Neal Vickers
51 Apollo Road
BULIMBA QLD 4171
[redacted]

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Committee Secretary
Standing Committee on Family & Community Affairs
Child Custody Arrangements Inquiry
Department of the House of Representatives
Parliament House
CANBERRA ACT 2600

Dear Committee Secretary

My submission is in support of the notion of a presumption that children should spend equal time with each parent when parents separate. I am divorced from my ex-wife, the mother of my daughter. From the time of separation when my daughter was 3½ years old, she has lived in a shared arrangement between my ex-wife and me, and I have therefore seen the benefits of this type of arrangement first hand.

Children with both parents as a rebuttable presumption
The terms of reference for the inquiry have been drafted well. I believe that there should be no change to the over-riding principle that the best interests of the child are paramount in considering where a child should live after parents separate. In fact, it is my belief that it is in the best interests of all children that they have the opportunity to share the time that they live with each parent. Of course, where there are factors known that may endanger the children's safety then these would over-ride the presumption of a child sharing time with both parents.

Much has been written and studied about the effects on children when they live with only one parent. Where this is unavoidable due to the death of a parent, it is unfortunate. When this occurs because parents separate, I believe that more should be done to lessen the likelihood of large numbers of children growing up under these circumstances merely because of, what I see as, old misguided notions that children should stay with only one parent, which is overwhelmingly usually their mother. There has been a steady shift in parenting in the last 10 or so years, towards fathers being more involved with their children (in intact couple relationships). This shift should be reflected also in the parenting roles of fathers if they are separated from the mothers of their children. Just as it is the best interests of the children in intact couple relationships who are gaining the benefit of a more involved father, it is similarly in the best interests of children whose parents separate to have this involved father.

I am not someone who has had experience in drafting legislation, but I believe that it is time that changes are made to Australian Family Law to reflect the shift towards more involved fathers so as to provide better opportunities for children of separated parents.

The shift that I am suggesting is contained in the terms of reference for this inquiry, that should children's parents separate, the first position should be that children would share the living arrangements with each of the parents, and this presumption may be rebutted at law, should the parents be unable to negotiate the living arrangements amongst themselves. I believe that to argue that children's best interests are served by making them live with one of their parents and only visiting the other is an outdated concept. That this outcome would happen should be up to either the parents by agreement, or by adjudication of a court if the parents cannot agree.

My daughter has been living in a "shared custody" arrangement, by Consent Orders, with my ex-wife and me since commencing school. I consider that my daughter has had a very good opportunity in this arrangement to experience the parenting of both her parents in this time and I would have hoped that this could continue for her. Unfortunately, my ex-wife does not share this view and I am currently planning to appear in the Federal Magistrates Court late in August to present my case against her application to have my daughter live full-time with her and only have minimal contact with me (alternate weekends).

I am particularly interested in this inquiry, as I have been involved in family law litigation two other times in the last 6 years. In each of these situations, I have begun my thinking about decisions that I have had to make (in relation to what orders to apply for, how to present evidence, consideration of offers by my ex-wife, etc.) from a standpoint that my daughter has every right to experience the parenting of both her parents. This position is not just the current legal position that the guardianship of children always resides with both parents whether they live together to care for the children or not. My position is that the living arrangements of children should be shared between both parents if they separate. The fairest way for children to experience parenting from both their parents, is to ensure that they have the opportunity to live with both parents for significant periods of time, in which each parent is able to care for them in a significant way. By this I consider that the current stereotypical arrangement that separated parents are involved in, by which children spend most of the time with one parent and commonly only have contact with the other parent on alternate weekends, does not meet the needs of children to have the opportunity to experience truly 'living' with both parents. A child cannot feel like their home is with a parent with whom they spend only alternate weekends.

I have always encouraged my daughter to consider that she has two homes and two families. I consider this a healthy concept for a child faced with being raised by parents who do not live together. In the 4½ years of this arrangement, my daughter has shown that this adjustment has not presented her with too difficult a challenge. She readily identifies to others that she, indeed, lives in two households and has two families. She has relationships with step-parents, extended family members, and pets at each of these households. In fact, one of the challenges that frequently presents itself to her is that others do not understand her situation. The default position for children at her school is that they live in one household (intact parents or with one parent if separated). I have gone to a lot of trouble to ensure that school staff understand my daughter's living situation and fortunately have had a very good response from most staff. I have been able to ensure that my daughter receives two of every school notice to take home, and I have endeavoured to ensure that teachers allow my daughter to present her work that might include reference to her families and living situation as accurately as possible (despite this sometimes taking longer to explain). However, this has not always been the case. While I have taken the trouble to explain my daughter's living arrangements to her class teacher each year, it is harder to ensure that other specialist teachers receive the

information. My daughter's school has a Language Other Than English (LOTE) program in which the classes have 2 sessions per week with an Italian teacher of half and hour each in each year of schooling. When my daughter was in Grade 4, her mother had another child (my daughter's half sister). At the parent-teacher interviews mid-year, I chose to see the specialist Italian teacher (for the first time in my daughter's schooling). It was only them, when my current wife attended with me, and my ex-wife, that the Italian teacher realised that my daughter's did not live with her father and mother. It then made sense to me why the Italian teacher had said congratulations to me a few months earlier following the birth of my ex-wife's child. At the time I did not have time to respond, as it was a passing comment, but it was clear that for 3½ years a teacher had not been made aware of my daughter's situation.

I believe that the positives for my daughter have, however, been due to my efforts. Unfortunately, my ex-wife has apparently not valued the shared care arrangement. I have always had difficulty negotiating with my ex-wife the many issues that arise between two households sharing the raising of a child. Most of this has been quite frequent, irksome issues relating to the particular arrangement that required agreement on which part of the school holidays my daughter would spend with which parent, and other holidays such as public holidays, school pupil-free days, etc. However, my daughter's experience of the shared residency arrangement has been positive despite, or even in spite, of these difficulties with my ex-wife. My ex-wife also has instigated two cases of litigation regarding my daughter's residence arrangements in the Family Court of Australia. This has placed great stress on my current wife and me, and our efforts to create our family life. I believe that part of the stress has come about due to the difficulties under law regarding the notion of shared care. The difficulties have been expressed as the issue that it has been exceedingly difficult to mount a case under family law arguing for shared care between separated parents. I have been advised by solicitors that when measured against an application from my ex-wife for my daughter to live full-time with her, my argument for shared care does not hold much chance of being ordered by the court.

While I can understand the logic of this advice under the current law, I believe this shows a deficiency that produces a particularly sad outcome for the child. The logic of the current law is that if one party does not want shared care, then there is little chance that the court would order shared care. This seems reasonable on the surface, however as it applies to my case, this logic shows a potential disregard for the experience of my daughter. She has lived for 4½ years in a shared care arrangement, but may have to change this and live predominantly with one parent, due to the actions of only one of her parents. Currently, this latest court case is still awaiting a final hearing late in August. Due to the advice that I have received, I have argued for my daughter to live with me predominantly (the reverse of my ex-wife's application) in this case, and therefore the court is left with the unenviable position to determine between these two competing arguments in deciding what is in the best interests of my daughter. This is particularly unfortunate, as it pits parent against parent in trying to show the court how it would be best for my daughter to be with only one of them. I do not enjoy this position. As stated above, it has always been my belief that my daughter should experience the care of both her parents rather than her having to live with one, and only visit the other. The way that the family law is, as it is practised today, has meant that I find myself having to chose between arguing along the lines of my strongly held beliefs for sharing care of my daughter, or arguing that she live with me and only visit her mother. The choice that I have made to not argue for shared care, upon the advice from solicitors, is due to the fact that I faced the very real possibility that my daughter would lose the significant experience of my

parenting if I argued for shared care, because it would be more likely that my ex-wife would be successful in arguing for sole residency.

My current situation in litigation also brings up the difficult issue of whether the law could order shared living arrangements for children that place separated parents under obligations such as to live relatively close to one another. I am aware of the difficulties that this may present in a legal sense. However, I do not find that it is difficult for the law to expect that separated parents who will be sharing the residency of a child or children should live relatively close to one another. The issue, as I see it, could be resolved legally by drafting laws that ensure that where a parent intends living is one of the considerations when making judgements under law about the living arrangements for children. By this, I mean that if a parent wishes to move such that shared living arrangements for children would be impractical, then that parent has a right to put this to the court and argue that the child/ren should either live with them full-time or with the other parent full-time. In other words, should a separated parent chose to move to live somewhere that would make a shared residency arrangement for children impractical, then the onus would be on them to argue that the child live with them full-time. Given the legal consideration for seeking to have children remain with the status quo in their lives (school, friends, extended family, etc.) it should then be more likely than not that the parent, who is staying within the area that the children know well and have connections within, will have the children stay with them.

Courts ordering children have contact with people other than parents
This issue relates to my arguments above relating to courts ordering shared arrangements to enable extended family ties to remain possible for children. This may not have to be specific to making orders relating to extended family, but this is a possibility for the court to consider when making orders.

Whether Child Support formula works fairly
I have a very strong opinion that the Child Support formula DOES NOT work fairly for both parents. My situation is clearly one where the current Child Support formula does not work well. I have cared for my daughter in a shared care arrangement for 4½ years. The circumstances of the arrangement are that my daughter lives with me during school weeks and with her mother on weekends, with school holidays being shared. This arrangement means that I care for my daughter between 50-55% of the time in a school year. However, under the current formulae, I have always paid my ex-wife child support, despite both of our incomes being just above the average wage. I find this particularly galling, as I provide for my daughter for 50-55% of the daily expenses (food, clothing, schooling expenses etc.) and this is not recognised in the formula anywhere, or where it is (such as some prescribed payments) it is not necessarily applied consistently over time.

The current Child Support formulae has shared care arrangements worked out by assessing income of both parents and then each parent notionally pays the other. Of course, this means that the parent who earns the most ends up paying the other money. In my situation, this is despite the fact that I have the greater share of the expenses related to the care of my daughter. It would appear fairer to consider shared care arrangements, currently those with parents having no less than 45% and no more than 55% of the time caring for the child, as being neutral in terms of the expenses of for the child, assuming no great disparity of incomes between parents. It is up to the parent to earn an income to sustain their family. The current formulae views shared care situations as the parent with the most income as providing for the child whilst in their care, and assisting the other parent with expenses of the child's care whilst they are in the other

parent's care. I have had the Child Support Agency staff explain this aspect of the formulae to me as the parent with the greater income should be shouldering the greater of the expenses for the child. I do not see why this should be the case. When parents separate, they make a choice to go their own ways. When they share the care or a child or children, then they are making a choice to provide for their children by themselves. The child support laws should not be a means of distributing wealth between ex-partners, as this issue is resolved separately under property settlement.

Yours sincerely

Neal Vickers (B. Soc. Wk)