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Secretary:

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To: Committee, FCA (REPS)

Subject: Inquiry into Child Custody arrangements in the event of family separation

## Submission to the Inquiry into Child Custody arrangements in the event of family breakdown

I have been the Secretary of the Family Law Reform Association NSW Inc. for over 13 years, which also includes manning the association free assistance phonenumber. My submission **in favour of Shared Parenting** is based on the thousands of phone calls I've received over the years from distraught fathers and grandparents. Of all the complaints I receive, the most significant are without a doubt the anguish and total despair they feel at the loss of the ongoing relationship with their children. All of these callers are pleased to have someone to talk to about their problems as they proceed to pour out their heart and soul to a total stranger. Many I find have exhausted all avenues to have an ongoing relationship with their children, including very costly court proceedings, only to find that the Family Court is unable to enforce the orders. This is despite the fact that they pay regular child support for their children. This situation usually remains until the children are of age, which could be many years.

The present adversarial court system creates an atmosphere where one parent gets the prize (the children and probably a greater share of the property) and leaves the other parent having to "fight" for everything. Women's groups base their argument for retention of the current system as being necessary to protect women from violent husbands. I acknowledge that there are some men who do assault their wives, but as a counsellor and mediator, I have male clients who have also been assaulted by their wives. These cases usually go unreported.

This Inquiry into the Rebuttable Presumption of Shared Parenting has given us the opportunity of analyzing the current family law system where it is assumed that children would stay with their mother and the father to have "contact" every second weekend, with perhaps a phone call mid week. The reason put forward for this is that it is "*in the best interest of the children*". The question is "*is this really in the best interest of the children?*" It presumes that the mother is the best and only parent capable of caring for the children and, because of this, the children have to suffer the loss of their father in their everyday lives.

Fatherhood today is much more complex than that of past generations. Prospective fathers are encouraged to participate in ante-natal classes, invited into birthing rooms to provide moral support to their wives during delivery, change nappies and generally take an active part in the nurturing of their children. Many believe that maternity leave should also be available for fathers so that they too can experience the wonder of a newborn child and help with the settling in period. This is the "bonding" period for fathers and their children in a modern day society.

Over the following years, this "bonding" is further cemented when children enter into activities, such as learning to swim, starting school and participating in sporting activities. Children learn to rely on both parents' devotion to ensure their wellbeing. From early childhood the majority of us are taught to share and consider others, so why should this policy cease when marriage breakdown occurs.

Which leads to the issue of grandparents and extended family members often being excluded. With the virtual "removal" of the father from children's lives, naturally the children lose contact with paternal grandparents, aunts, uncles and cousins, as well as their old friends. Many of these people most likely had played an important role in these children's lives. Some grandparents have been

known to have cared for them in their pre-school years while their parents went out to work. The children's sudden removal from one half of their family must be traumatic. In 1995 (the situation still remains today) the Council on the Ageing made note of this in their Press Release "*Parents, grandchildren and family breakdown*":

*"Everyone who has had contact with grandparents whose adult children have been through separation or divorce is very much aware of the sad stories about contact being severed between grandparents and grandchildren and the emotional suffering that they all go through".*

Children need grandparents for stability when marriage breakdown occurs. Under the current system, however, they can be denied this link if the resident parent wishes to sever this tie. If a presumption of Shared Parenting were introduced, children would be able to continue a relationship with grandparents and extended family members on both sides, thus providing some protection and support during a very difficult period. On a personal note, I am fortunate enough to have a very good relationship with my 15 year old grandson (my son's boy) and my son's former wife. He was with me a few weeks ago and was looking around the house. His comment was "I like this house Nanna – I always feel safe here". I felt quite proud that I was able to provide him with a "safety zone" away from his warring parents. Unfortunately, not all children have the opportunity of a continuing relationship with both sets of grandparents under the current system where the mother has total control over the children.

Male suicides between the ages of 25 and 40 are the highest of all suicides in Australia and indeed are three times that of females in the same age bracket ("*Tainted Love*" Paul Mischefski– *The Sunday Sun {Brisbane}*- 7-7-02). Recurring symptoms given for this high male suicide rate were reported as grief at being isolated and separated from their partners and children. Some might ask "*what does this have to do with children?*". The answer is that children are further traumatized by the death of a parent, perhaps even to the point of blaming themselves, or their mothers, for being responsible. I have received many calls from mothers of adult children who are distraught about what they fear their sons will do. Some have even experienced the death of a son by suicide. Not only do they have to come to terms with the loss of a son, but their grandchildren as well. This is a time for unity, not disunity.

Recently there has been a lot of press regarding boys' underperformance at school. Many blame the fact that children from broken homes no longer have a male role model in their lives. This is compounded by the fact that the majority of primary school teachers are female and some States are now attempting to recruit more male teachers into schools in an effort to correct this anomaly. Why then would we want to throw away perfectly good fathers who are willing and able to provide this function. I receive many phone calls from distraught fathers who are desperate to be involved with their children's schooling, but are denied this privilege under the current family law system.

The majority of both parents in today's society are in paid employment. However, when a marriage breakdown occurs the mother is more than likely to go on a pension, leaving the father to meet the total costs of rearing the children through excessive amounts of child support, as well as having to provide his own accommodation and living expenses. The ideal situation is where parents leave their children in the family home and the parents move in and out of the home each week, or fortnight. However, I do acknowledge that this situation is not always practical.

The concept of a Rebuttable Presumption of Shared Parenting means that each parent will be considered equal at the time of separation. It would then be up to an aggrieved parent to put a case forward for this to be changed. This could be done at mandatory Mediation, and failing a satisfactory conclusion and as a last resort, it would then go before the Federal Magistrates Court/ Family Court for a ruling. I believe that much of the violence following family breakdown is caused when one parent appears to receive everything (children and property). On top of this, the non-resident parent has to then "fight" in the Family Court for access to children, causing frustration and

poverty through court costs and excessive amounts of child support payments.

## **Conclusion**

I am of the opinion that a Rebuttable Presumption of Shared Parenting can work if both parents acknowledge the fact that they are divorcing each other, not their children, and that they have a responsibility to see that their children experience as little trauma as possible from the breakdown. From my experience, parents are more likely to honour an agreement between themselves, rather than the current system whereby parents are locked into an inequitable situation of having to fight over the children. When the tools are removed which create inequality and insecurity, then parents are more likely to become rational and co-operative, which really is "*in the best interest of the children*". Nothing could be worse for children than to be used as pawns to gain the love of their parents.

I would also like to see some provision made for retrospectivity, should the committee proceed along the lines of shared parenting. There are many thousands of fathers in the current system who deserve to be treated more fairly.

Recent polls have shown that the Australian public is ready to embrace the new concept of a Rebuttable Presumption of Shared Parenting. We have had almost 30 years experience to support the fact that the current system is unworkable and has been the cause of much distress. In the best of interest of children of broken homes and Australia as a whole, it is time for the implementation of a family law system which is based on a mature, more equitable, modernistic philosophy which will meet the needs of a changing society.

Regards

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