

Submission.

Committee Secretary

Standing Committee on Family and Community Affairs.

Child Custody Arrangements Inquiry.

Department of the House of Representatives.

Parliament House.

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House of Representatives Standing Committee on Family and Community Affairs
Submission No: 835
Date Received: 12-8-03
Secretary:

From

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Dear Committee Secretary,

Please accept my submission below.

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

Yours Sincerely,

Greg Firms.

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

(a)(i) I agree that as a starting point there should be a presumption that children will spend equal time with each parent.

(ii) As a standard procedure parenting orders should stipulate contact arrangements with other concerned persons including their grandparents.

(b) The existing child support formula requires a major over-haul.

The best interest of the child should always be the main objective, which is all too often lost in a question of law.

The Family Law court is found of stating that the greater majority of cases do not reach a final judgement. But a substantial number of parents have already spent a considerable sum of money on legal expenses that would have been better off spent on setting up new households for their children.

Despite a large number of cases settled by mediation and counseling – billions of dollars are still spent on solicitors. This resource would be better directed towards the children and conflict resolution, to promote greater emphasis on shared parenting.

Experts and research acknowledge that children benefit from the balanced guidance of both parents. A variety of studies in Australia and overseas have shown that the children generally progress better where both parents are actively involved. This is where shared parenting concept would benefit children more than the current concept.

There has been a lot of comment in the media of late that our children are deprived of a male role model at home, school and recreation, shared parenting would allow Dad to regularly participate in their milestones, homework, sport and everyday activities. This is currently very hard for once a fortnight Dads.

Shared parenting would hopefully reduce the situation or duration there of where the children are divided. For example where the daughter resides with Mum and the son with Dad.

91.7% of resident parents are female (ABS) this would suggest a huge gender bias in this modern age. The average distances father travels to see his children are over 140K (CSA).

Over 50% of all marriages end in divorce, our families, *our children* have a very uncertain future with the loss of regular contact with their father in the majority of cases.

Currently the FLC & the FMC caseload is clogged up further exasperating an all ready stress full time especially for the children. By the time of the pre-hearing conference most FLC would have been pending for at least nine months and significantly longer in some registries. Greater emphasis on shared parenting *arrangements* would reduce this backlog. In some US states the divorce rate has even lowered.

No other superior court has anything like the volume of business on contact with the general public, as does the FLC. This fact has not changed since the Sept 1990 Report of the Working Party on the Review of the FLC. Shared parenting would reduce greatly the caseload of the FLC & FMC.

Family Court static's show that the majority of cases and appeals are about contact and residence issues not about money, superannuation.

Simple research would show that their lawyers advise the majority of fathers that they stand little or no chance of gaining residence or custody of their children through the courts.

Divorce is all too easy to obtain little or no emphasis in legal circles is placed on reconciliation and the best interest of the children. I refer to "Do-It-Yourself DIVORCE by Hon Justice Elizabeth Evatt, who was Chief Judge of the FLC from 1976 to 1987. Foreword by the current Chief Justice of the FLC, The Hon Justice Alastair Nicholson. The seventy four-page book only contains two brief paragraphs on reconciliation, nothing on shared parenting.

Is one to deduct from this that the best interest of the child is better served by escalating litigation, allowing the parents to move a considerable distance from each other so that the child is raised in a single parent house hold where 91.7% chance (ABS) with his mother, the non resident parent on average travels 140K (CSA) to spend precious time with his child. Only to find no one home and spend more money on another virtually useless court order. Surely shared parenting offers a better alternative.

Shared parenting would place greater emphasis on dispute resolution other than litigation as per the 'Family Law Advisory Code of Practice' published by the Law Society of NSW paragraph 1992 page 146.

The Family Law Act Sect 14 par. 146 encourages primary dispute resolution mechanisms which should be used when ever conflict is a issue, so should not be a big problem where share parenting is chosen.

The claim by the Family Court that approximately 40% of cases determined by the Court result in residence going to the father is misleading. The court's claim only relates to the 5% or so of cases that where the father's claims are so strong that they are prepared to take the risk. Even then, the fathers in question only have a one-third chance in succeeding.

Domestic violence is abhorrence to all the general community and should be referred to the criminal courts where the full weight of the law can be exercised. Once the claim has been validated beyond reasonable doubt. Perhaps this would reduce the frivolous and vexatious claims that are clogging up the FLC and other court systems. Clouding the real pros and cons of shared parenting

It should be routine for all parenting orders to consider reasonable contact with the child's extended family, cousins, aunts & uncles and of course grandparents and others.

"Relationship breakdowns cost in excess of \$3 billion a year and billions more are being spent in the health and criminal justice system on damaged kids. The research shows that the best thing you can do for these kids is to strengthen the relationships of their parents – said that it was vital to re-engage divorced fathers in the lives of their children. *Three out of every four of the 2,000 adult male suicides each year follow a relationship break-up.*" Quote from Mr. Cameron federal parliamentary secretary "The Sydney Morning Herald 1 August 2002 p. 1.

The New South Wales Bureau of Crime Statistics and Research tells us that critical factors underlying criminality are parental neglect and lack of supervision. Surely shared parenting will have an effect on this horrible fact.

There are currently several anomalies regarding just which government department can make a decision only to have it over-ridden by another based on the different attitudes and criteria on which they base their assessment or ruling. For example a Family court judge may hand down a decision only to have it overturned by a Child Support case officer who uses a different formula to arrive at a conclusion. But no sooner is this done when yet another agency Center Link changes this decision and comes up with a new one.

In Australia 75% of divorces are instigated by the female partner. (Australian Bureau of Statistics).

Growing bodies of research in the USA suggest that child custody policies have a significant influence on divorce rates. USA states that have higher levels of joint custody have, on average lower divorce rates. "Joint Custody: Bonding and Monitoring Theories," 73 Indiana Law Journal 393 (1998).

Shared or joint parenting can and will work if given the chance. The practice been proven to work satisfactorily in the USA, where it received legislative encouragement in California some years ago and subsequently spread to more than 37 other states. For an extensive study see "Joint Custody. Bonding and Monitoring Theories" Margaret. F. Bring & F. H. Buckley at <http://www.law.indiana.edu/ilj/v73/no2/brinig.html>.

Poor design of the child support scheme and biased judicial decision on property have been a consequence of the failure to accept the fundamental principles of shared parenting. If a flat rate is to be used at all, this must be applied to net income, not gross income. Alternatively , there should be a sliding/decreasing scale applying to gross income and *contact*. There is little incentive for the non-resident parent to earn additional income or to seek promotion. Let a lone start a second family.

The current structure and parameters of the Child Support Scheme create very large problems for many people, and coupled with a denial of contact with their child, result in many suicides of non-resident parents.

Child Support seems to focus their attention on salary wage earners, those that are contractors or executives for example are able to mask their true income and not pay their fair share of child support.

The cost of contact for a non-resident parent is up to 100% the cost of children in an intact family. (Hansard; Hemnan & Mitchell Research.) There has never been a comprehensive Australian research into the cost of raising children. The formula used by CSA is based on the US model 'Garfinkel/Wisconsin formula'.

ONE THIRD OF ALL CHILDREN WILL BE RAISED IN DIVORCED FAMILIES in the best interest of the children we owe shared parenting a chance and must look critically at all related legislation and government departments.

Personal
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