FAMILY LAW REFORM AND ASSISTANCE ASSOCIATION INC.

8 August 2002

House of Representatives Standing Committee on Family and Community Affairs
Submission No: 894
Date Received: 8-8-03
Secretary:

The Committee Secretary,
Standing Committee on Family and Community Affiars,
Child Custody Arrangements Inquiry,
Department of the House of Representatives,
Parliament House,
Canberra...A.C.T...2600.

Dear Sir/Madam,

Please find enclosed a submission to your Inquiry from The Family Law Reform & Assistance Assn. Inc.

The writer, as an elected representative of the Association, will be pleased to appear before your Inquiry at any future date to elaborate on our submission or recommendations.

A hard copy of this submission will be mailed via the postal service to your Inquiry today.

Yours sincerely,

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Psychologist,
Honorary Secretary.

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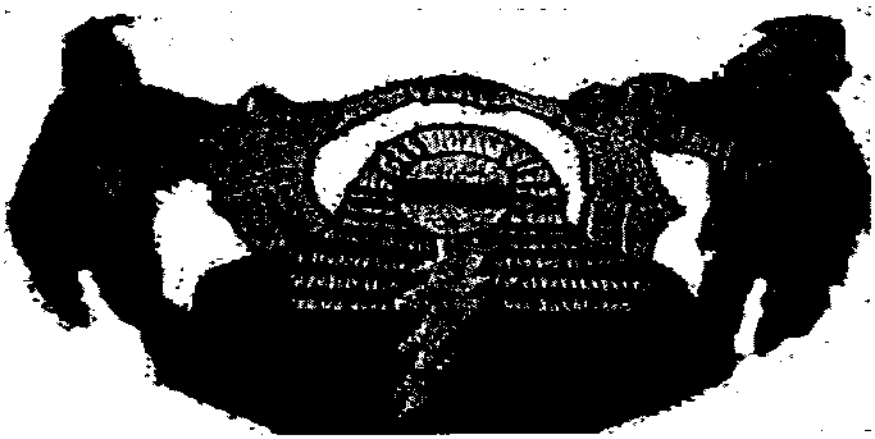
SUBMISSION TO

THE STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS

CHILD CUSTODY ARRANGEMENTS INQUIRY

DEPARTMENT OF THE HOUSE OF REPRESENTATIVES



BY THE
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INQUIRY INTO CHILD CUSTODY ARRANGEMENTS IN THE EVENT OF FAMILY SEPARATION

Introduction:

This Association would argue that the best interest's of the child have only received lip service since the introduction of the *Family Law Act 1975.* Our association notes that the ***rebuttal presumption of shared parenting*** was the intention of the Federal Parliament and the architect of the *Family Law Act 1975,* Senator Lionel Murphy, but that this rebuttal presumption has been consistently ignored by the judiciary in favour of a *"tender years"* ideology for the past twenty seven (27) years.

By following the *"tender years"* ideology, the following figures are brought to the committee's attention (even though these figures are from America, they can be extrapolated to the Australian experience):

(Fatherlessness is responsible for):

63% of youth suicides. (Source: US Dept. of Health & Human Services, Bureau of the Census).

71% of pregnant teenagers. (Source: US Dept. of Health & Human Services)

90% of all homeless and runaway children.

70% of juveniles in state-operated institutions come from fatherless homes (DOJ, Special Report)

85% of all children that exhibit behavioural disorders. (Source: Center for Disease Control).

80% of rapists motivated with displaced anger. (Source: Criminal Justice & Behavior, Vol. 14, p. 403-26).

71% of all high school dropouts. (Source: National Principals Association Report on "the State of High Schools).

75% of all adolescent patients in chemical abuse centers. (Source: Rainbows for all God's Children).

85% of all youths sitting in prisons. (Source: Fulton Co. Georgia jail populations, Texas Dept. of Corrections.

The State of Fatherhood

37.9% of fathers have no access/visitation rights. (Source: p.6, col.II, para. 6, lines 4 & 5, Census Bureau P-60, #173, Sept 1991.)

"40% of mothers reported that they had interfered with the non-custodial father's visitation on at least one occasion, to punish the ex-spouse." (Source: p. 449, col. II, lines 3-6, (citing Fulton)

Frequency of visitation by Divorced Fathers; Differences in Reports by Fathers and Mothers. Sanford Braver et al, Am. J. of Orthopsychiatry, 1991.)

"Overall, approximately 50% of mothers "see no value in the father's continued contact with his children...." (Source: Surviving the Breakup, Joan Kelly & Judith Wallerstein, p. 125)

Only 11% of mothers value their husband's input when it comes to handling problems with their kids. Teachers & doctors rated 45%, and close friends & relatives rated 16%. (Source: EDK Associates survey of 500 women for Redbook Magazine. Redbook, November 1994, p. 36)

"The former spouse (mother) was the greatest obstacle to having more frequent contact with the children." (Source: Increasing our understanding of fathers who have infrequent contact with their children, James Dudley,Family Relations, Vol. 4, p. 281, July 1991.)

"A clear majority (70%) of fathers felt that they had too little time with their children." (Source: Visitation and the Noncustodial Father, Mary Ann Kock & Carol Lowery, Journal of Divorce, Vol. 8, No. 2, p. 54)

"Very few of the children were satisfied with the amount of contact with their fathers, after divorce." (Source: Visitation and the Noncustodial Father, Koch & Lowery, Journal of Divorce and Remarriage, Vol. 8, No. 2, p.50)

"Feelings of anger towards their former spouses hindered effective involvement on the part of fathers; angry mothers would sometimes sabotage father's efforts to visit their children." (Source: Ahrons and Miller, Am.Journal of Orthopsychiatry, Vol. 63. p. 442, July `93.)

"Mothers may prevent visits to retaliate against fathers for problems in their marital or post-marital relationship." (Source: Seltzer, Shaeffer & Charing, Journal of Marriage & the Family, Vol. 51, p. 1015, November 1989.)

In a study: "Visitational Interference - A National Study" by Ms. J Annette Vanini, M.S.W. and Edward Nichols, M.S.W., it was found that 77% of non-custodial fathers are NOT able to "visit" their children, as ordered by the court, as a result of "visitation interference" perpetuated by the custodial parent. In other words, non-compliance with court ordered visitation is three times the problem of non-compliance with court ordered child support and impacts the children of divorce even more. Originally published Sept. 1992

The "tender years" ideology has grown out of the "mother as nurturer" paradigm of previous years, and is firmly rooted in parental roles of the period spanning the 1950's. 1960's, and 1970's, where the majority of mothers performed the role of "keeper of the hearth" and fathers were absent as the breadwinner, fulfilling their role of providing for the family. Roles were very clearly defined in that era. Fathers had minimal input into the lives of their infant children, hence the ideology that only the mother could be the nurturer, and this ideology has been perpetuated by an outmoded Family Law system which has embraced this ideology. Recent research (Kelly, 2000, as reported by Roop, 2000), has shown that children form attachments in their first three years of life, and they form these attachments not just to their mother. Assuming that both parents are involved with their children from birth, children begin to form attachments to their mother and father at about the same time. Infants can tell their mothers from other mothers in three days, and their father from other fathers within five days of birth. Research has shown that the ability to form good

attachments is important to a child's later success in life. Securely attached children are more independent, more co-operative and empathetic, and more socially competent. They are more inquisitive, have higher self-esteem and solve problems better. "Separation anxiety" is a phenomenon of age, and it is at it's most intense between 15 and 24 months of age.

The "mother as nurturer" paradigm is further reinforced after relationship breakdown by false accusations of child abuse, such that the Family Court errs on the side of caution once an allegation of abuse has been raised (but not investigated) and the "father as protector" suddenly becomes the "father as molester", further distancing fathers from input into the lives of their children. This is despite the fact that both mothers and fathers have abused and killed their children, and that the greatest perpetrators of child abuse are non-biological adults who live in a relationship with a biological parent, in most cases, mothers.

There is a paucity of empirical evidence regarding how fathers actually view their role – what is important to them? The "father as breadwinner role" is reinforced by society even after relationship breakdown because of the punitive child support formula and regime. As a society we tell fathers that they are to be reduced to a peripheral role as a nurturer of their children, if they are lucky they will see their children for an average of 109 nights per year, but that we still expect them to provide the bulk of the money to support these children, but not to have a say in how that money is spent, or even if it is spent on the children. Smith (2003) has conducted research into what is actually important to disenfranchised and displaced fathers. This research has demonstrated that fathers view their children as important to their own life and well-being, they view the loss of daily input into their children's lives as devastating, they value their role as a father and the guidance that provides to their children as important, they value the role of the family unit, and that they actually enjoy their role as a father. Reducing their role to being peripheral leaves them suffering from Involuntary Child Absence Syndrome.

Drawing these threads together, we, collectively, as a society, are guilty of impoverishing and in some cases ruining the lives of two generations of children whose parents have experienced relationship breakdown, and for this we should hang our collective heads in shame. We are equally as guilty of forcing an astonishing number of fathers into taking the ultimate solution, suicide, because of their pain caused by estrangement from their children.

This Association implores this Honourable Committee to recommend, and ensure, that ***the rebuttal presumption of joint parenting*** is enshrined in legislation so that future generations do not have to suffer the misery and ruined lives that previous generations have.

(i) What other factors should be taken into account in deciding the respective time each parent should spend with their children post separation, in particular whether there should be a presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption could be rebutted;

As stated in our introduction, this Association is of the belief that a rebuttal presumption of shared parenting must be enshrined in legislation. By this we mean not just a legal wording of shared parenting, but actual physical shared parenting. In intact families, each parent fulfils different roles for their children, and each parent undertakes different duties with regards to raising their children. With this in mind, post separation, each parent should be able to continue in their pre-separation roles and duties towards their children, therefore a "one model fits all" solution will not work.

Our model would see both parents, within one week of separating, attend a family mediation centre. There, under the expert guidance of a neutral party, each parent would outline the roles and duties they performed in the intact family, and discuss how they envisage their future roles and aspirations with regard to their children and the actual physical input they will have in their children's lives. Using expert mediation, a realistic division of time spent with the children could then be decided upon by both parents, bearing in mind that each family is unique. This parental division of time is then registered with the Family Court/Federal Magistrates Service, and becomes the court order. Where older children are concerned, those over the age of 10 years, they should be encouraged and welcomed into these discussions, as they may have their own views on how they wish to spend their time with their parents. These orders should be reviewed every twelve months, as children's needs change as they grow older.

Given the research referred to in the introduction, parents should also be banned from "moving away" in the first five years of a child's life, so that strong attachment bonds to both parents can be formed.

This Association also recognises that many fathers, especially of very young infants, may not be able to have their children overnight, and we recommend that instead of "nights in care" being used to calculate family tax benefits or child support, the concept of "actual hours in care" should be adopted, to allow for flexibility in family arrangements.

Rebuttal:

This Association recognises that there a small minority of parents, both mothers and fathers, who should not, under any circumstance, have any further involvement in the lives of their children. These parents will be able to be identified through actual criminal investigation by the police force in each State of Australia, prior criminal convictions and/or mental health records. Raising an allegation of abuse should not be considered sufficient proof nor should there be an erring on the side of caution, unless this is recommended by the investigating authority. By knowing that any allegation of abuse will be thoroughly investigated, it is hoped that this will reduce the frivolous raising of abuse allegations to gain a leverage in any contested court hearing. Where an allegation of abuse has been raised and has been found to be frivolous and vexatious, the person who raised the allegation should be tried in a criminal court for perjury.

This Association also recognises that there are a further small minority of parents, both mothers and fathers, who will require supervised contact for a period of time.

This Association has been providing supervised contact since 1989 (we began the first service in Australia, and still continue to do so, even though unfunded). During this time, we have found that the majority of parents requiring supervision are mothers who have a substance abuse problem. We have found that regular supervision has allowed these mothers to form attachment bonds with their children, and, provided that they no longer abuse substances, they have graduated to regular unsupervised contact with their children. We have also witnessed a worrying trend of fathers who have supervised contact, for no other reason than the whim of the mother. This is beyond our comprehension, as pre-separation these fathers were actively involved in the rearing of their children, but suddenly, post separation, the mother deems them incapable of looking after their children. We believe that this "supervision under whim" should be actively discouraged through legislation.

(ii) In what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents:

Grandparents provide their grandchildren with a living link to the child's history, but this Association has witnessed, over the past eighteen (18) years, many instances of court orders being handed down that actively deny grandparents (both paternal and maternal, but mainly paternal) contact because one parent does not like the grandparents, or holds a grudge against the grandparents.

Unless there are outstanding reasons why contact should be denied, once again proven by criminal and/or mental health records, or police investigation which recommends no contact, grandparents and other significant family members should be allowed regular contact with their grandchildren.

(b) Whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children.

Patently, NO.

Our Association draws to your attention the following (comments italicised and in brackets):

Ref: Department of Social Security,
Child Support: Formula for Australia
A Report from the Child Support Consultative Group
May 1988
AGPS: Canberra

P70 11.6 Taking into account the range of relevant research the evidence pointed to an average percentage of family income devoted to a first child of about twenty percent. Whiteford states that when only Australian data is used a lower figure of about sixteen percent is arrived at.
(You will note here that the twenty percent referred to is for an intact family, and the figure of eighteen percent now used for assessing child support is an arbitrary figure grasped by averaging).

P71 11.20 As previously mentioned, a number of current studies into the cost of children will add significantly to the limited data currently available on the cost of children in Australia. Both the Australian Institute of Family Studies and the Social Welfare Research Centre at the University of New South Wales are conducting relevant studies based largely on data from the 1984 ABS Household Expenditure Survey. Together with the Australian Bureau of Statistics these two bodies have set up a Cost of Children Study Group in order to co-ordinate and compare the information obtained and to maximise the usefulness of the results.

11.21 The results of these studies should be available to the Government during 1988. The Consultative Group has been given access to the preliminary results of the study being carried out by the Social Welfare Research Centre. The preliminary results have not changed the general conclusions, based on the range of existing research, outlined above.

(In April 1998 the Budget Standards Unit prepared by the Social Welfare Research Centre was published and handed to the then Department of Social Security. In this massive tome [633 pages] the actual costs of raising children fall far below this arbitrary figure of 18% but no government has had the gumption to act on this research and re-examine the faulty basis of the Child Support Formula).

Clearly, the Child Support Formula was not set in concrete in 1988, but it has been administered as being a true reflection on the costs of raising children in Australia from that date. Also, the above reference also shows that the formula was derived from an intact family's purported costs, not that of two separated parents. If we use the current formula, then each parent should be contributing 9% of the cost of raising their first child (and a halving of the formula percentages for each extra child), not as it is now, with the non-custodial parent contributing the full amount of 18% (for one child). This is grossly unfair, as one parent is carrying the full burden, whilst the other parent is theoretically contributing none of their income to the cost of raising the child, plus they are also double dipping into the welfare budget by being given a social security payment to raise their children.

This Association recommends that the Child Support Formula percentages be immediately halved to reflect the proper contribution of each parent to the cost of raising their children. We also recommend that the "nights in care" principal be scrapped to one of "actual hours in care", given that some non-custodial parents cannot have their children overnight.

Following on from this, and using one child only as an example, we recommend the following percentages be adopted:

No hours in care	9% of gross income be paid as child support
460 hours in care	8% of gross income be paid as child support
920 hours in care	7% of gross income be paid as child support
1380 hours in care	6% of gross income be paid as child support
1840 hours in care	5% of gross income be paid as child support
2300 hours in care	4% of gross income be paid as child support
2760 hours in care	3% of gross income be paid as child support
3220 hours in care	2% of gross income be paid as child support

3680 hours in care 1% of gross income be paid as child support.

If a parent has deliberately moved away to a distance of more than 50 kilometres from the area in which the former marital home was located, the full cost of each travelling cost of the contact visit is to be deducted from the child support due to be paid in the week following the conclusion of the contact visit.

REFERENCES

Fatherhood Statistics: http://www.naplesfl.net/~bestself/father.htm

Roop, L. 30 January 2000. *The Huntsville Times (U.S.A.)*

Smith, S.D. 2003. Unpresented, Unexamined, & Unpublished Masters Thesis. Central Queensland University.