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Secretary:

FAMILY PATHWAYS

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FAMILY MEDIATION SERVICES

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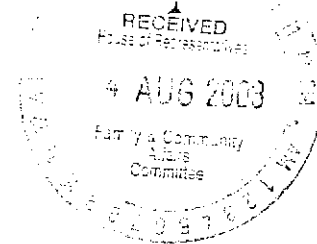
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28th July 2002

House of Representatives Standing Committee
on Family and Community Affairs
Parliament House
Canberra
ACT 2600



Re; Schedule 1 – Amendment of the Family Law Act 1975

Dear Sirs,

As a support service for separated parents and as a person who has experienced the difficulties of the current direction first hand, I see these proposed changes as something that has been too long coming.

My consideration of the format of the proposed changes has been very well drafted and has the potential to not only be beneficial to the children but also reduce the conflict that has occurred in the present format.

The current direction as far as the parents are concerned promotes a position of winners and losers with a concept that one of the parties is not going to have the opportunity of having sufficient input into their children upbringing. The winner has the advantage of being able to hold the loser to ransom by using the children as a lever to gain a larger proportion of property and income. The loss of all three of these to the ultimate non-resident parent causes much resentment and emotional hostility. Further this position has caused the over use in many cases of Domestic Violence orders which stigmatise usually the fathers and isolating them from their families.

In this submission I wish to address a number of issues which include ;

- the effects on the separation from both parents,
- the effects of separation on the children from both parents;

- the effects of separation on the non-resident parent,
- pre-court parental agreements and consent orders,
- influence of the associated groups involved in court proceedings,
- the attitudes of the Family Court and the Judiciary,
- the effects on children of long term limited access to fathers as role models,
- the effects of the isolation on fathers,
- the myth of the Disneyland effect,
- the effects child support has on the no resident parent in an unbalanced system,
- claims of domestic violence through the breakup,
- who does the domestic work in the home,
- the rights of children compared to the rights of parents,
- attitude of the National Network of Women's Legal Services,
- attitudes of the egalitarian groups such as the Lone Father's Association.

1) **The effects of separation on both parents.**

It is clear that there is usually a large amount of tension in marriage breakdown. It includes high emotional stress on both parties and each is vying to salvage as much out of the product of the relationship as possible. This includes personal property, joint property, family relationships and above all their full time involvement with the children. The current system provides greater scope for one party to gain a larger proportion than the other. This produces feeling of jealousy and loss of the people who are most important to them. This pressure is evident from day one of the separation.

Removing this concept of win/ lose can remove this expectation that parents must fight tooth and nail so they do not become disadvantaged in their relationship with their children.

2) **The effects of separation on the children from both parents.**

One of the major issues that appears to be completely ignored by the current system is the separation process itself. The normal family environment, whatever its circumstances has a security for children that mum and dad are usually there every day. The conflict that may occur in the lead up to a separation is usually very straining on the children. They don't understand what is happening and why this break up occurs. The first thing that happens is that one parent works on the children encouraging them to take sides. This creates a feeling of guilt in the child that it is their fault that this is occurring. They usually don't understand why dad (usually in 85% of cases) is not there for them except on designated times that do not coincide with the child's needs. There is no participation in the child's school and homework, sport and other activities that father's are involved in such as scouts and sport training.

Girls in particular suffer from the Oedipus complex situation and miss the male influence in their day to day lives. If and when a new partner becomes involved this jealousy is multiplied and she feels rejected by her father. The normality of life as it was has gone and the children feel sub standard and rejected. This is not beneficial to children as it

lowers their self worth and self esteem causing them to under perform. Many children will reject the absent parent as a self protection prophecy to try and isolate themselves from the emotional pain of the loss.

3) The effects of separation on the non resident parent.

In the current position the non-resident parent becomes isolated from their whole family. Many family members either take sides or do not wish to become involved in the conflict. There are also very few support services for men in particular to help them through this traumatic time.

One of the major problems is the separated male suicide rate which has escalated to an unacceptable level. This has been caused by emotional and financial hardship through the apparent patriarchal concept that the children live with the mother and the father pays the bills. In many cases the non-resident does not have the resources after paying their child support to get on and have a reasonably full life. Non-resident mother's are in a slightly more favourable position than non-resident father's as new partners are often in higher paying employment unless of course that that male is not also in the same predicament.

4) Pre-court agreements and consent orders.

By removing this win/lose situation it removes a significant amount of tension and friction from the equation. If one party does not feel threatened that they will lose more involvement with their children than the other there is more opportunity for them to sit down and mediate an amicable settlement. The starting point of 50/50 joint residency allows the parents to negotiate other situations if this is unsuitable to the parties. It also allows the parents the opportunity to adjust their living and working environments to fit in with the children rather than the children fit in with the parents.

5) Influence of associated groups involved in court proceedings.

There can be around a dozen groups of people who have an input into court proceedings. These include the Women's Domestic Violence Service, the Police, Community Legal Services, Legal Aid, Family Court Counsellors, Child Representatives, Family Reporters, DoCS, Mediators, Lawyers, Family Court Staff and the Judiciary as well as many other support groups and private practitioners. This situation means that any input by any of these groups has the opportunity to influence the Family Court decision by its reporting. This includes a bias that any of the individuals may have either political or personal. These biases may not only influence the end result but assist in raising conflict in the whole process as one party may feel that they have been unfairly treated.

6) The attitude of the Family Court and the Judiciary.

My experience has been that the Family Court and the Judiciary in particular have had a very patriarchal view of child residency. Most of the judges have been private school

educated with positions where the men have been the income earners and their wives have stayed home to raise the children. The number of male judges compared to women is still largely in the majority however this is slowly changing. Attitudes are slowly changing with a greater approach towards mediation which can only be positive. These changes would open the barriers to allow this a greater opportunity to be facilitated.

7) The effects of long term limited access to fathers' as role models;

There has been a slow decline of father's influence on children, particularly boys over the past 23 years in the time of the Family Law Act 1975. We have also seen a dramatic drop in the number of male school teachers with only 17% of males currently in NSW schools. In fact in many schools there are no male teachers at all. This along with the fact that still 85% of mother's gain residency means that many children have little or no contact with males.

The National Network of Women's Legal Services claims that not all males deliver an positive role model. While this may be the case the same can be said for women as well. Father's need to be involved in their children's lives in a general sense. If a parent of either side is not seen as a suitable parent there are more than enough agencies in place to deal with this including the courts.

8) The effects of isolation on father's;

Isolation has had a dramatic effects on father's. We have seen in many situations where fathers lose the support of many people including family and friends. This is particularly evidenced where there have been accusations of domestic violence or child abuse. There has been a culture within the women's support group and some of the legal fraternity that in any domestic dispute that a domestic violence order should be applied for. While there is no denial that genuine domestic violence is something that needs to be seriously addressed, the misuse of these protective provisions is something that is not acceptable.

The lack of emotional support and the financial drain of the current child support system has driven the numbers of male suicides up to around one a day Australia wide. This is clearly unacceptable. Reducing the conflict and the effects of the adversarial system can only be on benefit to all.

9) The myth of the Disneyland effect;

There is a precedent set in the courts of what is called the Disneyland effect. This is the assumption that children do not want to return from access because they get bought large amounts of gifts or are taken to fairs and shows while they are with the non- resident parent. The fact is that the current situation provides limited time that these parents have with their children. It is obvious that these parents want to have as much fun and quality time with their children as possible. It is not a position where they have the desire or the opportunity to apply discipline if required or other issues of a day to day nature. While there is joint responsibility, the lack of day to day contact limits the influence that the

non-resident parent has on the development of the children. The joint residency provision can only serve to eliminate any difficulties with this concept.

10) The effects child support has on the no-resident parent in an unbalanced system;

The current structure of child support is based around a strartered system where if a parent has the children staying with them les that 109 nights, the rate of before tax child support payments can be crippling. The basis of joint residency will eliminate the inequities that exist and balance the funding out. It will eliminate the need for the CSA to chase some parents for money and therefore eliminate the conflict both personally and politically.

11) Claims of Domestic Violence through the breakup;

While it is clear and accepted by the writer that domestic violence of any kind is not acceptable, so is the issue of using the orders as a vehicle in the Family Court. It has been observed by myself on a number of occasions that women are encouraged to take out the orders and then find themselves in a process that they cannot control or stop. In fact this has been the cause of many breakups as the husband becomes quite indignant at being locked up and arrested for having an argument. The resentment is then too great to facilitate a reconciliation.

The further problem is that once an order is made they are immediately eliminated from 30% of work opportunities. These include any child care, police or security work, aged care or any trade that requires a security clearance just to name a few. This has the potential to cause future conflict.

It has been standard practice in most contested family Court hearings that women in particular are advised by the women's support network, their solicitors or the police to take out a domestic violence order. There is always conflict of some sort in a separation which can be used against one person usually the father. The police have a standard format that regardless who makes the complaint they usually arrest the father.

There is a possibility though that we may see an increase in bogus domestic violence claims so as to move past the issue of joint residency in the courts. However it is far cheaper to defend DV matters than Family Court issues.

12) Who does the domestic work in the home;

In recent times we have seen a large increase in the amount of shared domestic duties in a relationship. There are still many areas that are automatically undertaken by each party in a gendered role. In many cases the father will do the lawns and gardens, home and car maintenance usually because the mother has little training or experience. More and more men are changing nappies, bathing and feeding children washing or hanging out clothes, cooking meals and cleaning house. They are involved in children's school and sport as well as other activities. I would suggest that the 50/50 sharing of each is irrelevant as it will depend on each individuals household and circumstances as to how these duties are

distributed between the parties. You will quite often find that women have the major input of first choice with the father being allocated the less desirable chores.

13) The rights of children compared to the rights of parents;

Clearly the rights of the children are paramount. There is a necessity for the parents, while there is a need to lead their separate lives and develop new relationships it must be at the convenience of the children. Many men's groups are criticised for placing their interest first. The same can be said for women's support groups as well. Women's groups have a traditional advantage at present as the residency figures will support.

The ideal of joint residency will see the focus of the issues of the parents back on the interests of the children. If parents want joint residency they must be prepared to accommodate the requirements of the children to do this. Joint residency will give them that opportunity.

14) The attitude of the National Network of Women's Legal Services,

The argument that "male role models are not always good for young men. They claim that they grow up with abusive and neglectful adult men and violent and dominating images of manhood. It is wrong to assume that any male role model is better than none. It is more important that boys are raised by a nurturing and positive parents of *either* sex, rather than fathers in particular", leaves a lot to be desired and is clearly bias.

It is true that there are some very undesirable fathers out there that should not be involved in raising children. Equally there are as many mothers that are bad and abusive parents and should not be raising children. To assume that all men should be feared and the risk should not be taken that they can adequately care for children is clearly outrageous. We have a court system specifically for that reason. We must allow it to do it's job fairly and without and gender bias.

15) The attitudes of the egalitarian groups such as the Lone Father's Association;

The attitude of this particular organization, which I am currently the President of the Dubbo branch, is that each parent should have an equal input into the child's development. The current position is open to abuse particularly by the resident parent is concerned as they have the capacity to hold the other party to ransom particularly in contact matters. The children in these circumstances are used as pawns to vet their spit on the other party. The provision that attitude to contact is paramount and those who do not adhere will be penalised by having their responsibility and care removed. This control needs to be given back to the children and away from the parents. Parents have a right not to be held to ransom and the children have a right to see both parents on equal terms. This includes the involvement of grandparents and any other significant person.

As a private practitioner I support the concept of joint residency.

Paul Bennet

