

To: Parliamentary Committee of Inquiry into child custody arrangements in the event of family separation

To:  
Committee Secretary  
Standing Committee on Family & Community Affairs  
Child Custody Arrangements Inquiry  
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*I am writing this submission from a few perspectives – as a father engaged in 50% shared parenting for the past 12 years; as a registered psychologist who has worked with in diverse areas, including counselling before, during and after Family Court matters; and as an academic (I am a senior lecturer & co-director of the Men’s Health Information & Resource Centre at the University of Western Sydney).*

The incidence of shared parenting will probably increase substantially in the near future – regardless of this inquiry - due to a variety of socio-cultural changes, especially the changing work patterns and career aspirations of both men and women, and a greater fluidity of gender roles. While these changes are supportive of successful shared parenting, they are not in themselves sufficient motivation to promote shared parenting. More importantly, any motivation to promote shared parenting should result from a close and critical examination of the outcomes, especially in regard to the well-being of children.

If the research demonstrates that shared parenting is beneficial for the children and parents - and I outline research in Appendix 1 that strongly suggests it does - the central questions then are:

- What conditions appear to be essential for successful shared parenting?
- What criteria should be used to determine the instances where shared parenting is the preferred outcome, and when should it be avoided?
- What legislation, policies, services and practices are necessary to support the development of shared parenting?

The following attempts to provide partial answers to these questions.

## **WHAT CONDITIONS APPEAR TO BE ESSENTIAL FOR SUCCESSFUL SHARED PARENTING?**

### ***Parenting ability***

There are of course situations where shared parenting is not an option. For instance, when one parent is clearly abusive or neglectful or suffers from serious mental health difficulties, a child may be harmed by continued exposure to such an environment.

However, prior involvement in level of parenting should not be used as a basis for assessing parenting abilities. A common arrangement between married couples is for the male to work, and the female to stay at home or work on a part-time or casual basis. The father then does not gain so much experience in the day-to-day care of children. However, this does not indicate an inability to parent. In my own case, my partner had provided most care for our children as infants, but when I achieved our shared parenting arrangement it meant I was caring for a 3 year old and a 12 month old child for 50% of each week. One of the necessary conditions to ensure greater levels of shared parenting will be to develop current parent support services to ensure greater engagement with fathers.

### ***Parental conflict***

Some authors have proposed that in situations of high parental conflict, joint custody may be detrimental because it will expose the child to intense, ongoing parental conflict. However, this argument may be applicable mainly to extremes of parental conflict. Some research indicates that joint custody may actually work to reduce levels of parental conflict over time (Bender, 1994).

Parental conflict is not in itself a sufficient reason to avoid shared parenting, and to award majority residency to one parent. In fact, the practice of doing so has prevented the development of successful shared parenting. The community's understanding that shared parenting will not be awarded in cases of parental conflict encourages a parent who does not desire shared parenting – even if it could in fact be in the best interests of the children - to deliberately provoke and exacerbate conflict. This leads to the situation termed the “hostile parent veto”, whereby one or other parent desires control over the children to allow greater freedom for their own future opportunities. It is more than unfortunate that even when children would benefit from the presence of both parents in active roles that legal processes – including spurious allegations of abuse and neglect – are used to limit access to one parent.

### ***Systemic support***

One common impediment to shared parenting unfortunately lies in those systems designed to manage the process of divorce. While ever the Family Court and related institutions are not scrupulously fair in their assessments and judgements, hostile parents will be encouraged to use these systems to attain their own ends. While the allegations of bias may be only partially true, it is not enough to simply dismiss these objections - the courts must be seen to wish to identify and prevent systemic bias through objective research. Court sponsored research – such as the embarrassing Graycar Report – only reinforces suspicions of bias.

### ***Economics***

It is evident that the standard of living of divorcing couples will drop – it is not possible to maintain two separate living arrangements without extra costs. However, the current approach to child custody resolution relies overly on “winning” primary residency to maximise income. This

is often most true for mothers, who may not wish to participate in the workforce to the same degree as men. It is illuminating to note that the majority of single fathers work full-time, while only a minority of single mothers do so. It may be that there is an extra cost to the community in supporting shared parenting, and that while this must be taken into account in planning various forms of government support to single parents, it should not over-ride the principle of the best interests of the child. Some commentators have argued that there are also hidden costs of single parenting which should be factored into costings, such as the loss of a potential employee through a primary residency parent being unavailable to the labour market.

## **WHAT CRITERIA SHOULD BE USED TO DETERMINE THE INSTANCES WHERE SHARED PARENTING IS THE PREFERRED OUTCOME, AND WHEN SHOULD IT BE AVOIDED?**

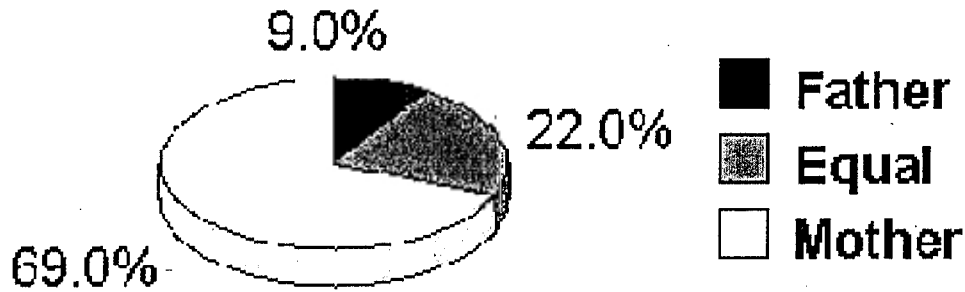
It would indeed be wonderful if an easy answer to this question were available. However, some factors that do seem to be necessary for consideration include:

- The desires of the children.
- Children's safety. Clearly, a parent with major mental health problems, or a history of sexual, physical or emotional abuse may not be a suitable candidate for shared parenting.
- Locational factors – it is important to maximise children's opportunities to maintain a single school and social network when moving from one residence to another. (The commonly espoused idea that "two homes" causes more problems than benefits for children is totally contrary to my own experience, and that of all other shared parents I know)..
- Adequate material provision, such as housing, appropriate to the children's age and needs.
- Levels of social support (extended family, friends, willingness to use parenting support services) that parents are able to access.

## **WHAT LEGISLATION, POLICIES, SERVICES AND PRACTICES ARE NECESSARY TO SUPPORT THE DEVELOPMENT OF SHARED PARENTING?**

### ***Legislation***

Research from the USA provides a good model for Australian purposes, as each American state is responsible for its own family law, which allows comparisons between a range of differing approaches. In the USA, equal shared parenting now accounts for more than 20% of post-divorce living arrangements for children (see Figure 1), and has grown at an extraordinary rate. In some states, it has become the predominant form of child custody after divorce, accounting for nearly half of child custody orders.



**Figure 1: Child Custody & Divorced Families, 1997**

Data sources: U.S. Census Current Population Survey.  
National Center for Health Statistics.

A presumption or preference for joint custody exists in at least 30 states - plus the District of Columbia. More recent legislation has tended to favour stronger presumptions that protect the child's right to both parents. The existence of large numbers of divorcing couples in each state has ensured a substantial body of research on the outcomes of various post-divorce living arrangements.

It must be noted that under the US terminology "joint custody" refers to both joint physical and legal custody. The former refers to situations where the children live with one parent for a minimum time of 30%; the latter refers to the right to have equal responsibility for decisions affecting the children in all areas of life, including schooling, recreational activities, medical & dental care etc.

While Australian law claims that both parents already have equal legal rights in decisions affecting the welfare of their children, most contact parents perceive - with apparent justification - that in practice this is not the case, and that if they cannot resolve decisions with the residency parent that the Family Court will give preference to the desires of the residency parent.

### ***Policies***

Rather than specify the myriad policies which will have to be addressed - and in a number of jurisdictions - I would simply suggest that all policies relating to children post-divorce should meet a standard of not presenting any obstacles to shared parenting.

### ***Services & practices***

I suspect that your enquiry will identify the necessary shifts in parenting and child service operations far more effectively than I can. However, two areas for comment based on my experiences are:

- Parenting support. Most of these services are provided through the community health sector and NGOs such as Burnside. Such services should not remain focused on mothers even in intact families, but there is a pressing need for them to acknowledge the presence of shared parenting in the community, and to structure programs to ensure that fathers from diverse family configurations are able to access them. This will involve greater "out of hours" operations rather than the current "9-5 business-days only" orientation of most services.

- Higher levels of shared parent will of necessity mean a greater level of fathers wishing to use services. In the same way we would not expect women to feel comfortable with male-dominated services, neither should we expect men to feel comfortable with female dominated services. There will need to be greater effort and encouragement to employ men in parenting and child support services.
- The most pressing need is for mediation services that are pro-shared parenting. It may be that such mediation services are clearly separate from the Family Court to prevent their being tainted with the poor reputation of the court in promoting non-adversarial solutions. Consideration may need to be given to models such as those operating within Community Justice in developing mediation services.

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## APPENDIX 1

### *RESEARCH INTO OUTCOMES OF SHARED PARENTING.*

On the face of it, shared parenting seems as close to a “win-win” as is possible in a divorce. Of course, there are situations where it is not possible. But the overwhelming evidence from researchers and clinicians involved with divorcing parents and children since the 1980s suggests that shared parenting should already be at a much higher level than it is.

Arguments in favor of shared parenting focus on benefits for the child of maintaining relationships with both parents. In contrast, opponents have argued that joint custody disrupts needed stability in a child’s life and can lead to harm by exposing children to ongoing parental conflict. These positions can only be examined critically by referring to the research. The main findings at present are considered below.

The most comprehensive and methodologically sound study of the past few years has been Bauserman’s (2002) meta-analysis of outcomes research, which incorporates 33 studies conducted between 1982 & 1999. Bauserman compared child adjustment in joint physical or joint legal custody with sole-custody settings, including comparisons with paternal custody and intact families.

The analysis reveals that children in joint physical or legal custody were better adjusted than children in sole-custody settings, but no different from those in intact families. More positive adjustment of joint-custody children held for separate comparisons of general adjustment, family relationships, self-esteem, emotional and behavioral adjustment, and divorce-specific adjustment. Joint-custody parents reported less current and past conflict than did sole-custody parents, but this did not explain the better adjustment of joint-custody children.

Interestingly, the reported benefits from shared parenting did not vary according to the identity of the person completing the adjustment measure, indicating that on average mothers, fathers, children, teachers, and clinicians, all rated child adjustment as better in joint-custody settings.

The ratings by mothers are notable because some authors have claimed that mothers are the primary “losers” in joint-custody situations. However, mothers appear just as likely as other evaluators to perceive joint custody as beneficial to their children’s adjustment.

#### *Child adjustment*

Lakin (1995) compared the psychological adjustment of children in joint physical custody circumstances with that of children in sole physical/joint legal custody following parental divorce. In comparisons between the two groups, many similarities but several significant differences were found. Children in joint physical custody circumstances tended to adjust better with time, whereas children in sole circumstances tended to have more difficulties as they grew older. In both groups, boys encountered more behavioural and emotional problems than did girls. In particular, sole custody boys of high school age reported far more problems than their joint physical custody counterparts.

Buchanan, Maccoby, and Dornbusch (1996) report a study of 517 families with children ranging in age from 10.5 years to 18 years, across a four and a half year period. Measures were: assessed

depression, deviance, school effort, and school grades. They found that children in shared parenting arrangements were found to have better adjustment on these measures than those in sole custody.

### ***Adult children of divorced parents***

Tucker et al (1997) examined associations among parental divorce occurring during participants' childhood, adult psychosocial mediators, and mortality over the life span of a subgroup of participants (N = 1, 261) in the Terman Life Cycle Study (1921-1991). Children from divorced families grew up to show a higher risk of premature mortality across the life span. The higher mortality risk for men was explained, in part, when 3 mediating factors were controlled: Men who had experienced parental divorce were more likely to have their own marriages end in divorce, obtained less education, and engaged in fewer service activities. Women who had experienced parental divorce smoked more and were more likely themselves to divorce, both of which predicted higher mortality risk. The findings extend previous work on the negative sequelae of parental divorce to long-term effects on personality and longevity.

### ***Relationships with and between parents***

Pearson and Thoennes (1990)note:

*"Consistent with other studies of joint and sole custody, our joint legal and residential non-custodians were decidedly more involved with their children following divorce than were non-custodians in sole custody arrangements. . . . Respondents in joint custody arrangements were more apt to perceive their ex-spouse as having a good relationship with the children and to report satisfaction with that person's performance as a parent." and ". . . conflict between divorcing parents in our sample did not appear to worsen as a result of the increased demand for inter-parental cooperation and communication in joint legal or joint residential custody arrangements. To the contrary, parents with sole maternal custody reported the greatest deterioration in the relationships over time."*

Krecker (2003) notes:

*While there have been criticisms of the routine movement between houses occasioned by shared parenting, there is no evidence that this inconvenience has any major impact on the children. There is more "stability" in the living arrangements of children in the sole physical custody in terms of children's formal physical placement. But children in over one-third of these families have no overnight stays with their fathers, and over 18 percent no longer see their fathers at all. In contrast, children in over 99 percent of shared placement families have contact with their fathers, and 75 percent of them stay with those fathers at least 31 percent of the time. In terms of the well-being of children and families, it appears, the most legally "stable" arrangements do not necessarily make for the most enduring relationships between children and both their parents.*