Pete Granger
PO Box 384 Malvern, 3144
[redacted]

26th October 2003.
Re: Standing Committee of Family and Community Affairs
Child Custody Inquiry

Dear Committee Members,

In 1978 my wife deserted me and our two young children. Some 6 months later she applied for custody, and despite overwhelming evidence the children wished to remain with me, the Family Court awarded sole custody to my wife in 1980.
In 1996 my ex-wife again handed the children back to me- in effect providing me sole custody, and subsequently was killed in a car accident 5 months later.
Thus, from that point I became a single parent.
One lesson that should be learnt is that the awarding of sole custody to any parent is dangerous, as future circumstances can change dramatically. At the time, the awarding of sole custody to my ex-wife was tantamount to saying to me you should 'bugger-off' dad, at least that was its intent. If I had done as intended there would have been a strong possibility my children would have finished up in an orphanage when their mother died, and with the benefit of hindsight, we now know how diabolical that particular fate has been for many unfortunate children.

I cannot adequately express to you my disgust at the Family Court, its practitioners and processes, albeit my personal experience mostly relates to the early 1980's.
Nor can I cannot adequately express the emotional damage the process has had on my family, and in particular my children. On this point it seems to me it would be very helpful to have children (who are now young adults) appearing before the Committee to express how the system has affected their lives.

Having personally experienced the absolute destructiveness of the system, its appalling self-interest (being in the 'grip' of lawyers as referred to by Mr Reaburn in his evidence) and appalling dishonesty (I refer to the ad-infinitum mantra from the Family Court that it 'acts in the best interests of the child', whilst knowing this not to be true. In this regard I refer in particular to Professor Maloney's evidence, and his much-belated concessions in regards to the failures of the Court). The child's interests are placed at the bottom of the list behind the powerbrokers within the Family Law Council, the judges, the lawyers, the counsellors, the child psychologists, the custodial parent, and even the non-custodial parent. In the early 1980's I was moved to write to then Chief Justice Evatt, and Attorney General Gareth Evans (see attachment) requesting consideration of a presumption of joint physical custody (an impossibly 'foreign' concept in those early days). It is with deep regret that over 20 years later we are still waiting. I have read the evidence criticising the Family Court for not implementing the will of the Parliament, but I am more inclined to blame successive Attorney Generals and Prime Ministers who have not been sufficiently motivated or concerned to force the system to function in a particular way. All too late there has been a realisation that we have emotionally damaged a whole generation of children.

Politicians have allowed divorce to be hijacked by a self-interested, greedy class of 'professionals' – who have exploited it for all it is worth.

The current problems are the result of faulty logic going back to the early days of the Family Law Act. Its (unstated) intent was as follows. Mothers were to be provided all the assistance they needed to break the bonds from their husband. This was an overreaction to the prevailing situation in which women were forced to remain in unwanted, loveless marriages. They were to be provided the financial means to break these bonds if need be, and the support from the system to ensure their viability as a separate entity. Mothers retained children, fathers were not encouraged to maintain contact with their children, that is, given little or no rights, but plenty of responsibility in terms of financially maintaining them. At first this maintenance was modest, but over time it became crippling. The principal effect if not intent of the law was to assist mothers make a clean break from their spouses, be financially and emotionally independent, and minimise potential contact with (overly-interfering?) ex-husbands. Given at the time men were being encouraged to be more involved in the children's lives during their marriage, a clash was inevitable if and when parents separated. This policy/system was introduced by politicians – not lawyers, and we are dealing with the fallout even today.

At the time social (male and female 'feminist') researchers, many from Government-funded organisations such as the Institute of Family Studies, released considerable data on divorce, and how it had little effect on the welfare of the child – that they were doing fine, and how it (divorce) was often in the child's best interests. The prevailing wisdom was that divorce is OK, and its often best for the child, and men should learn to shut up and put up with it. The taxpayers of Australia funded this utter rubbish. If you were caught in the middle (i.e., in the process of divorce), and you had traditional or semi-traditional family values, it was if the world had suddenly gone completely mad. Under the adversarial system, parents indulged in ritualistic slaughter of each other in Court, and the effect this had on children was blamed on parents – not the system which fed it. Men who complained were regarded as loopy malcontents.

There is so much wrong with the system one hardly knows where to begin. But I want to make these points. If one reads the transcripts the vested interests still do not want to change anything and are going to fight to the bitter end to preserve their professional monopoly. The Family Law Council even denies there is a problem (at least they are consistent).

Professional counsellors and mediators do not want parents being presumed equal as a starting point. Their solution of course is that they should 'stage-manage' this process for parents. Their objections are self-interested and disingenuous. They already stage-manage the 80/20 system we have in place, so they should have no difficulty in 'stage managing' a 50/50 system. The only difference is that they will be explaining to mum and dad that both are entitled to equal access and 'control' – within **practical,** not prescriptive **legislative** limits. Preferably this mediating process should occur in an 'early-interventionist' manner. If dad wants to make it 20/80- they should perhaps encourage him to have greater – not less involvement. It gets back to the historical point I was making earlier. We need to bury once and for all the concept of dad being peripheral to their children's lives, and implement a law and system which encourages the opposite. This is the expectation of most fair-minded Australians, and as such I urge you to make it clear in legislation. We do not want legislation which says it is 'open', as requested by the mediation/counselling industry, because this is code for

more of the same. The law must officially recognise that both parents commence equally in their negotiations. This does *not* compel parents to agree to anything if they do not want to. But, it does compel them to accept that equality if they cannot otherwise agree. It is inconceivable this scenario would be any more toxic than one in which only one parent is empowered - unless you believe in achieving a negotiated result through the abuse of that power, or unless you believe in the original intent of Family Law – which is, that it is in the child's interests to have limited involvement with the non-custodial parent.

I wish to make one final point. The committee needs to address the issue of whether parents are provided equal access/control or alternatively equal rights. As indicated previously, there is resistance from mediators/counsellors in regards the law being too prescriptive in terms of access/control, even though this relates to providing parental equality. I question their sincerity on this issue. One would think this parity would appeal to them. Perhaps they consider it is an insult to them as professionals they cannot shape these outcomes without legislative interference. If so, it is time for them to swallow their professional pride.

It seems to me the focus should be on providing parents with equality in terms of their ability to negotiate outcomes. That outcome does not necessarily mean equal access if that is not a practical proposition, but it does mean that one parent cannot overly influence the outcome simply because they are deemed the more likely custodial parent.

Subject to the interests of the child, and one has to always make this proviso, equality is provided to both parents when they cannot otherwise agree. This resolves the problem of abuse of power, but it does not solve the problem of what is in the child's best interests – in a practical sense. This problem is 'resolved' in the current system by providing the principal carer with greater control, but in so doing, the other parent is disenfranchised and dis-encouraged to maintain contact. Arguably this is counterproductive. A reformed system requires both parents to agree. It is critical that neither the mother nor father can unreasonably refuse agreement when it is clearly not in the child's interests to do so. Perhaps that needs to be legislated – although I assume it would be difficult to do so. What can be done when they cannot agree? Conceivably this is the (much less critical) role of counsellors, mediators, and ultimately the Court. Their role is not deciding who is the best parent, or shaping outcomes that give them a warm fuzzy feeling inside, but rather expediently dealing with unresolved practicalities.

In this scenario, the Court could take the role of the 'third party' representing the child's interests.

Moreover, if it can be demonstrated one parent is being unco-operative and overly difficult the Court may be provided the means to preclude that parent from future decision making for a period not exceeding say 12 months.

Divorce is an awful business made infinitely worse by poor legislation, and professionals who have exploited both parental and legislative weaknesses. I plead with you to get it right at last – for the sake of children.

Sincerely,

Pete Granger