- SUBMISSION -

TO: THE COMMONWEALTH GOVERNMENT STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS

INQUIRY INTO CHILD CUSTODY ARRANGEMENTS IN THE EVENT OF FAMILY SEPARATION

[redacted]

This submission was prepared with the presumption that all recommendations within it are in the best interest of the children with due consideration being given to BOTH parents of the children.

SUMMARY

We strongly support the notion of Shared Parenting. We believe that a 50-50 Rebuttable Presumption of Shared parenting is mandated for Australia. Public opinion is strongly behind this move as seen by recent polls. We discuss the increased use of Mediation and Counselling and the formation of a Family Matters Tribunal. This submission calls for the introduction of Shared Parenting as quickly as possible, for greater regular contact with Grandparents and other close family members and for the immediate overhaul of the operation of the Child Support Agency. We express our support for many of the findings in Family Law Pathways Advisory Group out of the Maze Report (29 August 2001)

This submission discusses the appalling suicide rate among young men and the implication of the Child Support Agency and family break up as strong drivers of these unnecessary deaths. We go on to look at the idea of Shared Parenting and make recommendations for its introduction and suggest some methodologies for its practical application.

Further, this submission details recommendations for the overhaul of the Child Support Agency. It suggests ideas for merging the Child Support Agency with Centrelink. The submission suggests ideas for improving the formula used for child support assessments and for taxation relief for payers of child support. We then raise the issue of AVOs and the difficulties these bring to Shared Parenting although we note research to indicate that domestic violence and anger between the parties reduces with fair and equitable contact with the children and child support payments.

OUR STORY

[redacted] was separated late in 1999 and was informed by his wife that it would be Ok he could see his daughter, K, just about any time he wished. A true Shared parenting situation was offered. K was 4 years old at the time.

After visiting a solicitor the wife decided to offer him $0 in a property settlement. This caused [redacted] a huge amount of stress and he was then forced eventually to seek legal assistance. The fight had started. Now contact was offered as per the standard every second weekend and some holidays as it had to be less than 109 nights else the child support would be reduced.

At this point contact was denied to [redacted] with his daughter in order to pressure him into not fighting for a share of "the prize". Eventually contact was restored after the contact order was consented to under pressure and threat of major litigation in the Family Court. The "Consent" orders stipulated less than 109 nights contact with K and among other conditions that [redacted] must provide K with her own bedroom. This meant that he needed to rent a 2 bedroom property. This placed additional financial burden upon him.

As [redacted] only had two part-time jobs at this pint he was in a serious financial situation having to find funds for his solicitor, a bond on an apartment and he had the mortgage and car loan repayments to make.

Early in 2000 he received a letter of demand from the Child Support Agency for $234 a fortnight in child support plus arrears back to October 1999. This amounted to a bill of around $1000 which he just didn't have. As they were to take money from his wages, he had to cease mortgage payments on the matrimonial house.

A Domestic Violence Order was taken out against him as he shouted at his ex-wife one evening and attempted to remove K and take her with him to his parent's place. He suffered a physical assault from his ex-wife at the time and attended a doctor the next morning. The AVO was later removed as the ex-wife made a complaint to Police because an insulting message was left on her message bank as a result of contact denial with K. The Police asked her to withdraw the AVO as they considered it bogus and [redacted] employment would have been terminated if his employer new he had an AVO against him.

His car had $5000 owing so [redacted] was in trouble. Her car was debt free. The property settlement was a joke. He eventually negotiated $10000 out of the $37000 pool. Of that it was ordered that he repay a $4000 loan to his parents, a loan made by them to the bank to assist with the mortgage arrears. This left [redacted] with $6000. He paid out the car loan leaving him with $1000 to pay the legal bills of $9500 and a MasterCard bill of $3000.

During a weekend contact visit [redacted] house sat for a friend who was overseas on holiday. He and k had the 2 bedroom unit to themselves. K was 5 years old at the time. Because the owner of the unit arrived home on the Saturday morning unexpectedly, [redacted] and K slept on a double fold out bed, a situation which was not uncommon for K as she was often in her parent's bed. Well that brought about allegations of sexual abuse. At this time Trevor was living 100km away from K at his parent's retirement unit. Accommodation was not available for k at this location due to space and a lack of beds.

[redacted] gained employment in [redacted] as a senior airline Captain with a small airline there and paid around $100 per month in child support to his ex-wife each whilst trying to service debts. He was rapidly approaching bankruptcy and being hounded by the CSA. This position paid $50000 per year. As he was ordered to pay all contact costs with the child he faced a huge burden having to travel from [redacted] to see his daughter. He was only permitted 3 calls to K per week which were made from [redacted] at his expense.

Following the Coup [redacted] Trevor returned to Australia in 2001, unemployed with nowhere to live, with no car and unemployed. Immediately his ex-wife notified the CSA of his return and they commenced billing him at his pre-departure rate, based upon his last Australian Tax Return from 1999. The CSA hounded him again for money and he eventually gained employment with Qantas in Sydney as a manager. He had to undertake a Change of Assessment with the CSA who levied him $600 per month in child support for K. As he had paid his ex-wife a lump sum in child support upon his return from [redacted] and was unemployed at the time the CSA had been overpaid. He had another change of Assessment to correct this and pay him a small refund. His ex-wife said to the CSA that she needed more money for K so he was re-assessed at $924 per month even though his salary was only $59000 per year. **This was 25% of his net take home pay** whilst his ex-wife was taking home approximately $4000 per month including child support payments. She was working in a part-time position whilst [redacted] was working in full time employment. In paying such a large percentage of his tale home pay in child support; an amount which seems inordinate with what is required to keep a 6 year old in the style to which she wishes to become accustomed, it was very difficult for [redacted] to meet the obligations of his new family and to pay for regular contact and gifts for K.

[redacted] had to borrow $5000 in 2001 in order to have the Contact Orders for contact with K changed in order to allow visits to Sydney and to allow him greater telephone contact. The CSA make no allowance for these expenses.

[redacted] found it distressing and depressing to lose so much money each month whilst working hard in a high pressure job. He often thought that it was so unfair that he had achieved great success in his career but was not able to enjoy the financial rewards whilst his ex-wife reaped the benefits and was able to have overseas holidays (without K) and fund the purchase of a new townhouse with most of the money she received in child support.

This is a most unsatisfactory and yet typical story.

1. FACTORS TO CONSIDER IN THE AMOUNT OF TIME CHILDREN SHOULD SPEND WITH EACH PARENT FOLLOWING SEPARATION.

In an interview on June 18th 2003, with the ABC, Matilda Bawden, President of the Shared Parenting Council of Australia stated the following.

"The biggest difference will be to take litigation out of the family break-down picture to the greatest extent possible and encouraging parents, wherever that is possible, to work it out themselves. Get the lawyers, get the judges, the psychologists and social workers out of the picture and families might stand a chance of working things out."

We agree that a system based upon the presumption of Shared Parenting should be the starting point for arrangements following separation of parents within a family. It is agreed that something like 90% of Contact Orders for children to have contact with the non-resident parent, are signed as Consent Orders. The problem is that these orders are usually signed under duress with pressure from solicitors, family and friends. The present system discourages more than 109 nights contact for the non-resident parent due to the prize of child support payments being reduced for the resident parent. The non-resident parent usually is not in a financial position to fight these Orders through the Family Court and simply signs in order to be able to see the children, even for the limited time offered. Many of these Orders are not by Consent at all.

Mr. Geoffrey Greene, Federal Director of the Shared Parenting Council of Australia said "*Only by recognising and upholding the fundamental rights of children to maintain an equal relationship and opportunity with both their mother and father will society reduce the impact of family breakdown on children of divorce.*"

"By clarifying that divorced fathers are 'by law' still fathers, parents' negotiations about fathers' participation in child rearing after divorce may shift from trying to resolve *whether* fathers will be involved in child rearing to the matter of *how* fathers will be involved." (emphases in original). J. Seltzer, *Father by Law: Effects of Joint Legal Custody on Non-residential Fathers Involvement with Children*, University of Wisconsin- Madison. NSFH Paper No. 75 (February 1997).

The rate of suicides, particularly amongst Australian men is of great concern. We have the highest rate of suicide caused by relationship breakdown in the world according to a recent study. It has been suggested that three fathers suicide every day in Australia. This is both a national disgrace and a tragedy for so many children.

Tens of thousands of parents have committed suicide over the past 30 years.

Father's groups attribute at least half of these deaths to the brutal mistreatment of fathers and their children at the hands of our family law and child support systems. The government has acknowledged there is no documentary evidence to contradict this claim.

2028 adult men aged 20 years and over committed suicide in 1998.

Professor Pierre Baume estimates 70 percent of these are due to relationship breakdown. That is 27 per week. A national disgrace! When you take away children from their fathers or severely restrict their contact, you take away a father's reason for living!

(DADS on the Air 24 Feb 2003 Sue Price)

This national disgrace requires **URGENT GOVERNMENT ACTION.**

Recommendation 1: Extensive use of Counselling and Mediation Services
Couples must attend mandatory counselling where an assessment of their situation can be made. The Counsellors report is sent to a Mediator where the couple will attend mandatory mediation, either together or separately if appropriate, in order to make agreement to the Shared Parenting arrangements for the children of the marriage and to agree to a suitable property settlement bearing in mind the agreed parenting arrangements. The minimum time couples must attend Mediation should be 2 X 3 hour sessions before proceeding to the next stage. **Mandatory Mediation on a user pays basis where possible, will reduce costs to Government where Family Court services are currently used.**

Should mediation <u>not</u> resolve these issues, the couple will be directed to a <u>Family Matters Tribunal</u> where the couple can put their case before the Tribunal for a ruling. Solicitors should not be permitted to attend Tribunal hearings. Parents will self-represent themselves as far as possible in family matters or be allowed a 'friend' to assist them. The Tribunal should be empowered to issue Interim Contact Orders. An Interim Contact Order will be applied for immediately (within 7 days) to allow **both** parents to have ongoing contact with the child. The Family Matters Tribunal, Federal Magistrate or a Family Court Registrar should be able to issue this Interim Order promptly as the number of cases before the Courts will drop markedly if these recommendations are adopted.

Solicitors should be kept out of the mediation and not be involved unless matters are required to go before the Family Court of Australia or the Federal Magistrate's Court. We feel this will occur in a minority of cases. **Solicitors should only be used as a LAST RESORT as should the Court.** Parents can work out the most important issue of their children's future better than a Court of law. In our opinion solicitors tend to aggravate the situation due to the adversarial nature of the law and their work.

A **Family Matters Tribunal** could be established to register all Agreements, register amendments to Agreements and to resolve breaches of Agreements. The Agreements would be filed with the Tribunal by Registered Mediators. Such a Tribunal could be funded by money saved in the Family Court and Child Support Agency.

We quote the following:
Even the Chief Justice agrees that the adversarial system of the Family Court is not suited to Family Matters involving the parenting of children. We refer to the **FAMILY COURT REVIEW, Vol 40. No 3, July 2002** - which reproduces an address which **Chief Justice Nicholson** gave at the 25th conference of the family court in Sydney in July 2001. On page 287 the CJ concurs with the following:
"The original architects of the [Family Law] act recognised that the adversarial system was an inappropriate vehicle for the resolution of family disputes in the vast majority of cases, particularly where the continued parenting of children was an issue."

Accredited mediators should be registered and supported by the Department of Community and Family Affairs or the Attorney General's Department and be empowered to offer guidance for contact arrangements with the children and to provide guidance for agreement

to be reached on child support payments where necessary. This empowerment should include the ability to review agreements at any time. As the user will pay for this service, its use will not be abused. A Family Matters Tribunal should be established to Register Shared Parenting Agreements and to resolve disputes without the need for the parties to engage solicitors. Appeals from Tribunal decisions could then go before the Family Court or Federal Magistrate's Court.

Mediation would commence with the following presumptions:

- Shared Parenting will be agreed to.
- The first priority is for the ongoing contact and parenting of the children by both parents.
- Property settlement will be fair and equitable with consideration to Shared Parenting and the interests of the children.

Shared Parenting implies that the children spent 50% of the time in the care of each parent. This time may take many forms depending upon the circumstances of each parent. Some parents may live overseas or interstate, some may work shift work, and some may travel frequently as part of their employment. **There are many reasons that total flexibility in the Shared Parenting arrangements is needed.**

Should this recommendation be adopted, significant savings to the Government will result as the Child Support Agency could be wound back or its function transferred to Centrelink. We are strongly of the opinion that Shared Parenting will greatly reduce the rate of suicide in conjunction with issues regarding the Child Support Agency and family break up resulting in detachment for the non-resident parent.

Recommendation 2: Shared Parenting and Distance
We recommend that the mediation gives careful consideration to each parent's circumstances when they are negotiating the Shared Parenting arrangements. Should parents live a significant distance away from each other, consideration must be given to more contact with one parent during holidays. It is important that the children's schooling maintains continuity. Parents should be able to arrive at suitable Shared Parenting aiming for 50-50 time over the course of the whole year where possible. This contact arrangement should be agreed to and registered as a Contact Order by Consent, with the Family Matters Tribunal, Federal Magistrate Court or family Court of Australia following mediation. If through distance or work patterns 50-50 Shared parenting is not possible over the course of a year, then the best compromise possible should be sought during mediation with both parties. An adjustment for child support payments should be agreed to at this time.

Some parents will incur significant cost of contact so full allowance must be made in any child support assessment. Child support assessments, where required, must be fair to both parents and allow for up to 50-50 contact with the children for both parents. See Section 2 below.

Recommendation 3: Breaches of Sharing Parenting Agreement
That the Family Court of Australia, the Family Matters Tribunal or the Federal Magistrate Court directs the Sheriff's Dept. or a new body of enforcement to assist in the timely enforcement of Contact Orders. We would expect the number of breaches of these Orders to reduce by a huge amount if the previous recommendations are adopted but it is vital that contact be conducted as agreed

by the parents at all times. Breaches must be acted upon and not have to wait months to go before the Family Court of Australia causing both expense, frustration and stress for the aggrieved parent. At present Contact Orders are often breached with little enforcement action taken due to the lethargy of the bureaucratic process and the reluctance of the judiciary to impose penalties. Community Service Orders and fines may be used as a penalty where Orders are breached to ensure that Contact Orders are enforced to facilitate Shared Parenting. We bear in mind that fines can cause financial hardship for parents resulting in possible suffering for the children. Perhaps the children could spend time with the other parent during the carrying out of Community Service by the defaulting parent should this punishment become necessary. We are of the opinion that because parents will care for the children for something approaching 50% of the time in most cases, breaches of contact will reduce by a very large percentage. As there will be less hostility in the situation there is less likelihood of denied contact by one parent as the contact will be agreed by the parents in a non-adversarial environment during mediation.

Mediation is the key to much of the new way of handling separation and divorce. Many of the current problem issues will vastly reduce if mediation becomes the norm if non-adversarial mediation replaces the current legal battles in courts.

It will be far better for children's well being if their parents continue to arrange time with them and all parenting issues between themselves, with some guidance from counsellors and mediators. Professionals in the family matters area are far more appropriate to assist parents than solicitors who base the profession on conflict.

2. IN WHAT CIRCUMSTANCES A COURT SHOULD ORDER THAT CHILDREN OF SEPARATED PARENTS HAVE CONTACT WITH OTHER PERSONS, INCLUDING THEIR GRANDPARENTS?

Recommendation 4: Visitation to Grandparents and Others
In most circumstances where the grandparents and other close family members (Aunts, Uncles, and extended family members) of each parent live within 100km or a reasonable distance of one or other of the parents, and Shared Parenting is being accommodated, these family members will see the children once in each 30 days where appropriate. Either parent may facilitate these arrangements or they can take turn about if the parents live in the same city.

We consider it very important for the child to keep in touch with grandparents and other close family members as this contact assists the child in feeling secure. Security is most important for developing children. This is recognised by all childhood specialists. During separation children lose a huge amount of their security and feel very vulnerable and lost. **Grandparents have the right to have contact with their grandchildren as do other close family members.** It is vital that each parent agree to regular visitation by the children where appropriate. Children will feel less affected by the separation of Mum & Dad if regular contact continues with grandparents.

3. FACTORS TO CONSIDER IN THE AMOUNT OF CHILD SUPPORT WHICH SHOULD BE PAID BY ONE PARENT TO THE OTHER

Up to the present time, Shared Parenting has been not occurring in Australia to any significant extent, we have seen the non-resident parent paying excessive amounts of child support to the resident parent in many cases. The reason for this is due to the fact that the current child support system creates payers and payees where the payer is left shouldering the major financial responsibility in providing for the child/children. The CSA's formula and methods are not fair to the payer in many cases. The CSA does not offer a personal service and adopts a "one size fits all" policy. The CSA is an inappropriate body to manage the finances of children in a fair and unbiased way. It has demonstrated bias and a total lack of any logic or compassion in so many cases it handles. It has been a major problem for many MP's constituents.

Research shows and CSA's experience proves, that improved relationships with ex-partners and greater contact with the children improves voluntary compliance in the payment of child support. (CSA web site)

"We found that the groups differed significantly in terms of how much financial child support was paid: when sole custody was that arrangement despite the fathers' wishes, 80% was paid (according to what the father reported; the figure was 64% by mothers' report), while when joint custody was awarded despite the mothers' preference, it zoomed to almost perfect compliance (97% by fathers' report; 94% by mothers' report)". (THE BEST PARENT IS BOTH PARENTS Report by Parental Equality, 54 Middle Abbey Street, Dublin 2. Phone: 01-8725222. Web: www.parentalequality.ie)

At present little consideration is given to non-custodial parents within subsequent marriages or de facto relationships. "Second Families" often have children who are not catered for under the current heavy handed CSA formula. **Children in second families often suffer due to inordinate financial burdens placed upon the payer by the CSA.** This is clearly NOT in the best interest of children. Second families are suffering hardship at present due to CSA decisions. Often the non-paying parent is made responsible for the cost of contact. It is often difficult for this parent to enable contact due to a lack of money which is the result of the high level of child support being paid to the resident parent. This causes stress, anger and hurt for the parents and great disappointment for the children. **Should the concept of Shared Parenting be adopted then the amount of money being transferred between parents should reduce thus assisting second families and reducing the anger and frustration associated with trying to enable regular contact on an inadequate budget.**

There are many factors which are wrong in the way child support is currently administered. The Inquiry will read of many different situations and factors all illustrating a flawed system which causes danger to people's lives. Both children and non-resident parents' lives are at risk due to the way the CSA operate.

50-50 shared parenting will reduce the transfer of a large chunk of child support money as parents will be spending their own money directly on the child during the periods the child is in their care.

Recommendation 5: CSA – Responsibility, Accountability and Transparency

The Child Support Agency (CSA) needs to act in an impartial and less biased manner when dealing with payers. Currently CSA staff lack consistency in their responses to clients' questions on how they arrived at certain decisions. CSA's

staff currently lack the ability to effectively explain the ruling or decision especially when change of assessments occurs. CSA's staff fail in their ability to link their decision to the correct and applicable part of the legislation. The CSA need to learn from Centrelink's software system that works on algorithms which are knowledge and rules based. Utilising this system eliminates any personal bias of staff. The following is an extract taken from the CSA's 2003 business plan *"issues raised in feedback from our clients, in particular, our failure to follow through on promises that we make, our inability to give clients viable options and the inconsistent advice we sometimes give."*

The CSA must change the formula it uses to assess the level of child support payments. The formula should be based upon the Taxable Income of both parents and child support should only become an issue if Shared Parenting is not adopted by the parents. If both parents care for the child 50% of the time then both must contribute equally. It is not in the children's interest for the CSA to vigorously chase down the few defaulters and cause hardship to many innocent parents in this same net. The "shotgun approach" currently used causes financial hardship to the wrong parents. Parents under a Departure Assessment are not able to exercise Tax minimisation effectively as the CSA take much of the benefit. Managers on packages are hit harshly be the CSA and ridiculous amounts of money are taken and given to the resident parent. There is NO ACCOUNTABILITY in the way all this money is spent. **A non-resident parent can pay up to $1400 net per month, after tax, to a resident parent. This is equal to almost a gross annual income of $31000 per year! How can one 6 year old child require this much money from a non-resident parent with the resident parent supposedly contributing as well?** Perhaps the resident parents are not contributing at all in many cases to the child's financial needs under the present system. The current system is wrong and needs an urgent fix. Is it any wonder there is anger generated in non-resident parents? They are being ripped off totally by the CSA and the current system.

The ATO could have a role here. Currently payers pay their child support from their net salary (take home pay). This can be quite different from their income package as structured by employers upon which their CSA Assessment is calculated.

Why is there not some tax relief for payers? To pay the CSA $1000 per month one needs to earn $1800 of which about $800 is then paid in income tax and Medicare Levy. The payee receives this money TAX FREE. Why does the non-resident parent have such a huge tax burden to bear on top of other financial pressures? **If we are talking about SHARING, why not offer say a Tax Rebate of 32c in the dollar for payers of child support and levy the payee 32c in the dollar as income tax?** This would be zero cost to the Government but assist child support payers enormously by lowering the tax they have to currently pay on child support.

In the Shared Parenting situation where Taxable Incomes vary greatly between the parents, then an allowance can be made. Such an allowance must take into account the following:

- That a Mediated Financial Agreement be arrived at by the parents. This agreement may be filed with the CSA, CentreLink or Family Court. Defaulters may be dealt with by the CSA, CentreLink and the Court.
- Taxable Income of both parents must be considered.
- The infrastructure costs associated with housing the child as applies to BOTH parents. Eg. Bedroom, personal items, transport, phone calls, clothing, toys etc.

- The financial position of the second family must be considered especially in the light of children within that family.
- The actual cost of raising the child must be taken into account. A maximum recommended amount payable should be set (based upon BSU figures $140 per week per child from any one parent plus special circumstances which must be proven or mediated agreement as decided by the parents.)
- That 50% of support payments in excess of $100 per week received by a parent be accountable and subject to possible desk audit by the CSA or CentreLink.
- A cap is set at $70000 annual Gross Income above which is assessment free.
- Sliding scale reductions to be used in line with the ATO income tax scales where people on higher income pay more tax and therefore have less relative disposable income.
- Consideration is given to tax Rebates for payers of child support.
- DAYS (including hours) of contact (not nights) to be used in calculating contact times for the purposes of calculating child support assessments. This will align with the ATO's FTB calculations.
- Where a parent re-marries, Family Tax Benefit to be paid as a pro-rata share to both parents regardless of a new spouse's income as the FTB is for a child from a previous marriage. This should be means tested.
- Whether the parents have other family responsibilities (new family to support)

If parenting is based upon 50% equal time with the children then the need for one parent to pay the other for child support is greatly diminished. This will reduce the cost of operating the Child Support Agency greatly and possibly to the point where Centrelink can fulfil the function.

Only some adjustments may be needed where there is a disparity in the wealth between the two parties and where the parties agree to some payments for the children's upbringing. If these arrangements can be agreed by MEDIATION then much of the emotion will be removed from the process of living as separate parents and bringing up the children of the marriage. Domestic violence relating to family issues should greatly reduce and both parties should find their dealing with each other far more amiable as most issues should then centre on the care of the children. This is a major issue which is a causal factor in male suicides in Australia.

At present it is a matter of great resentment that the non-resident parent's ongoing wealth is seen to be passed, via the CSA to the resident parent. It is not seen as going to the child. This money is not always spent on the child. This resentment and unfair calculation of child support amounts leads to male suicide, unemployment and sometimes violence. It is the very heart of the problem at present. Shared parenting will greatly reduce this problem.

When many payers feel abused by the system and see a great percentage of their income and/or wealth as going to the payee, they opt to leave the workforce as the only means of relief they can see. Out of frustration and despair after lengthy periods dealing with the CSA, they decide that the workforce is no longer suitable for them and they just give up and join the unemployed. **This is very costly for both the individual and for the Government.** Once a person leaves the workforce it is difficult for them to regain employment.

CSA or Centrelink only need be set up to chase a few defaulting clients. There should be no need for the CSA or any other body to be involved with Payers who have shown a good record in meeting their child support obligations. Over 90% of child support payments should be by Private Arrangement. If parents agree on child support money matters over 90% will pay without problems and many payers will then elect to remain in the workforce as the frustration and despair will not be present. **There is potential here for millions of dollars in saving for the Government.** Refer to Page 8 "The Best Parent is Both Parents".

Recommendation 6: Significant Cost Savings by incorporating CSA into Centrelink

In 1999-2000, the cost of transferring money between parents was 14.3 cents per dollar transferred (compared to 13.9 cents per dollar transferred in 1998-99). In 2002 this cost has increased to $0.15 per dollar transferred. This indicates rising costs within the CSA.

By incorporating CSA activities within Centrelink operations will enable the Government to achieve enormous cost savings and benefits not only to the Government and public but also to the relief of the disgruntle clients of the CSA. While Centrelink has long experience and knowledge in collecting money, the CSA is still struggling to collect from 66000 of its defaulting clients with a budget allowance of $27.3 million plus a further $31 million dollars of tax payer money being spent to recover $97 million.

Centrelink currently have 200 offices in NSW alone whereas CSA have only 6 agency offices. In NSW alone Centrelink have 2700 staff manning the 200 offices whereas the CSA have approximately 500 staff in the 6 agencies.
Centrelink has its own call centre with dedicated call centre staff. CSA has an elaborate phone system with the CSA staff rostered on to take calls and then continue on with their normal duties. It also has been noted that Centrelink have set up call centre in high unemployment regional areas and training people in the call centres with high success rate.

The additional workload for Centrelink would only be a small percentage of that currently undertaken by the CSA as the issue of child support payments will diminish.

Recommendation 7: Reduce the use of AVOs

The use of AVOs (DVOs in some states) needs be scrutinised more closely. As these are often used as a weapon by mothers to prevent or reduce contact with fathers, AVOs need to be considered carefully with sound evidence presented before the court before an AVO is issued. Should Shared Parenting become a reality, it is envisaged that AVOs could initially increase as it will be used as a tool to avoid responsibilities of Shared Parenting by mothers. Government should look into increasing penalties for false allegations.

Sue Price says she mentions domestic violence early in the piece because, although it is a state legislative issue, it is the tool that is often used to dictate the carriage of a family law matter. An easily gained domestic violence order against a father gives an undoubted advantage by removing him from the home, thereby establishing sole parenting, which usually results in a financially beneficial settlement of the family assets.

There is serious speculation from the legal profession that only 5 to 10 percent of applications are genuine.

We feel the figure is a little greater than this.
(Dads on The Air 24 Feb 2003)

We would anticipate a sharp decline in Domestic Violence incidents and AVO applications if the principle of Shared Parenting is adopted. If both parents are able to mediate an agreement covering the care and well being of the children including any child support payments, then logically as both have signed this agreement neither party should feel aggrieved. Parents with their focus on their children are far more desirable than parents set up in battle by solicitors and the Child Support Agency.

"Also, there were significant benefits for the Mothers and Fathers who were involved in a joint custody arrangement and that **diminished hostilities between the parents was another fringe benefit.**"
Susan Steinman, Director of the Joint Custody Project and Director of the Centre for the Family in Transition for the Jewish Family and Children's Services, *Joint Custody: What We Know, What We Have Yet To Learn, and the Judicial and Legislative Implications*, University of California. Rev. 739, 747 (1983).

No doubt a number of mothers will use the allegations of "violence" in an attempt to prevent a move toward Shared Parenting. The definition used for this "violence" is very broad. A person only has to express that they "fear" the other person and an AVO can be issued. As this is most likely the primary reason mothers will use for refusing shared parenting, we assume many will use this as an excuse. Somehow the Courts and the Police will need to be more certain of, and require solid evidence of such "violence" before issuing AVOs or DVOs. **This matter will require assistance from the Federal Government as AVOs are issued under State jurisdiction.**

The Arguments Against Shared Parenting:
The most mean spirited opposition to joint residence is that it should be rejected because of the risk of family violence. The opponents argue from a presumption of pathology, and urge a rule that assumes the worst behaviour of the most extreme individual is the norm. Policy cannot be made by anecdote, and the law should not be based on the presumption of pathology. The law should serve the vast majority of the fit and loving parents who simply want to be with their children.

Replicated research does not support the positive parenting propaganda. Specifically, the evidence establishes that children in joint physical custody situations are more successfully adjusted overall, those parents with joint custody are less litigious than parents in sole custody, that parents with joint custody are more likely to comply with financial child support obligation, that joint custody benefits both parents and both sets of grandparents and that parents in joint custody are more satisfied with the custodial arrangements, even if they initially disagreed with the custodial decision.

The gender feminist argument on child abuse.
Let us unravel the gender feminist distortions.

Increased risk of child abuse in single parent households (typically mothers).

Some evidence has suggested that children in sole residence arrangements may suffer an increased risk for child abuse (Ditson & Shay 1984). This potential may

be understood as an increased risk resulting from three factors. First, numerous authors have expressed concern about the injury to children when a parent with psychological problems is given total responsibility for the children (Wallerstein & Kelly 1980; Williams 1987; Kelly 1988a). Even in the best of circumstances, judicial decisions in favour of sole residence will result in awarding residence to a small number of parents who have serious psychological problems. Given the total authority which parents in sole residence situations have, the potential for child abuse, in that context, is almost unchecked.

A second potential for abuse is contact denial, the evidence reviewed previously (Fulton 1979; Wallerstein & Kelly, 1980; Lovorn 1991; Gibson 1992; McMurray & Blackmore 1992) indicated that contact denial was a pervasive problem, and because parental loss injures the child in terms of post-divorce adjustment, contact denial may be viewed as one form of emotional abuse in a large percentage of sole residence households. Available evidence suggests that both sole residence mothers and sole residence fathers are guilty of that form of child abuse (Lovorn 1991; McMurray 1992).

Finally perhaps the most striking information suggesting that sole residence arrangements victimise children are several reports which indicate an increased risk for all forms of child abuse for sole maternal residence (Ditson & Shay 1984; Webb 1991). Ditson & Shay (1984) presented data which indicates that 63% of all confirmed child abuse in one American city during one year took place in the homes of single parents and that the mother was the perpetrator of the abuse in 77% of those cases.

Other U.S. data from various state departments of human resources suggest that, in most cases of child abuse and neglect, the mother is the perpetrator (Webb 1991; Wright 1992), and this is consistent with research reports by various advocacy groups for non-resident parents and children (Anderson 1990; Burmeister 1990). A study of all state child protective services agencies by the Children's Rights Coalition (a child advocacy and research organization in Austin Texas), found that biological mothers physically abuse their children at twice the rate of biological fathers. The majority of the rest of the time, children were abused because of the single-mothers' poor choices in the subsequent men in their lives. Incidences of abuse were almost non-existent in single-father-headed households (Anderson 1990).

These data could result from the increased stress associated with single parent responsibilities, since the Ditson & Shay (1984) data also indicated that, in married families, the abuse was evenly split between male and female perpetrators (i.e., the mother and the father). Also these data based conclusions may result from the fact that following divorce more children live with mothers than with fathers. Further, no information is currently available on such increased risk among sole paternal residence children. Finally, some studies indicate directly conflicting results (Rosenthall 1988). However given the potential risk of child abuse, which may be associated with sole residence, these reports must be investigated.

National data collected by the Australian Institute of Health and Welfare (AIHW) show much the same pattern. Child abuse and neglect statistics collated by Angus & Hall (1996) of the AIHW shows an over-representation of single-parent households. For the three states (Vic, Qld, & WA) and two territories (ACT & NT) for which data were provided, more cases involved children from female single-parent households (39%) than families with two natural parents (30%) or other two parent households such as step parent households (21%). The over-representation becomes even more apparent when the abuse statistics are

compared with Australian Bureau of Statistics (1995) data on the relative frequency of different family types in Australia.

Both Angus & Hall (1996) and Broadbent & Bentley (1997) acknowledge the over-representation, but fail to comment on its large size. Angus & Hall (1996) say:

"In all, 34% of substantiated cases of physical abuse occurred in families with two natural parents and 32% in female single-parent families. More substantiated emotional and sexual abuse and neglect cases involved children from female single-parent families than from other types of family 38% of substantiated cases of emotional abuse, 34% of sexual abuse and 47% of neglect cases. In comparison, 31% of substantiated cases of emotional abuse, 30% of substantiated cases of sexual abuse and 26% of neglect involved children from families with two natural parents."

The data strangely missing from the above statement is the relative incidence in the community of single-parent households compared with two natural parent families. When this factor is taken into account, the difference in child abuse rates becomes more starkly apparent. Since 81% of Australian children 0-14 years live with both their natural parents (Australian Bureau of Statistics 1995) and 30% of child sexual abuse occurs in this type of family, while 13% of children live in female single parent households (Australian Bureau of Statistics 1995) and 34% of child sexual abuse occurs in this type of household it follows that the relative risk of child sexual abuse in a female single parent household is over seven times the risk in a two natural parent family (34/13 x 81/30). The relative risk of any kind of abuse in a single parent household is eight times that of a two natural parent family."

The situation is becoming more serious. The Australian Bureau of Statistics reports that **between 1982 and1992, the number of families headed by a lone parent grew by more than 180,000, reaching an estimated 619,000, an increase of 42% in just ten years (ABS 1995)**. The data provided by Angus & Hall (1996) and the Australian Bureau of Statistics (1995) shows the dramatic relative risk of child abuse and neglect in single-parent families, and even more in stepfamilies. The proportion of two natural parent families in the community has decreased since 1992 (ABS 1995), with a corresponding increase in the proportion of single parent and blended families but the relative risk of child abuse in the non-traditional family types remains much higher than for two natural parent families.

Child abuse is intimately related to later delinquency and violent crime, and here too divorce is implicated (Fagan 1997). Higher levels of divorce mean higher levels of child abuse. Remarriage does not reduce this level of child abuse and may even add to it. Serious abuse is much higher among stepchildren compared with children of intact families. Adults who were sexually abused as children are more likely to have been raised in stepfamilies (Fergusson, Lynskey, & Horwood 1996). The rate of sexual abuse of girls by stepfathers ranges from six to seven times as likely (Russell 1984), and may be as much as 40 times more when compared with such abuse by biological fathers in intact families (Wilson & Daly 1987).

Australian Human Rights Commissioner Brian Burdekan (1989) has reported that sexual abuse of girls is very much higher in households where the adult male is not the natural father. National statistics indicate that the relative risk of child sex abuse in a family where only one of the parent figures is a natural parent is much higher than in a single-parent family and enormously higher around 17 times

than in a two natural parent family. In a stepfamily, the abuser may be an older stepsibling not necessarily the stepparent.

Family structure predicts huge differences in rates of fatal child abuse. Professors Margo Wilson and Martin Daly (1987) of the Department of Psychology at McMasters University, Canada, report that children two years and younger are seventy to a hundred times more likely to be killed at the hands of stepparents than at the hands of biological parents. Younger children are more vulnerable because they are so much weaker physically. British data is milder but the research is not as rigorous as the Canadian research. There the fatal abuse of children of all ages occurs three times more frequently in stepfamilies than in intact married families. Neglect of children, which frequently is more psychologically damaging than physical abuse (Emery 1989), also is higher twice as high among separated and divorced parents.

Stepparents always have had a difficult time establishing close bonds with new stepchildren as even traditional fairy tales recount. Sole residence is the judicial preferment of stepparents. Difficulties between children and stepparents are not confined to Grimm's fairy tales. The fairytale theme is confirmed in the research literature: The rate of bonding between stepparents and stepchildren is rather low. By one study only 53 percent of stepfathers and 25 percent of stepmothers may have parental feelings toward their stepchildren, and still fewer to love them. A Melbourne study (Hodges 1982) indicated considerable difficulties were experienced by adolescents on the re-marriage of the resident parent (usually the mother). The majority appeared uncomfortable. There is a vast biological literature regarding parental solicitude, which shows that it is discriminative. Parents favour their own children. Bi-parental care is universal in our species and is a fundamental attribute! (Daily & Wilson 1980).

With these recorded results, it is somewhat surprising that the factor of sole maternal residence is not considered in much of the literature on child abuse. Numerous factors are considered as correlates of child abuse including age and sex of the child, race, family income, number of siblings and social status. While a number of Australian studies have considered the effects of the family structure on child victimisation, most merely refer to structure as part of the family demographic information, noting the over-representation in their sample (e.g. Goodard & Hiller 1992). However, results are not reported which would indicate whether mothers were more prone to child abuse than fathers, or if sole maternal residence as compared to joint residence, sole paternal residence, or intact family status contributed to an increased risk for child abuse. These are simple questions. Yet these fundamental questions are not being addressed.

In this context, the decision taken in 1997 by the Australian Institute of Health and Welfare (Broadbent & Bentley 1997) to no longer publish data indicating the sex of perpetrators in substantiated child abuse cases must be reversed. The action was taken just one year after the data was first published in 1996 (968 men and 1138 women). The omission was justified on the wobbly basis that only one state (WA) and two territories (ACT & NT) had furnished statistics and a lack of publishing space. Interested parties were advised that they could obtain the data under a Freedom of Information request at a cost of $200.

Curiously, these reasons did not preclude the publication of these data in 1996. In fact, Angus & Hall (1996) observed that the information base provide an extra dimension to data previously presented. Quite obviously, the non-publication of these important data can negatively impact on child abuse policy and the allocation of resources. If the AIHW decision does indeed represent bias reporting then such slanted views clearly have no place in scientific endeavours.

We must be wary of assuming that all sole parent households, step-parent households and cohabiting couples are inevitably risky for children, or that married parents are an absolute guarantee of safety and happiness, for this is clearly not so. But what does seem to be the case is that on average, the risk to children increases as we move away from an environment in which the biological parents of the child are married. Many single parents do a good job in difficult circumstances and many stepparent households function well. However, we should not be surprised when statistics prove that two natural parents generally cope better than a sole-parent, or that step-parent households often experience resentment, jealousy and other tensions, or that unrelated boyfriends of the mother do not have the commitment to the mother's children that a natural father is likely to have. This is common sense.

These data showing the dramatic relative risk of child abuse and neglect in single-parent households and even more in step families should alarm governments and the community particularly as researchers point out that there has been an increase in child abuse notifications of more than 80% in six years, with substantiated cases increasing by 56%. While some of the increase may stem from changes in the law and increased reporting, it is also likely to be due to other factors, since the Western world has seen more sociological change in the past decade than perhaps any other in human history. Given the potential risk of child abuse, which may be associated with sole residence, these reports must be investigated. According to the Australian Institute of Family Studies (Tomison 1996):

"...there has been a failure to date to extensively investigate the role of parental characteristics and family structure. There is a need for further investigation, in Australia and overseas, into the impact of family structure on child maltreatment in reconstituted or single parent families. Such an investigation should incorporate an assessment of the positive aspects of such families in constitution with the more negative consequences."

There seem to be two fruitful areas of research. First, when parenting responsibilities are totally loaded totally on one parent, that residence decision may lead to increased parental stress, and research has associated increased maternal stress with increased violence against children (Whimple 1989). More research that delineates this potential link between sole residence, stress, and a higher risk for abuse should certainly be conducted. Further, the research should be based on multivariate procedures, which allows for partialling out the independent effects of inter-parental conflict, economic stress and sex of the resident parent. If this evidence continues to mount, these data could become an important concern in future residence determinations.

The gender feminist distortions on family violence

Who is abusing who?

Whereas conventional wisdom holds males guilty of most physical family violence, a U.S. study of 140 divorcing couples from different socio-economic backgrounds, reported that three quarters of the survey population were physically aggressive, with women perpetrating as much physical and verbal abuse as men (Johnston 1992). The study carried out in California by an Australian expert Dr. Janet Johnston, discovered the highest aggression rates were among couples entrenched in litigation, and children were the ones who suffered.

The lack of discrepancy between women and men was supported by other national studies in the U.S. Of violence in marriage (Straus, Gelles & Steinmetz 1985; Marriage & Divorce Today 1986; Straus 1993). Several other studies have suggested that women may be more violent (Malone Tyree & O'Leary 1989, Stets & Straus 1989; O'Leary et al 1989). For example, in the Stets & Straus (1989) study of family violence against adults, the most frequent pattern of abuse was mutual abuse, in which both the male and female engaged in violence against each other. However, in situations, which were not mutually violent, females were more violent towards males than males were towards females. These results, while running contrary to the current popular view which holds males guilty of most family violence are consistent with local research which indicates that women are as guilty as men of violence in the home (Sherrard et al 1994; Stuart 1996; Headey, Scott, & de Vaus 1999).

END OF SUBMISSION