

It is not that alternative options have not been submitted over the years, but rather that any submission which offers credible alternative options that could possibly provide some protection and relief, for the parent and child victims of this miscarriage of justice, continue to be discounted and/or ridiculed.

As a public broadcaster, presenting the world's longest running radio program on father's issues, we have listened to thousands of horrifying stories during our 10 years of broadcasts. These stories unfortunately continue to present themselves and would indicate that the problem is far from being resolved.

This brings us right back to the issues surrounding the impotence of the Hague Convention. It seems to us, that unless our Government is prepared to clean up its own impotent house first, it is somewhat patronizing and hypocritical to meddle in the affairs of another impotent organization.

Child abductors, who are the subject of charges brought under the Hague Convention, were able to remove the children over International borders with relative ease, due to the ineffectiveness of the Family Laws in their own country. They have simply taken advantage of laws that have removed the checks and balances that only the watchful, caring, protective eyes and ears of responsible family members can provide.

We consider such yawning holes in our Family Law legislation and the Family Court's interpretations, give cause to fear that our Government is failing in their duty of care to protect the human rights of their citizens.

Having been allowed to abduct a child to another street or suburb and successfully shutting the other parent and family members out of their lives, these child abductors are free to do as they please, when and if they like. There is no follow up protection for the children by the legal system and the eliminated non-custodial parents and other caring family members are powerless to intervene, for the fear of being charged and jailed for breaches of intervention orders. This then provides the perfect platform from which an abducting parent can plan and launch their cross border flight with the children.

It is obvious to anyone who has ever had the misfortune to have become involved with the destructive Family Law Industry, that unless several root causes are recognized, and there is a genuine willingness to embark upon providing the necessary effective legislative protection for the nation's children and their parents to remain in regular meaningful contact with each other, there is no point in another costly, pointless talkfest.

Moreover, we are of the opinion, that unless Parliament is genuinely prepared to enshrine such protective legislation into law, these debates and inquiries are an exercise in futility.

One of the root causes for our failure to provide for the effective protection of our children's welfare is that parents no longer have any legal parenting rights to parent their own biological children. It is a complete waste of time for parents to seek perceived parenting rights in our Family Courts, when they don't exist!

It is our view that if the following initiatives were adopted by all the signatory countries of the Hague Convention, most of the International cross border abductions would slow to a trickle and most of the concerns that are the subject of this inquiry would become irrelevant when:

- **The 'sole parent physical custody' model is abolished and BOTH responsible, biological parents, are *legally recognized as equal primary care parents.***
- **Each parent is awarded a *legal equal parenting right*, to share a meaningful, near equal percentage of *physical primary care parenting time*, following separation.**
- **Withholding of contact by *either* parent invokes a criminal charge of *Kidnapping*.**
- **Violence and abuse allegations are only dealt with in the criminal justice system, providing due process of law and harsh penalties for perjury. Such allegations are to be accompanied by immediate court ordered protection of responsible parent/child relationships.**

We thank you for the opportunity to make this submission in order to shed some light on how and why parental child abductions occur and to provide some possible alternative solutions.

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