

## SUBMISSION

### Inquiry into child custody arrangements in the event of Family Separation

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#### Background

I am the paternal grandmother to a 15<sup>1/2</sup> year old boy whose parents separated almost four years ago when my grandson was 12 years old.

I am the only surviving grandparent living in Australia who my grandson has had significant contact and relationship with. He also had significant contact with my husband who passed away two years ago.

## Submission

Children of separating and divorcing parents are the real victims of current failed Family Law Policies. Under the sole custody regime, children are automatically deprived of a continuing and meaningful relationship with both their parents and the social outcomes for children as a result of this loss is a national disgrace.

On any level of assessment, the children of Australia are our most treasured and important resource into the future. Yet the children of separating families, which are becoming an increasingly high proportion of the children of Australia are allowed to be treated in the most disastrous way possible by the Family Law System.

In the great majority of cases, the Australian Family Law Courts grant custody of children to one of the parents, usually the mother. The other parent is reduced to a mere visitor to their children or is forcibly excluded from their children altogether. Thus the Australian Government is presiding over a programme of forcibly removing children from their parents on a scale far greater than the stolen generation of aboriginal children. The personal, social and financial consequences for the children, their families and Australian society is on a scale that is almost impossible to comprehend yet alone calculate. If one ventured to put a total cost to this catastrophe it must be in the hundreds of billions of dollars every year. No other issue could be of more importance in Australia today.

The only possible solution in these dire circumstances is to do the most obvious and rational thing, namely to enact a presumption of equal shared parenting for the children of separating families into Australian Family Law. This single act will do more to address the current problems associated with family law than any other possible act.

The enactment of a presumption of equally shared parenting in law will have the following effects: -

- Children of separating families will have the extreme benefit of two parents post separation to love them, care for them, educate them and be totally involved in their emotional, psychological and personal development to adulthood.
- Children of separated families will develop into more balanced, more stable, more caring, better educated and functional adults with all the resultant benefits to themselves, their future partners and families and society generally.
- Separation and divorce rates will decrease significantly along with the litany of other associated actions and disorders - applications in Family Courts, litigation over custody, parental conflict, relitigation rates, false allegations, etc.
- Significant reduction in the level of all forms of social pathology in developing children and young adults - suicide, drug abuse, school dropout, teenage pregnancies, low self esteem, involvement in crime, delinquent action and unemployment to name a few.
- Significant reduction in the damage to parents caused by the current system, particularly fathers - suicide, emotional and psychological damage, loss of employment,

damage to or complete annihilation of businesses, loss of contact with and privilege of parenting their children, financial disaster, loss of homes, loss of life savings, loss of incentive to be productive again, disincentive to parent any further children

There are a myriad of other benefits that will also emanate from the introduction of shared parenting into family law.

One particularly important result would be the reduction in parental alienation of children where one parent in a divorce or custody battle embarks on a campaign to alienate a child against the other parent in order to subvert the "wishes of the child" not to live with or have contact with the other parent, and thus win a sole custody battle. I will not go into further details of this serious family separation problem but have attached to this submission an article by respected American psychologist Dr Philip M. Stahl titled "Alienation and Alignment of Children". The introduction of equal custody into family law will significantly reduce alienation as there is very little chance of "winning" any custody battle with such a law in place.

I will not go into further detail in this submission on the arguments in favour of a presumption of equal parenting as the case has been put so eloquently by Ronald K. Henry in his testimony to a hearing in Washington DC in the matter of the Joint Custody Act of 1995. I attach a copy of his testimony to this submission. All of his arguments and evidence apply to the situation in Australia.

Within a framework of shared parenting after separation (minimum 40% time with each parent), other factors that should be taken into consideration in deciding any deviation from a child spending equal time with each parent, include the following :-

- Each parent's approach to the separation and behaviour and attitude during the separation process in terms of aggression and hostility to the other parent and support of the other parent's relationship with the children.
- Any involvement of either parent in parental alienation of the children against the other parent.
- Any conduct resulting in false allegations being made about the other parent including the other parent's suitability to care for or parent a child.
- Actions of violence including all forms of emotional, psychological, verbal aggression towards the other parent or children.

Only where the above factors are proven in a court should there be any variation from an equal position of parenting. The level of involvement of each parent with a child should not fall below 30% of the child's total time except in the most extreme circumstances where extreme violence to children, sexual abuse of children or extreme parental alienation can be proven in court beyond any doubt. Only in such circumstances should the presumption of equally shared parenting be rebutted. In all but the most severe cases, the offending parent should still be allowed to have as much restricted and supervised contact with their child as a judge sees fit under the circumstances, having fully examined all of the evidence in the case.

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Many of the other issues in the family law arena will at least be partly addressed by the introduction of a presumption of equal parenting into family law.

Included in these are the issues of the contact of children with other persons including their grandparents and the child support formula. I will make the following brief comments on these issues.

The issue of lack of contact of children with grandparent and other persons primarily occurs where one parent has fought to achieve sole custody and as a consequence has restricted or eliminated contact of the children with the other parent and that parent's friends and family including the child's grandparents. With the introduction of a presumption of equal parenting into law, this issue will be inherently addressed in the majority of cases as the extended families and friends of each parent will have access to and involvement with the child through that parent's equal custody time. However, for the circumstances that this is not the case, there should be clear provisions in the Family Law Act for an order to be made to protect the rights of children to have contact with these important people in the child's life.

The issue of child support will also be addressed in a significant way by the introduction of an equal parenting presumption. This will mean that because each parent will have equal care of the children, child support will only be paid by one parent to the other if incomes are not equal or in the circumstances where the presumption has been rebutted or the parents voluntarily and by consent, agree to have different parenting

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arrangements for the children or different financial arrangements to the child support formula.

Having in mind all of the above, the current child support formula does not work fairly for both parents in relation to the care of children. It should be re-evaluated to reflect the true and detailed cost of caring for children and also be scaled on an after tax basis and a more detailed sliding scale taking into account the new circumstances post separation in terms of earning capacity and all other circumstances including care of new families. Any reassessment of the child support formula should be made only after an independent and open public enquiry.

I close in saying that I appreciate the opportunity to make a submission to your parliamentary enquiry and trust that my comments on this most important issue will be not only taken into consideration but also acted upon.

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