

Thursday, 31 July 2003

Wayne Butler
P.O. Box 8262
Tumbi Umbi
NSW 2261

House of Representatives Standing Committee
on Family and Community Affairs

Submission No: **336**

Date Received: **6-8-03**

Secretary:



To the (Secretary) Standing **Committee on Family and Community Affairs**
Inquiry into child custody arrangements in the event of family separation
Department of the House of Representatives
Parliament House
Canberra ACT2600

Fax 02 62774844

Dear Members

The following submission outlines the issues associated with my complete frustration and lack of ability to get proper contact with my son, for nearly two and half years.

I have to place my trust in the committee that you will be the source of quick determinations and resulting law changes that are desperately overdue for the many children who seek to maintain more contact with their fathers.

The current Family Law act and its draconian contact arrangements are in my personal experience a complete and abysmal failure to many Dads who desperately seek to be part of their children's lives again and should not have to face the situation in the first place.

- 1) I vigorously **SUPPORT** the consideration of a presumption that children will spend equal time with each parent through legislative change. A change to the Family Law Act is the only sensible outcome that will force upon the inflexible Family Law courts a change in the existing unfair and completely out of touch application of the "Bests interest of the child" orders and judgments.

I would be pleased to **appear before the committee** if called upon.

My Background

Edited for confidentiality

It is likely it will have been in excess of four years before I can even obtain a hearing to get proper contact.

The delays in getting hearings are quite extraordinary compared to matters heard in the local court system.

My matter is simple; it's only about Contact and Residence issues in the main.

I desperately seek changes to the law to facilitate on going contact for my son and I and also other Dads in a similar situation. It is a complete travesty of justice and delay in the Family Law Court, currently forced upon us by the way the existing Family Law Act is structured.

The current situation where my son and I simply cannot see each other or even talk on the phone because the mother decides there is "**No court order**" is absolutely outrageous.

It can only change when there is a rebuttable presumption of shared parenting on separation.

Index and Summary

My Background	1
Index and Summary.....	3
Terms of enquiry section (a) defined.....	4
My Response – Terms of Enquiry section (a) i.....	4
Presumption.....	4
What will shared parenting deliver?.....	7
Best Interests provisions	7
Violence	9
False accusations	9
Court defined time.....	10
Location of parents	10
Children’s Age.....	11
My Response – Terms of Enquiry section (a) ii	12
The circumstances of contact for Grand Parents and other persons	12
There should be a presumption on separation	12
Contact should be as liberal as required	12
Grandparents are usually elderly	12
When the father does have significant contact	12
My Response – Terms of Enquiry section (b)	13
Response to Child Support Formula	13
Proportion of care	13
Formula based on gross not net income	13
Contact related to payments	13
Potential earnings rules.....	14
Naps schedule changes required	14
CSA Forms and Letters is a failure.....	14
Increase Naps deductions in the month they are incurred.....	15
Final Summary	16
I miss my son who has been taken from me and I know he misses his Dad.....	16
Appendix i	17
Published Interview Chief Justice Family Law Court and my response	17
Appendix ii	19
Ideas from personal experience with the Family Court that I believe will significantly make a difference to children’s right of contact.	19
Presumption.....	19
Court procedures	19
Counselling	20
Parents	20
False Sexual Abuse claims and withholding contact	20
The implementing of amendments to Law from this committee	20

Terms of enquiry section (a) defined

Having regard to the Government's recent response to the Report of the Family Law Pathways Advisory Group*1, the committee should inquire into, report on and make recommendations for action:

(a) given that the best interests of the child are the paramount consideration:

(i) what other factors should be taken into account in deciding the respective time each parent should spend with their children post separation, in particular whether there should be a presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption could be rebutted; and

My Response – Terms of Enquiry section (a) i

Presumption

1) **There should be a presumption that children will spend equal time with each parent.**

- a) There are a range of social changes that may arise from such a presumption including increased discussion and consideration between the parties prior to separation.
- b) The existing Family Court favouring one parent over the other to benefit the child will simply continue to cause litigation on the part of the father trying to obtain contact for his children.

2) **Children should have the fundamental right in the majority of cases to have both a mother and a father equally.**

- a) The existing Family Law courts take this right away and allocate mostly every second weekend and sometimes a few hours on a Wednesday as considered the court's version of shared arrangements.

3) **Many Dads appear to be unable to make it through to the family court due to the time involved and the very significant costs,**

- a) Many Dads appear to be talked out of going to court by their respective solicitors as they advise their clients the hopelessness of the situation and the unlikely outcomes.

4) **The presumption in favour of a joint residence order may be rebutted by a showing that it is not in the best interests of the child only after consideration of **clear and convincing evidence** with respect to all relevant factors in the best interest section 68F(2) of the Family Law Act.**

- a) It is clear that **the presumption may suit some and not others**. That is where the personal circumstances will fit. Some fathers may not be able to have flexible work hours that can allow a 50/50 sharing and that would be determined at the initial interim orders hearings either at court or at an arbitration commission.
- b) The provisions under section **68F are well covered** should a presumption that children will spend equal time with each parent be implemented. The provisions are clearly available that protect the children should the child need protection.

- c) The presumption that children will spend equal time with each **parent will make a massive difference to those fathers and Non residential parents who currently get no time on separation.** Many mothers are vindictive and looking for revenge against their partners on separation and immediately commence a conduct regime of parental alienation.
- d) The immediate impact of a presumption of shared parenting cannot be overstated as it will make a significant and immediate improvement in the lives of many children and their fathers on separation.
- e) In addition to situations in which a parent is an inappropriate primary carer, there are circumstances stated by Justice Nicholson that preclude shared parenting but a presumption would allow the option to negotiate.

These situations are stated by Justice Nicholson as follows and include cases where:

- i) Justice Nicholson says Parents live considerable distances apart and consistency of schooling and peer relationships cannot easily be maintained – to say nothing of the travel difficulties.
 - (1) Such situations require this to be addressed on separation by considering the best interests provision extend to the children having on going contact with the father. It is unacceptable that the mother simply moves extreme distances to ensure parental contact is unobtainable.
- ii) Justice Nicholson says parents continue to be hostile to each other, are unable to co-operate or are inflexible.
 - (1) I do not believe this to be a factor. The very fact that reasonable contact is withheld is the primary reason parents are hostile to each other. I believe that contact handover should be able to be conducted at schools or Preschools where, if necessary, the other parent is removed from the handover.
 - (2) Parents in a separated situation exhibit very different behaviours than when in a pre separation environment. It is therefore important to consider particularly the Non Residential parent in a more normal environment when making decisions that preclude contact for the Non Residential parent.

The presumption in favour of a joint residence order will take care of this outrage.

- iii) Justice Nicholson says that parents do not have the flexibility to ensure work patterns and living arrangements can accommodate the demands of the children.
 - (1) This is entirely up to individuals to arrange. It's obvious that some fathers will be unable to have complete 50/50 shared arrangements due to work commitments **BUT** others clearly will be able to adjust work arrangements around drop off and pick up from Preschool and School. The presumption of shared parenting will at last **give them that opportunity.**
 - (2) Many employers already have work related provisions to allow fathers to go early to collect children. Many have special sick leave provisions. My workplace even has a special "Children's room" if you need to bring your children in to work if required.

- (3) Many fathers will make additional effort and work around the drop off and pick up requirements or negotiate four day weeks around such plans to share in their children's lives.
- iv) Others say accommodation and other facilities to meet the needs of children in two households are not financially within reach of both parents, given that separation frequently results in fewer resources being available.
 - (1) Extended families, grandparents and friends would absolutely pitch in to ensure appropriate surroundings where longer or any periods of contact are available.
 - (2) Many children regard the transfer from one household to the other as great adventures and caring parents will equip both residences with appropriate required items.
 - (3) The parents will be far more caring and less adversarial if there is a presumption of shared parenting in law from the first day of separation or when such interim orders would permit.
- v) Detractors from shared parenting regimes say that before separation, one parent has carried out most of the child care and the other lacks sufficient parenting skills.
 - (1) This is highly unlikely with support services available. Where this situation exists and the parent is unable to cope they would hardly take up the full 50% presumption opportunity.
 - (2) It is clear that individual circumstances will play a key part in the determination of shared time requested by the Non Residential parent.
 - (3) In my case I spent most of the time bringing up my son yet on separation the care and contact was completely withheld. Many fathers take a leading part in the care and upbringing of their children.
 - (4) All else being equal, whoever walks away from a marriage should be the one to give up custody. Often it's the mother who walks away and forces the father out.
 - (5) Residence could reflect the approximate division of parental responsibility before a family splits however one parent usually desires to stay home and through financial necessity the father usually has to be the one to go out and work to support the family. This is not to say that fathers do not contribute equally in the upbringing and around the house.
- 5) The burden of proof that a joint residence order would not be in a child's best interest shall be upon the parent requesting sole day to day responsibility or in other words the parent making the rebuttal.
 - a) Currently the **Non Residential parent has no rights of contact** and has to argue for every single piece of contact usually ending in extremely limited contact at great cost, both personal and financial, to the parent seeking the contact. This is simply wrong and completely at odds with other presumptions of innocence until proved guilty.
- 6) **If one parent is of a mind to allow liberal and continued meaningful contact by the children with the other parent then that parent should be considered as a particularly suitable parent** in terms of any attempt by the other to exercise a restraint of the principles of shared contact arrangements.

- a) A parent holding a lesser view such as my ex partner who has a view that I should have no contact should have a much lesser weighting in any rebuttal proceeding.
- 7) Thousands of fathers often are denied copies of school report cards and newsletters and even school photos because the mother has told the school not to send them to the father.
 - a) Often, these fathers send a birthday cards and present to their child at the school to ensure it is received by their child only to be told by the school it has to get the permission of the mother to forward the present.
 - b) These mothers are using the schools to help alienate the child from the father and the schools err on the side of caution as the mother often threatens/intimidates the school stating that the Family Court Order does not allow the father any form of communication with the child through the school.

What will shared parenting deliver?

Shared parenting will, in my view, contribute significantly to:

- Making a **significant reduction** on the number of cases before the Family Court.
- Have a **significant number of parents think twice** before separating
- Create immediately **much more focus between the parents** on agreement before separation.
- Possibly see more parents going to external mediation and counselling before separation.
- **Take significant “angst” out of the hands of the Non residential parent.**
- **Remove much of the conflict** out of separation by preventing the exclusion of the child's father which is currently the default position.
- Reduce the numbers of AVO and DVO's at local courts which is now simply a routine tool used by every separating mother.
- Reduce the many false and vexatious claims of sexual and other forms of abuse by the Non Residential parent. (In fact I have just recently in March 2003 been accused of such behaviour which was proved a false allegation with my four year old and have undergone a truly traumatic process of having to deal with JIRT and DOCS, subpoena documents and defend being a loving and enthusiastic Dad)

Best Interests provisions

- 8) The Family Court of Australia does not believe shared parenting or equal time, to those that can effect an equal parenting situation, is in the best interest of the children. Refer **Appendix i**.

- 9) The family court, from direct experience, **is clearly an adversarial playground for solicitors, barristers and mothers bent on maintaining a regime of parental alienation.** It is a slow, archaic and depressing surrounding to run a residence and contact matter.
- a) The Family court is an adversarial ground of human misery where these lawyers rely on fees for their income.
 - b) What possible reason could solicitors have to avoid strung-out hearings and adjournments, exchanges of lengthy, mostly irrelevant affidavits or to encourage agreement without trial? They, like Judges, are trained in, and thrive on adversary, not conciliation, and parental adversary can seldom, if ever, be in a child's best interest.
- 10) In my own view my son Brad is extremely excited to come and visit his Dad. He has a great time, reading, writing, building things, sailing, and numerous activities too many to go into. He is extremely happy here on the limited occasions he is allowed to come to his Dads.
- 11) The best interests provisions in the family court are better served by fathers being involved in the Non Quality time (As described by the Family court).
- a) Many fathers want to be involved in bed time reading, dinner or homework. Residential mothers generally ensure this does not happen by literal and strict adherence to limited interim or final orders.
- 12) My son is given no clothes or support items by the mother on hand over, often a claim made by many dissenters of shared parenting, who say that it's difficult for the mother to pack everything.
- a) In my case she has never given anything of value at change over periods.
- 13) There is some argument that home work would be left behind.
- a) My argument against that is simply that as a caring father I would prefer to pick the child up from Pre School or school anyway where he has all his books and school equipment with him in the first instance.
 - b) I would ensure I had a time table of events and had him adequately clothed for his return to school or preschool and send all his items he brought from the school back on his next hand over period. This can work.
- 14) The best interest provision are clearly enhanced by stopping the insidious family Court rulings that insist on pick up and drop off to be at the mothers or fathers residences.
- a) Surely we are in a society now where Pre schools and Schools are adequate institutions for collection.
 - b) This would save significant angst and be more efficient in terms of limited time use in some situations and reduce the tirades of abuse from mothers, intent of ensuring confrontation to enable their next AVO attempt to be successful.

Violence

- 15) I sincerely believe that a presumption that children will spend equal time with each parent will significantly reduce the levels of violence alleged in separation issues.
- 16) My own experience and that of other men in the DIDS (Dads In Distress Group) on the Central Coast of NSW is that there is extreme frustration at the continued use of the withholding contact of the children as a means to black mail or demean the position of the separated father.
- 17) I have been through not less than five or six local court hearings on AVO proceedings myself forced upon me by a vengeful mother wanting some advantage at Interim order hearings. None of these were successful and much evidence was fabricated however I can understand the sheer torment that men go through when all contact with the child is with held.
- 18) I genuinely believe that a presumption that children will spend equal time with each parent at separation will immediately result in a decrease of most violence that is alleged to be perpetrated. This can only be good for the local courts.
- 19) It is clear that there are already significant safeguards in place for children who require protection through DOCS and its JIRT unit. There is clearly no requirement for any specific additional children protection service.
- 20) There are clearly adequate provisions in the local court through AVO and DVO proceedings. I might add that I have sat through a number of AVO matters including my own and find that mothers particularly use these proceedings as a weapon to achieve a better outcome in family court hearings notwithstanding their continued attempts to seek and impact revenge against the father. If and when the mother makes a successful application the impact on children's lives is significant and usually long lasting as the father is then cut completely out of the children's lives.

False accusations

- 21) Rebuttal circumstances need to be factual and proved and not simply malicious or false. Accusations as are often fabricated by mothers wishing to ensure that contact is not made available and achieve advantage at final hearings.
 - a) As in my case the mother alleged I sexually abused my son. Fortunately the JIRT investigation proved otherwise and corroborating evidence at the time the incident was alleged to have occurred proved it was completely fabricated yet there were no legal repercussions for the mother.
- 22) A number of mothers will go to any lengths to ensure that the father does not get any or significant contact; including false letters from the children saying they do not want contact, refusal to allow telephone contact by the father, refusal to allow pickup from destinations other than that which

will cause most conflict, refusal to accept letters or allow email exchange between the father and Children. The list is significant.

- 23) Accusations need to be proved before they are accepted. Once the mother believes something to be true the Family Court seems to deem that as being fact.
- 24) There should be statutory laid out penalties for false accusations that are not proved. These penalties may be fines or residence orders reversed.

Court defined time

- 25) The court appears to have a view that there are two types of time
 - a) "Quality time" - Weekends and
 - b) "Non Quality time" – The other days where meals, baths and homework are carried out.

This view should be challenged and that time shall be calculated over a complete calendar month. The presumption that children will spend equal time with each parent should mean a sharing of equal time not some other calculated arrangement.

- 26) If both parents are spending equal time with their children then both parents should be declared as joint residential parents.

Location of parents

- 27) Location of the two parents should not necessarily preclude a presumption that children will spend equal time with each parent.
- 28) Where there are young children under two a reasonably close location may be beneficial but the mother often departs from the locality or the State to ensure contact is avoided.

My own view is that good Dads can in fact look after Baby's as well as mothers.

Breast Milk can be extracted as was done in our case and frozen in plastic sterile bags for up to three weeks use. This worked extremely well as the mother could extract a supply of milk at a convenient time during the day. I believe there are some mothers that are unable to express I am told and that would be an issue for consideration.

There are those that do not use breast milk and I believe these numbers are significant and this is then not an issue.

The key issue is the bonding of the child or children with the father who is all too often discarded and attempted to be replaced with a new "Step Dad". This can only be achieved with liberal and regular contact regimes.

Such regimes will only ever become reality if supported with the presumption in law that children will spend equal time with each parent.

- 29) On separation there needs to be a status quo on the location of the parents to stop one of the parents from moving a long distance away to ensure contact is not able to be maintained. Certainly this would mean:
 - a) The children must not be moved interstate.
 - b) The children should not be moved a distance of more than 30-40 minutes drive to enable the presumption that children will spend equal time with each parent and that such presumption would enable either parent to collect or drop off the children
 - c) Where children are already moved interstate or significant distances in excess of 30 minutes away then the parent who has taken the children should make adequate arrangements to ensure that the other parent may participate in some meaningful sharing. This may require significant block periods of time for the children to be made available to the father where the mother is unable to move back to the general area she left.

Children's Age

- 30) In difficult cases children of any age should be able to have their opinions heard in court. Currently the Family Court excludes children's views and relies only on the performance of the various legal parties, mother and father attempting to destroy each others credibility. How any judge can make a valid judgement without consulting all parties is quite beyond belief. My son of four would clearly express a view in court.
- 31) My son is quite able to express where he would like to go. He often requests spending more time with me.
- 32) Very young babies can be looked after by fathers providing required facilities are available to the father. Often Grandparents are available and much more needs to be done to allow fathers of very young babies to have proper contact.

My Response – Terms of Enquiry section (a) ii

(ii) in what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents.

The circumstances of contact for Grand Parents and other persons

There should be a presumption on separation that contact is available to Grand Parents particularly, and relatives or close friends that have had a previous involvement in the children's lives.

Contact should be as liberal as required and not specifically set down to rigid inflexible orders that preclude contact on this day or that. Currently mothers can insist that unless there is a specific contact order then contact is excluded.

- a) This is particularly necessary to accommodate elderly parents who may reside interstate or overseas and make infrequent trips to the location of either the father or mother.
- b) It is important that should contact not be given as a presumption then there is an ability to apply to the local or federal magistrate's court for such contact to be given as the Family courts take between 1-5 years for final orders. That in itself is an outrageous situation.

Grandparents are usually elderly and should not have to, nor would they take a case to the family court. They should have automatic rights of contact as should fathers.

- a) This is a significant point as I have parents who cannot possibly take a case to the family court to get contact orders. They reside in New Zealand and can only manage one trip a year.
- b) In my particular situation even close relatives (Aunties) on the mother's side that live only 2 doors away from the mother's parents are precluded from seeing my son. (Because the mother says there are no orders to allow them to do so) I have asked these members to write to you but they are elderly and feel they cannot interfere and find an application too daunting. (Names available)
- c) It is a sad fact that **elderly people simply cannot cope with the issues of dealing with courts** in respect to matters of contact and simply accept their lot when contact is not given.
- d) **The presumption of shared parenting provisions will immediately allow grandparents and close friends of the children to continue the contact (Without the need for court orders) that has been withdrawn on separation. This in itself is an extremely important consideration.**

When the father does have significant contact as would be the case with an enactment of a presumption that children will spend equal time with each parent, then contact should be more easily available to Grand Parents

and relatives or close friends and the specific issue of Grand parent, relatives and friends may therefore not be as of significant an issue in such circumstances when a presumption is available under law.

My Response – Terms of Enquiry section (b)

(b) whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children.

Response to Child Support Formula

Currently the child support formula is unfair for the following reasons:

- 1) It makes no reference to the true cost of the child (children).
- 2) It can result in determinations that exceed any estimated cost of the child.
- 3) It treats the income and financial resources of parents inequitably.

Proportion of care

- 4) It does not take into account any proportion of care less than 30%. Child support payments should be linked to contact as low as 10% as a means to try and get mothers to understand that it's not simply a free subsidy.

Formula based on gross not net income

- 5) The formula is based on gross income, and is therefore not representative of the true take-home financial resources of the parents.
- 6) There is no tax deductibility_which would assist considerably.
- 7) It is a major disincentive for non-resident parents earning more than \$50000 to increase their income. The formula should be adjusted to reflect a set threshold and not continue on the more the payer earns as it's a total disincentive for the payer to earn more as all he or she does is pay more. There is no set limit on the calculation to the threshold level currently set.

The reason given by CSA for this is that it enhances the living standard of the child (Children) the more that is paid. I would say it allows the mother to spend more on herself and not on the children.

Contact related to payments

- 8) Those fathers who are paying their assessed share often do not have significant contact or any contact due to the mother's inflexibility in allowing contact through some revenge agenda. No contact - No payment is certainly an option that must be considered.

- 9) There is currently no system to account for where the funds are spent by the mother. Accountability by the payee is required.
- a) Payments can be made that are clearly not given to the children. A system of providing "School" stamps for school wear or text books or school lunches could be considered where mothers are clearly abusing the process of where the money is spent such as situations where there is gambling and alcohol abuse.

Potential earnings rules

- 10) The projected or potential earnings income provisions of the CSA where PAYE salary details are provided at a level below the assessments is clearly unfair.

Naps schedule changes required

- 11) The schedule of Prescribed NAPS should be significantly expanded to include:
- a) Clothes.
 - b) Shoes.
 - c) Computers.
 - d) Software.
 - e) Children's books for reading at the Payer residence.
 - f) Holiday payments such as Cash allowance while on holiday.
 - g) Payments in cash directly to a Childs separate bank account.

CSA Forms and Letters is a failure

- 12) The CSA forms/letters system is a complete abysmal failure.
- a) Computer generated letters are signed by Lorraine Shergold "The Registrar" and never by the case officer who dealt with the matters making follow up extremely difficult.
 - b) Computer generated letters generally do not have a referring officer and will often say call our objections unit on 131272 and the officer has no idea what you are calling about.
 - c) Computer generated letters do not refer to any specific or previous matter raised by the Payer. Example we refer to your letter of 9th May. (The payer may well have sent five letters to CSA on that day.)
 - d) Statements are only generated when requested not on a regular basis and should be available on line just as a bank account

Increase Naps deductions in the month they are incurred

- 13) The Naps payments should increase to 100% deduction in the month the Naps are claimed.
- a) Currently only 25% is deducted per month and it can take years to use up NAPS. These Naps credits can get to become large amounts.
 - b) The statements never ever show the NAPS payments sitting in credit so the Payer never knows what NAPS payments are accepted and being deducted at the rate of 25% of the amount per month.
 - c) Naps have to be applied for on a monthly basis. In my case I have monthly payments for regular amounts paid over a year such as school fees. These should be able to be done off a schedule of payments with receipts provided as part of the yearly tax returns.

The following **Child Support Formula** may result in a more equitable determination.

$$CSP = \frac{A}{A+B} \times C \times (1-D)$$

Where:

A: *Is the child support income of the payer, which is their income net of tax less any allowances for dependants.*

B: *Is the child support income of the payee, which is their income net of tax less any allowances for dependants.*

C: *Is the cost of a child, which may be calculated from published research and adjusted for inflation on a yearly basis. It may be that this value is dependant upon the sum of A and B, to reflect the increasing cost of care as it relates to increased family income.*

D: *Is the proportion of time the child is in the care of the non-resident parent. This proportion should be based starting from zero.*

Neither parent should have their income considered for the purposes of Child Support if that income, net of tax and the cost of dependants, falls below a reasonable amount. This amount should be the same for both the resident and non-resident parent.

Using this formula, it is not possible for the paying parent to pay more than 100% the cost of raising a child to the resident parent.

Final Summary

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

It would immediately make a fair and equitable situation where one does not currently exist.

I miss my son who has been taken from me and I know he misses his Dad.

It seems like a lifetime has gone before me since October 2001 while I have been waiting for this opportunity to write to someone that can really make a difference in allowing my son and I to have proper contact and for him to interact in normal every day events with his Dad.

I am a good Dad and simply seek an opportunity at law to share with my son in his life.

Wayne R. Butler

Appendix i

Published Interview Chief Justice Family Law Court and my response

Justice Nicholson in the Advertiser Wednesday 2 July 2003 stated that:

- a) Many people achieve resolution before getting to the Family Court.**
 - i) I would comment due to sheer impossibility for the Non residential parent to achieve a positive outcome and with the mother able to take legal aid and the father self represented the situation is clearly almost impossible for Non residential parents.*
 - ii) Many fathers are talked out of proceedings and "Take it or leave it" settlements by solicitors who want quick results and are not interested in the children's right of contact.*
- b) Most of the remainder achieve resolution with the assistance of court mediators, external counsellors or solicitors.**
 - i) I comment due to significant pressure brought on by solicitors at the hopeless task ahead for the non residential parent to achieve a positive outcome it is obvious not many cases get to court.*
- c) It is true that these consensual arrangements favour the mother as the residence parent.**
 - i) Surely diminishing the role of the father should hardly be supported by the Family court as is done currently*
- d) Courts have no bias as such. Each judge is independent of the other and there is no policy that guides them. Other than the Family Law Act and decisions of appellate courts.**
 - i) Perhaps this is where a significant problem lies in that there is no accountability and standards policy to guide them to a level playing field which may well consider the children's rights to have significant contact with their fathers.*
 - ii) It's obvious that the Family court cannot do it therefore the Government will have to sort this out through legislative change.*
- e) In many cases parents live considerable distances apart.**
 - i) Usually as the residential mother has taken the children to another state or a distance away that would preclude proper contact with the father. Often mothers are perpetrators of the move away to continue the despair that fathers face.*
 - ii) The presumption of shared time will force mothers to consider carefully locations as they may well have to contribute to the costs of transporting the children to the fathers place of residence should they move long distances away.*

- iii) *There are a number of cases where Family Court judges have allowed mothers to move away to remote locations under the bests interest provisions. Basing this on the state of mind of the mother being happy and therefore the children would receive better care from the mother.*
- f) Parents are hostile to each other, uncooperative and inflexible.**
- i) *It's obvious that the Family court cannot do it therefore the Government will have to sort this out through legislative change. Parents are hostile as one parent gets little or no contact and for years has to battle through the adversarial court system with little hope at the end of a reasonable outcome.*
- g) Parents have work patterns and living arrangements that do not meet the needs of their children.**
- i) *Clearly an issue that needs to be worked through with the parents to ensure proper contact is maintained by the children.*
- h) Before separation one parent carried out most of the child care.**
- i) *Often the father yet the mother ends up with usually the majority of time with the children as the residential parent where she can go about conducting the most draconian alienation campaign. The court clearly has a biased view of the role played by many fathers in the upbringing of their children.*
- i) I have long advocated a less adversarial system.**
- i) *Then why hasn't he changed the way the system works and allowed all residence and contact cases to go to **Arbitration or to the Local courts where it would be heard in a matter of weeks not years.***
- ii) *Current delays are significant and can be up to a year for Interim orders and up to four or five years for Final orders is quite common. Certainly in my own case I started in the legal channel October 2001 and expect an outcome and proper contact by the end of 2004 or early 2005.*
- j) We can admit that in the 21st century where families and individuals are more fluid in the way they live and, tragically, almost one in three marriages end in divorce, that the needs of the children can be left behind.**
- i) *Justice Nicholson appears to admit the courts are not dealing with parenting for current times and that is clear from the way the Family court is failing children through a lack of contact arrangements that reflect any close resemblance of a shared parenting arrangements.*

Appendix ii

Ideas from personal experience with the Family Court that I believe will significantly make a difference to children's right of contact.

Presumption

- **Give the child the fundamental first right at law to have equal time with both parents. All the other existing rights fall in behind.**

Court procedures

- **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.
- As a special court, the Family Court should **not get involved** in residence and contact matters, only property or technical issues because it's an adversarial place where solicitors get rich and is an extremely complex court environment.
- **Reduce the Family Courts involvement in residence and contact matters.** This is pivotal in any reforms. My recommendation is that the Family Court should **not deal with matters of residence and contact.** These matters should be dealt with in local and or Federal Magistrates courts or an arbitration environment perhaps at Centerlink or some such department.
- The Family Court will suddenly be unburdened of its many years of case / matter backlog if there is a presumption of shared parenting. This will need a guideline to the Family Court in how to deal with an expected influx of applications from Non Residential parents.
- If the Family Court is to continue then **give the court Deputy Registrars, Registrars and Chamber Magistrates the authority** to make interim orders setting down a 50-50 Shared Parenting structure. **This will significantly speed up the "First" part of the process.** **This will deal with the up to 1 year Family Court backlog in issuing of Interim Contact orders.**
- Set a maximum time frame on Interim orders to be in place within 30 days of application to any court and allow the Deputy Registrars, Registrars and Chamber Magistrates to make these interim orders. Currently the requirement to have a Judge make orders means it is an impossible task to get rapid results in the Family Court.
- Allow parents to speak at Interim hearings to support affidavits. Currently Interim hearings are by affidavit only and the most creative claims win the day.
- Force the mother or parties through legislation to undergo counselling sessions 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. Current court counselling is simply a complete and total waste of time as there is no outcome and set down agreements. If the other party is totally inflexible and continues a "No Contact" approach there is absolutely nothing you can do except battle it out in the Family court.

Counselling

- ❑ **Make it clear in marriage and de-facto separation counselling sessions** that the rights of residence are automatically joint as the status quo and that to change that position will require a full court session at a later date

Parents

- ❑ Allow parents to pick up and drop off at Schools and or Preschools or other more flexible places so other parent contact can be limited. Currently the courts only favour pick up and drop off by the father at the mothers residence where often conflicts can occur.
- ❑ **Set down firm guidelines on “fathers first”** so that mothers give the father first opportunity of baby sitting instead of farming the children out everywhere else except the father, in a direct effort to ensure the father has little involvement in his family. The presumption of a shared parenting arrangement will significantly assist this from occurring.
- ❑ **Set down firm guidelines for mothers who leave the State** in an attempt to simply avoid the responsibility of allowing contact with the father.
- ❑ **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 in the mornings 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.

False Sexual Abuse claims and withholding contact

- ❑ Set down severe penalties for cases where a Residential parent makes claims of sexual abuse against the Non residential parent and the claims are found to be false. There are many cases currently before the Family courts where contact is completely restricted while lengthy DOCS and JIRT investigations and interrogations of the children are on going.
- ❑ Set down severe penalties for withholding contact from an able Non residential parent.

The implementing of amendments to Law from this committee

- ❑ The presumption enactment to take effect on passing through the house. This will immediately reduce the burden on existing matters and new matters in the Family Court. Therefore allow a simple application to be made at the local court. Mothers and residential parents will not give up their regimes of alienation easily. My own ex partner has vowed not to make any presumption and increase of contact have any effect without my obtaining specific orders.
- ❑ **Make any legislative changes retrospective** so that Dads and Non Residential parents in hopeless contact arrangements can apply to take advantage of any new law changes. Those who are currently disadvantaged and operating under the existing regime may take a review case before any local or Federal Magistrates court registrar to obtain shared residence