House of Reps committee Monday 27th October

Distinguished Members

The problem of fractured parenting and the injustice done to our children by hostile and inflexible mothers, the Family Court of Australia and supported with a passion by Barristers and Solicitors, ill informed physiologists, lecturers and members of the teaching profession, The Law Society and Government Agencies is simply the gravest travesty of justice that befalls our free Australian society today.

I am a loving and doting dad who simply wants to share and carry on after separation the upbringing, welfare and schooling of my little boy now aged 4 ¾

To discuss the many required changes to parenting matters and to address and support Mr Dutton's speech in Parliament on the 13 August 2003 would require substantially more time. My comments therefore are directed only to the issues confronting children who are attempting to have an equal and shared contact regime with their fathers and in particular my own specific experiences.

I separated in October 2001 and from the first day of separation **the mother maintained a cruel and vindictive campaign of a zero contact regime**. This regime was simply an extension of her campaign of revenge for all the ills of the relationship whatever they may have been.

What is very relevant is that the **mother simply deemed that no contact shall be in order** and this position is clearly supported in every way the Family Law Act is enacted.

The mother filed for sole residence orders in the Family Court after heated numerous letters and telephone exchanges between solicitors which still did not get my son contact with his father. As an aside of note is the significant confusion as to which court you lodge applications or attend to in either the Federal magistrates, Local or Family Court and moving through one to the other as solicitors avail themselves of the ability to keep raising the anti.

In my case at the pre Interim orders hearing, **court ordered counselling was an absolute complete waste of time** where the mother continued to maintain during counselling with legal representatives present, a position of zero contact. "Why should he have contact when he did this or that".

It can only be described as a living hell until an interim hearing is finally held. After **extensive delays** to even get to an Interim hearing, affidavit evidence appears to be the only basis on which the Family Court Judge makes a decision.

The standard weekend Sat from 9:00 through to Sunday at 5:00 and 2 hours on a Wednesday, the result of hundreds of hours and tens of thousands of dollars of Solicitors and Barristers costs and in a hearing which lasted some 15 or so minutes with neither party addressing the bench is simply outrageous.

The concept of a dad contributing equal time to his children's up bringing seems completely foreign in the Family Court.

My extensive continued attempts to get proper contact through the protracted Family Court and to progress to a proper trial date were thwarted by the other side **failing to file** certificate of readiness in the Pre Trial conference and the matter was taken out of the list to a defaulters hearing.

The **delaying tactics** used to get advantage of "Status Quo" and to alienate the child or children from the father by way of forcing such significant time to pass after separation is well practiced by solicitors representing the mother.

Once in the Family Court system unsubstantiated **allegations of child abuse by the mother to DOCS** are perceived to be treated as either true or hold some weight regardless of the baseless foundation for such belief and even after finding no such allegations to be true in formal findings by the JIRT unit of Docs.

The system is completely wrong, and you, the members of this committee, are now our only hope to fix this travesty of justice.

The system as it is clearly favours mothers and or the residential parent.

The system forces really good dads like myself (and some mothers) to have to fight it out in an adversarial campaign. Unless the dad has very significant reserves of funding, countless hours to write submissions, affidavits and solicitor briefs then the dad faces a hopeless and despairing position in trying to get any proper contact arrangements.

Is it any wonder with the current system the way it is that dads either cannot continue in the Family Court system, give up and take anything, commit suicide or are in continual conflict with the mother?

Not a single shred of evidence supporting the current "Sole Custody" model has been presented to this parliamentary inquiry by the array of Family Law Industry participants - and the reason for this is because none exists. There is no valid research that says children of divorce fare better with one parent instead of two.

Quoting Senator Harris during the second reading of his Bill on the Family Law Amendment (Joint residency) Bill recorded in Hansard 2002.

"The time has come to end the system under which the courts on a daily basis enter orders that bar fit and eager fathers from exercising a most fundamental human right, the right to simply spend time with their children."

Of course proponents against the proposed presumption of shared arrangements will go to any lengths to misinform, and lead astray the facts that would support such parenting arrangements as is sensible and proper.

It is now clear that the Family Law Council completely misrepresented California joint custody law as a preference statute and wrongly advised the 1992 Senate inquiry that the law was repealed in 1988. The advice was central to Council's recommendations against joint residence. (Refer to page 125/126 of the JPA submission).

This litany of falsehoods has compounded through the Family Court and other agencies over the years.

For the record In fact, the statute in California is clear and states a presumption in favour of joint custody and lists joint custody and sole custody as co-equal options when parents cannot agree.

The Law Society (Family Law Division) submission last week was simply horrendous and to think that such a body was so ignorant of the true position in relation to contact perpetuated against fathers by the legal profession is hard to believe.

Professor Parkinson's finding that only 3% of children lived in a shared care arrangement in which each parent cared for the child at least 30% of the % of the time30% of the time simply supports the quite incredible position we find ourselves in.

The proponents who argue that there will be a boom in litigation may well as argue there is a boom in litigation now because dads have to argue for even 1 minute of contact if the mother is of the contrary opinion.

My own view is that a rebuttable presumption that children should spend equal time with each parent is a fair and equitable solution giving full and complete protection where there are considerations or factors that that must be taken into account to preclude such shared time.

The existing presumption and operation of the law currently is that children should spend no time with the non residential parent and any time must be argued.

On research I and colleagues find nothing explicit in the 1975 act indicating a preference for sole custody over joint custody. It has been an interpretation by the Family Court that has led to extraordinary over empowerment of the custodial parent---to the exclusion of the non-custodial parent from the Childs's life, with hurt, frustration anger and sometimes violence as a consequence.

In a number of cases dads may not avail themselves of an equal shared arrangement due to work or other reasons but such presumption of shared arrangements give both parties a fair place to start from and a position that is clear and recognised in law.

I do know first hand that what is offered to dads in forced settlements is simply outrageously inadequate.

We cannot continue to carry on with the outrageous legal position that is forcing good dads to have to cease being dads on separation.

I have attached a one page summary for your consideration.

- **Give the child the fundamental first right at law to have equal time with both parents. "Presumption of shared parenting" All the other existing rights fall in behind.**
- **Set firm guidelines to Family Court Judges** that the position of parents having equalled sharing of time with their children is paramount over all the other indices that are used to determine residence and contact arrangements.
- **Give the Chamber Magistrates, Court Registrars and Judicial Registrars (Not just Judges) in all courts including local and federal Magistrates courts the authority** to make interim orders setting down a 50-50 shared structure. This will **significantly** speed up the "First" part of the process.
- **Set a maximum time frame on Interim orders** to be in place within say 30 days of application to the Family Court and allow the Chamber Magistrates, Registrars and Judicial Registrars to make these interim orders. Force the mother or parties via legislation changes to undergo a multiple week counselling session under the direction of the court and with **some set outcomes to be achieved**. Not simply counselling where there is no set down outcome expectation.
- **Make it clear in marriage and de-facto separation counselling sessions** that the rights of joint residence are automatic as the status quo and that to change that position will require a full Family court session at a later date after Interim orders are set down.
- **Allow both parents to speak** at Interim order hearings to support affidavits and argue against a presumption at that time. Its too late two and three years later to try and pick up a shared parenting relationship.
- **Make any legislative changes retrospective** so that dads who are currently disadvantaged and operating under the existing draconian regime may take a review case before any court including the local court.
- **Set down firm guidelines for mothers who leave the State** in an attempt to simply avoid the responsibility of allowing contact with the father. The judgments surrounding the best interest of the child simply because the mother will be happy having relocated to another State is outdated and obviates the responsibility that both parents have to bring up a child or children.
- **Allow the father to drop off the child at more flexible locations** other than insisting it is the mother's residence. Places such as the preschool or school in the mornings are very suitable to avoid the huge trauma of separation from the father. The child can generally understand a situation where dad goes to work and the little one goes to Pre School.

The recommended changes as listed above would have an **immediate and profound affect** and contribute to reducing the negativity surrounding the Family Court decision-making process.

Conflict will be reduced and avoided through implementing such changes.

Proponents against such shared parenting arrangements using conflict between the parents as an argument have no understanding of why such conflict exists and in my view after attending countess court sessions and DIDS meetings it is simply because contact is not allowed or agreed by the residential parent.