

Submission to Inquiry into child custody arrangements in the event of family separation.

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To Committee Secretary  
Standing Committee on Family and Community Affairs  
Child Custody Arrangements  
Department of House of Representatives  
Parliament House  
Canberra ACT 2600

House of Representatives Standing Committee on Family and Community Affairs
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Copy to Hon. Ken Ticehurst MP  
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Submitted by  DAVID LINCOLN 6/8/03

In this submission, I am basing my statements on: -

1. The behaviour of children/parents in a home where the parents live together.
2. Recent studies from the US in respect of separated parents.
3. How best to simulate a home when the parents have separated.
4. Personal experience.
5. News reports

### **The behaviour of children/parents in a home where the parents live together.**

In this type of home (unbroken home), the father would typically go to work each day and be home on weekends. The children would see their father in the morning on his way to work, in the evening when the father arrives home from work, and on weekends. On weekdays the mother would typically give the children breakfast, get them ready for school, and receive them when they get home from school. She may also go out during the day and/or work. On weekends the children would tend to spend more time with the father than they did on weekdays.

### **Recent studies from the US in respect of separated parents.**

Recent studies from the US (initially amongst the black community and then later amongst the white community, which showed the same outcomes) have highlighted several problems which occur in children whose parents are not living together. They include: -

- Less likely to achieve academically and as individuals in society.
- Less likely to marry.
- More likely to separate from their partners.
- More likely to become criminals.
- More likely to be brought up in poverty
- More likely to suffer abuse

### **How best to simulate a home when the parents have separated**

It's not an ideal situation for children when their parents separate (broken home); children rely heavily on both their parents for their needs until they are able to support themselves. Adults (one hopes that parents are adults) are more able to care for their own needs and support themselves.

When the parents have separated, my attitude is that the children should have the same, or as closely the same as is possible, access to their parents as they would have if the parents were still together. This means that children should have equal access to both parents and the current 'formula' of giving the children one day in seven with the father (every second weekend) is totally inadequate.

Children should have alternate weeks, or fortnights, with each parent and they should be cared for by the mother when the father is at work just as they would be in the unbroken home. E.g. When the children are with the father, he delivers them to school in the morning, or to the mother if he leaves prior to school commencing. The children return to the mother after school if the father is still at work, probably the case, and the father picks them up from the mother on his way home from work. This will provide a reasonable approximation of the unbroken home, except that the children will not see their father at all during the period when they are with the mother and probably should spend some evenings with the father during this period.

To achieve this situation would require good co-operation between the parents and for the parents to live reasonably close to each other to enable the children to attend their schools. Both parents are responsible for all aspects of bringing up their children, and those responsibilities do not disappear with separation. Parents should be encouraged by means of compulsory counseling, if necessary, to co-operate as much as possible in the upbringing of their children, court action should be discouraged as much as possible and only considered as a last resort. Good co-operation between the parents is not an unreasonable expectation, they did co-operate to some extent when they lived together, and could be reasonably expected to continue doing so for the sake of their children who depend on them.

When the parents have decided to separate geographically, then it would tend to be impractical for the children to spend alternate weeks or fortnights with each parent because of the traveling involved and probable interruption their schooling. In this case, another solution needs to be found which satisfies the children's needs for schooling and access to their parents. This may include relocating the parents

to the same vicinity, or an agreement between the children and parents as to whom they will reside with and when they will have contact with the other, notwithstanding that one parent should not be excluded from contact against their will. It should also be considered that one parent may attempt to influence or coerce the children into not having contact with the other. Such behaviour should not be accepted.

All children need two parents for various reasons and while there may be many studies, by so called experts, into the child's best interests, they cannot and do not always take into account all of the factors which affect the children. Some of the studies are made by individuals or organisations which take a particular point of view, often subtly extreme, and the study only takes into account factors which support that point of view.

Contact with grandparents should be arranged by the custodial parent at the time, provided that the custodial parent is available. In cases where the children are being denied access to either their maternal or paternal grandparents because one or other of the parents is not allowing it, or not available to allow it, then court action should be considered. E.g. The mother has left the children with the father and has relocated without providing the father or her parents with her current address (or become deceased). A court ruling would be appropriate in this case. However court rulings for custody by grandparents which would disadvantage a parent should only be considered in special circumstances such as when the children are in physical, moral, or spiritual danger.

## Conclusion

I want to conclude by saying that I think that family law in Australia is totally inadequate and needs to be revised in its entirety.


The current system fails to provide any form of protection to either of the partners if one partner decides to leave the marriage. Marriage should be considered as a legal contract, just like any other form of contract. Each partner should be given access to litigation procedures, in the Local, District, Supreme, and/or Federal Courts if that contract is breached. No government or corporation would enter into a contract if there was no means of enforcing it, especially if the default rate was as high as the marriage failure rate. Yet marriage is a contract of longer duration and much more importance than any government or corporate contract.

Under current Family Law neither partner has any sure way to protect their marriage or the property that they brought into or acquired during the marriage. Most people enter a marriage with the intention that it will be permanent, people who don't want permanent relationships are free to live together in a de-facto relationship. The current Family Laws provide no protection whatsoever for a situation where one partner enters a marriage with the intention of it being permanent, and discovers that the other partner had no such intention or has changed their mind.

Marriage is the primary institution for procreation and bringing up children, and should be regarded far more importantly than it is today, especially by the Government (which is supposed to be running the country and setting standards). The results of a marriage breakup are serious and far reaching; it breaks lives, disadvantages children, and costs the country money. The effect on people's lives is similar to the effects of war, yet this country seems to have no serious concern whatsoever. In the US study, referred to above, the authorities have recognized the costs of broken marriages, and have taken steps to encourage people to get back together with positive results. This is a much better solution than the current Australian attitudes which seems to be 'it doesn't matter' and 'we don't care anyway' - it does matter to the children.

The domestic violence laws are a sham and a Royal Commission is needed to clean them up. When a marriage breaks up the domestic violence laws are commonly used to deny a man access to his home, children, and possessions. In the state of NSW if a woman says that a man is violent, no proof is required nor is any evidence needed. The police or courts automatically issue an AVO against the man on request, and he is prevented from returning to his home. Even if the man fights the matter in court and is found not guilty, the AVO is still issued (isn't there a principle that says 'innocent until proven guilty' - in NSW it's 'guilty even if proven innocent'). Most solicitors advise their male clients not to fight an AVO because it will be issued anyway. There is **ABSOLUTELY NOTHING** a man can do to prevent an AVO being issued against him in NSW if a woman requests it. AVO's are rarely issued against women even if it can be shown that they are violent, ten's of thousands of AVO's are issued against men, but only a few tens, not thousands, just tens, against women.

In the state of NSW it is Government policy that an AVO be issued on request by a woman, police and magistrates are well aware that they will lose their jobs if they do not adhere to that policy. Some years ago an anonymous survey of magistrates revealed that 30% of them felt that women were to blame in domestic violence matters. Shortly afterward the Attorney General, Geoff (Jeff ?) Shaw resigned his position in what was clearly an unplanned move for him. The NSW Government then responded by spending millions of dollars on a program to 'educate' magistrates ( such 'education' programs are called brainwashing if they happen in communist countries). Some time later another magistrate, Pat O'Shean (O'Shea ?) dared to go against Government policy by stating publicly that she believed that "... women did not always tell the truth ..." she was immediately suspended from duties.



Whilst I have only quoted a few events here, it is well known among the Legal Profession that such events are commonplace and occur on a daily basis. A Royal Commission would easily uncover enough evidence to make a finding.

Legal aid is another matter that needs to be investigated. In the case of a marriage breakup a woman is nearly always given legal aid. This gives her an unfair advantage over a man who now has to find money to accommodate himself and pay 10's of thousands of dollars in legal fees out of an income which was struggling even before it was severely reduced by 'child support'. To be fair, if one partner is given legal aid then the other should receive the same amount of aid. Better still the partners should be required to attend compulsory counseling sessions with a view to recovering the relationship, only if that fails should they be allowed to proceed to court.

Child support needs to be revised too, the current system takes far too much and is little more than legalized stealing. The Child Support Agency is responsible to no-one and does what it likes. When it takes more than it should (and how is that decided – it makes its own rules and changes them to suit itself anytime it likes), it refuses to return the money. Some time ago there was a case of a man who had never married or fathered any children having \$5000 taken out of his bank account by the Child Support Agency. It was a mistake of course but the Agency refused to return the money to him. He finally got it back by complaining to the ombudsman. In another more recent case a man had \$30,000 in Child Support taken from him before it was discovered that the woman was lying and the child was not his. The Child Support Agency refused to return any of that money. One would only expect such behaviour from Nazi's, Communists, or Third World Dictators – not from a civilized country like Australia.

Once again I have only presented a few events, but again it is well known within the Legal Profession that this type of behaviour is commonplace. A Royal Commission would easily uncover enough evidence to make a finding.

The current Family Laws are inadequate and the Domestic Violence Laws in NSW completely ignore the principles of justice in this country. A change is needed to these laws to provide protection to children and both partners. Partners need the right to enforce the marriage contract ,and NSW needs some honest courts that can make decisions based on the principles of justice without fear of retribution from the Government. Men in NSW must have the right to defend themselves from fabricated accusations, and all people in this country must have the right to protect their most precious possession – marriage.