

House of Representatives Standing Committee
on Family and Community Affairs

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Secretary:

This submission has been formulated from consultation

*with the members of Citizens Concerned For Kids (Goondiwindi),
and is authorized by that membership.*

This submission has been compiled and submitted by:

The Honorary Secretary Citizens Concerned For Kids

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Signed: Pamela Chandler Dated: *07.08.2003*
Pamela Chandler
Hon. Sec. Citizens Concerned For Kids (Goondiwindi)

SUBMISSION

**To: The Standing Committee on Family and Community Affairs
Child Custody Arrangements Inquiry
Department of the House of Representatives
Parliament House
Canberra**

**From: *Citizens Concerned For Kids (Goondiwindi)*
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RATIONALE

Our group was formed in response to growing concern and outrage within the community of Goondiwindi over the plight of children from broken homes in our area, and the apparent inability of the Family Court to mediate in a way that is in the best interests of the child or children involved.

*We believe that, in order for the children's welfare to be resolved, the process must be **realistic** and **fair** to both parents, so that they can perform their shared parenting responsibilities in the optimum attainable atmosphere of harmony and co-operation.*

We further believe that the current legislation and its application by the Family Court compromises the interests of children by creating an imbalance in its administration which results in greater disharmony, ill-feeling and resentment between the parties.

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RATIONALE (Cont):

We welcome, as long overdue, the Standing Committee's Inquiry into Child Custody Arrangements, and respectfully address the terms of reference of the inquiry with our views and suggestions as follows:

VIEWS & PERCEPTIONS**1. The Presumption of Shared Parenting**

- It is our view that, as conception requires the participation of two parents, so does the task of rearing that child to an independent age.
- We acknowledge that no parent should be forced to remain in an unsatisfactory co-habitational relationship solely because they have created a child together.

Co-habitation for this reason invariably results in a destructive and harmful atmosphere for the child or children involved.
- The present system as administered by the Family Court, and purporting to be based on the best interests of the child, has, in many instances, created entirely the opposite outcome, resulting in insecure, confused and endangered children, and resentful, vengeful parents who are emotionally and financially disadvantaged.
- The repercussions of Family Court decisions are not limited to the parents and children, but flow on vicariously to grand-parents, aunts, uncles and the wider community.

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- We recognise that not all parents are willing or able to accept their share of responsibility for their children, and that we, as a community must share some of this burden through our taxes, and by being vigilant in our observations of how our taxes are spent, and that the best interests of children are, in fact, being served by our elected legislators and the administrators of that legislation.

2. The Fairness of the Existing Child Support Formula

- We believe that the existing formula which bases Child Support payments on a percentage of the gross income of the non-custodial parent discriminates hugely against that parent.

This discrimination is responsible for much added resentment in what is often an already strained and bitter relationship, and works to the long term detriment of the child or children involved.

- Non-custodial parents are usually forced to find new accommodation, feed and clothe themselves, deal with the physical and emotional implications of permanent or semi-permanent loss of contact with their families, provide a suitable and acceptable venue for access visits from their children, provide for their daily care for the duration of the access visit, pay for fares for the children's travel, sometimes from the other side of the country, take time off work, (either unpaid or as part or all of their accrued holidays), to spend this precious time with their children.

- There seems to be no permanency attached to orders handed down by the Family Court, and these orders are open to challenge at the whim of either parent, or, in some cases, other people who would appear to have no legitimate claim on residency of the child or children.
- Most often these claims and challenges prove to be frivolous and vexatious, resulting in great financial and emotional strain on the defending custodial parent who is obliged to repeatedly defend him or herself in court, at his or her own expense, in order to retain the residency of the child which has already been determined by previous judgements of the same court.
- There appear to be no penalties in the existing system to deter or prevent this type of false claim and resultant court hearings, nor is there any compensation for the expense the defending parent is forced to incur.
- A great deal of taxpayers' money is wasted on these unnecessary court actions, both in supporting the petitioner through legal aid or similar funding, and in the conduct of the court proceedings as well.
- In some cases, the parent who has been granted residency, is forced to support the child or children in their care, defend themselves in court against false accusations, and help to pay the legal costs of the other parent through their taxes.
- Under the present system, the parent paying child support is severely restricted by financial constraints, and very limited in their life-choices.

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- Many see quitting their jobs and registering for social security as their only option, and take this course, resulting in the loss of valuable work contributions to society, and increasing the burden on taxpayers.

3. The Best Interests of the Child

- We believe that every child has the inalienable right to adequate shelter, protection, food, health care and education.
- We believe that provision of these basic rights of the child is the primary responsibility of the parents.
- We accept that it is not always possible for either or both parents to accept the responsibility of providing for the day-to-day care of their children. Children, regardless of age, are aware of, and sensitive to, any discord between their parents, and often feel responsible and guilty when parents fight or separate.
- Children are often disadvantaged by residency judgements imposed by the current system.
- Some children are the victims of emotional, physical and sexual abuse as a result of their custodial arrangements.
- The lack of permanency in custodial judgements, and their openness to misuse and abuse by either or both parents, places the child in a situation of insecurity and vulnerability.
- The quality of care given by the custodial parent is adversely affected by not knowing, from day to day, how long that child will be in their care.

- Some children are repeatedly subjected to physical and psychological examinations to prove or disprove claims of emotional, physical and sexual abuse.
- Some children become the tools of vengeance of either or both parents, and are used as go-betweens to carry messages, threats and vilifications between those parents.
- Some children become the pivot for blackmail of one parent or the other, and are often physically endangered in the process.
- Children are often educationally disadvantaged by frequent moves of the custodial parent, or swapping between parents for access arrangements.
- Courts are sometimes overwhelmed by the bitterness of the situation between the parents, and lose sight of the best interests of the child.
- Court-appointed legal counsel for the child are often inadequately or ill-briefed, due to time constraints, and fail to properly protect the child's interests.

SUGGESTIONS & RECOMMENDATIONS

Based on our experiences, observations and perceptions of the operation of the existing Child Custody Arrangements and the Child Support Formula, we offer the following for your consideration when making recommendations from this enquiry:

Shared Parenting

- That wherever possible, custody and support arrangements be shared equally by both parents.
- That each parent's financial and physical situation be **thoroughly** and **individually** investigated as to its merits in providing for the best interests of the child or children involved.
- That decisions of the Family Law Court not be based on a predetermined, "one size fits all" formula, and be delayed until thorough investigations of individual circumstances have been completed.

This would give each parent the opportunity to present the merits of their claims, and enable the court to make informed, equitable decisions about child placement, support and access arrangements.

- That each parent have access to the Family Law Court only once as an entitlement, and both parents have access to free legal representation at this original hearing.

- That the rights and claims of other interested parties, eg. grandparents, be considered, where appropriate, when determining what constitutes the best interests of the child, and be included when making initial judgements.
- That, where, after thorough investigation, neither parent, nor member of their extended family is deemed capable of, or willing to, care for the child, that other suitable arrangements, eg. approved foster care, be provided at the equal expense of both parents.

The Fairness of the Existing Child Support Formula

- That each parent's **individual** financial circumstances be thoroughly investigated before the establishment of child support orders, so that neither parent is advantaged or disadvantaged by the payment of child support, the residency of the child or children, or their physical situation after separation.
- That Social Security payments to the custodial parent be based on individual circumstances, so that no incentive is provided for this parent to benefit financially and 'live off the system'.
- That Social Security Payments to custodial parents be based on individual merit, and only paid in circumstances of genuine need, where all avenues of parental support possibilities have been investigated and exhausted.
- That the Child Support Agency oversee the use of child support payments to ensure that they are always directly applied to the welfare of the child.

- That genuine concerns of the either parent for the welfare of themselves or the child, eg. sexual or physical abuse, be reported, with supporting evidence, in the first instance, to the police, and investigated and dealt with in a Criminal Court, where penalties for making false or misleading accusations are already in place, and costs of court are paid by the loser of the court action, and criminal compensation is available to victims.
- That changes be made to existing custody and support arrangements by the Family Court, only after a Criminal or Civil Court judgement has been made, and claims of misconduct proven.

This would deter either parent from making mischievous accusations, and ensure that continuity and security for the child were maintained.

Family Court personnel would then be freed to spend more time investigating individual cases and claims, and have a clearer idea of the legitimacy of each petitioner.

The Best Interests of the Child

- That the best interests of the child or children can only be served when each individual case has been thoroughly investigated and judged on its merits.
- That the "one size fits all" formulas and guidelines currently in place be replaced with a system that recognizes that every child's circumstances are different and that children cannot speak for themselves, and, as such, are the most vulnerable members of our society.
- That where-ever possible, arrangements for the custody and support of children be shared equally and fairly between the parents, so that children's exposure to ill-feeling between parents is minimized.
- That children be subjected to physical and psychological examinations by medical professionals **only** when Police or Criminal Court investigations require it.
- That all instances where **any person** has good reason to suspect that emotional, physical or sexual abuse is being perpetrated on a child, that this be reported immediately to the appropriate civil authorities, and dealt with **promptly** by Police and Criminal Courts.
- That penalties be imposed for false or misleading claims to the Family Court as a deterrent to parents falsely trying to use children or the court system to their own advantage, or as an instrument of vengeance on others.

- That police be empowered to remove a child to a **neutral** place of safety when an obvious and immediate threat to the child's safety exists.
- That penalties be imposed for breaches of orders of the Family Court.
- That legal counsel appointed to protect the interests of the child be given adequate opportunity to familiarize themselves with all facts and circumstances pertaining to the case, so that they may better represent the children and protect their interests.
- That the judgements and orders of the Family Court be **final and binding** on all parties, and be made only after thorough and complete investigation of all individual circumstances.
- That such Family Court judgements be made only once unless necessitated otherwise by findings of the Criminal Justice or Civil Justice Courts.
Any such findings should be immediately referred to the Family Court for action to protect the child.