7th August, 2003.

[redacted]

Committee Secretary,
Standing Committee on Family
and Community Affairs,
Child Custody Arrangements Inquiry,
Department of the House of Representatives,
Parliament House,
Canberra, ACT, 2600,
Australia.

**Submission to inquiry into child custody arrangements in the event of family separation**

Dear Sir/Madam,

Please accept for consideration this submission relating to the proposal for a presumption of shared parenting in Family Law and a review of the Child Support Scheme.

If this submission is publicly released, I would be grateful if you would suppress my address and contact details. I have no objection to the publishing of my name and suburb.

I am a 39-year-old non-resident father with a wonderful 10-year-old son. I am employed as a computer technician with a fair degree of flexibility in my 0.8 time fraction and I am working towards largely home-based employment.

Ever since separation when my son was 3-and-a-half, he has expressed a strong desire for more time living with me and for more involvement by me in his life, a view that I share with equal vigour.

It is our hope that changes to Family Law can bring this about.

Yours sincerely,

[redacted]

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## 1. A rebuttable presumption of shared care should be legislated for.

**(a) It is an unassailable fact that children need the love, nurturing and heritage of both of their natural parents.**

There exists a large body of research, especially recent research, which supports this view. The Family Law Pathways Advisory Group Report at page ES2 also acknowledges this view:

*"Maintaining nurturing relationships between children and parents, even after separation, is known to be good for the children's wellbeing."*

However, I personally do not need to rely on any research to support this - my son has constantly expressed his view that he would be happier if he lived with his dad more.

A comment made to me by my son when he was quite young will remain with me for the rest of my life:

*"I don't care what we do dad, so long as we do it together"*

I utterly reject the line being peddled by opponents of shared parenting that such an arrangement would "split the child in half". Surely the proposed changes will promote "the whole child".

**(b) A rebuttable presumption of shared care is consistent with the intent of the Family Law Act as it stands now.**

s.60B(2)9a) of the Family Law Act:

*"children have the right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together."*

However, the Family Law jurisdiction has thumbed its nose at the clear intent of The Act, to the detriment of children, non-resident parents, grandparents, extended family, friends and the community at large.

**(c) Sadly, the culture in the Family Law industry is such that a rebuttable presumption of shared care needs to be legislated for.**

(i) <u>The "normal order" is a flimsy basis for effective parenting by non-resident parents.</u>

Clearly, two days per fortnight offers meagre opportunities for parents to fulfil their crucial role in the lives of their children. Good parenting is all about involvement. It demands immersion in the routine aspects of children's lives. The "normal order" clobbers the continuity of care from one of their parents and it deprives the child of a reasonable

chance to gain the heritage and viewpoints of that parent. Current outcomes all-too-often marginalise the non-resident parent to the detriment of the children.

"In the child's best interests" seems to frequently roll off the Court's collective tongue, but very often the reckoning does not withstand scrutiny.

For example, the mother of my son relocated 100Km distant. At great disruption to my life, I relocated to the same area. I then asked the Family Court for a modest extension to contact such that I would drop my son off to school on Monday mornings following the alternate contact weekends rather than return him on Sunday afternoons. My primary reason for this was so that I could have some opportunity, albeit fleeting, to informally interact with my son's teacher so that I could identify ways of assisting my son with his learning. Another stated reason was to address my son's complaint that his friends have not seen his "real" dad. The miserly court refused the request.

My son expressed a strong view that he wanted more time with me to the Family Court counsellor during the making of a Family Report. The counsellor invalidated this inconvenience to the Court's agenda, stating that I had put this idea into my son's head.

In the situation of a mother, a father and a child, the current attitude of the Court guarantees two losers – the non-resident parent and the child. A rebuttable presumption of shared parenting holds out the distinct possibility of three slightly modified winners.

(ii) Vested interests

Family Law practitioners are able to procure a significant proportion of a family's assets by perpetuating the current outcomes in the Family Court.

Self-serving feminist doctrine appears to maintain an undue influence in Family Law research, Family Court counselling and "community" legal services.

A rebuttable presumption of shared parenting will place appropriate checks on these phenomena.

**(d) Conflict**

Whilst not denying the negative effects of conflict upon children, I believe that the Family Court hangs its hat too readily on the issue of conflict between the parents. Conflict is largely mitigated by the fact of separation. Tackling residual conflict should then be the focus of primary dispute resolution. But to seriously curtail the involvement of one parent due to a situation of conflict

is akin to "throwing the child out with the bathwater", for the reasons given in sub-paragraph 1(a) of this submission.

The fatal flaw in the Court's attitude to conflict is that some parents realise that all they have to do to secure an outcome favourable to them is create an environment (or an illusion) of conflict. The jurisdiction is thereby fuelling conflict, not reducing it.

**(e) Other dividends**

(i) Depression

I now truly know what depression is – it is like discovering a new feeling. It is like a lead coat. And it cuts across everything – employment, relationships, creativity and occasionally it intrudes upon the relationship with my son.

Politicians have been wringing their hands with the spiralling incidence of depression but given the large numbers of people now caught up in separation and divorce, perhaps the biggest single remedial measure that they can take is to adopt the proposal for a rebuttable presumption of shared parenting.

(ii) Suicide

I understand that separated and divorced males are massively over-represented in suicide statistics. This is unacceptable in any decent society and a blight on "the lucky country".

(iii) General happiness, prosperity and dignity and the flow-on effects.

The quality of life for children is inextricably linked to the quality of life of both of their parents. The sidelining of a parent strikes at the very core of their humanity, and in turn, the children's humanity.

We frequently laud our fair and tolerant society - for me, and I am sure for countless thousands of non-resident parents, this has a hollow ring to it. My experience with Family Law has left me greatly disillusioned.

In 1996, just prior to the first trial, I had a job in Information Technology commanding $45,000p.a. The traumatic experience of litigating-in-person coupled with the loss of a meaningful position in my son's life resulted in me suffering a nervous breakdown. My employer appointed my second in charge to take over my responsibilities, but it was apparent that my position was untenable. I resigned and spent the next two-and-a-half years on sickness benefits. Then I got a job as a labourer on $15,000p.a., which I consider to have been a waste of my talents. Only recently have I started to gradually claw my way back, re-entering my field in I.T.

However, as a result of my forced relocation, the opportunities in my area are limited and I currently earn $20,000p.a.

My son has at times been despairing of my reversal of fortune.

(iv) Reduced incidence of litigation.

Current attitudes of Family Law industry are fuelling family breakdown. Many mothers realise that it is a forgone conclusion that if push comes to shove in the Family Court, they stand a 92% chance of being awarded residency, plus so-called "child support" income and the myriad government benefits and concessions to which a resident parent is currently entitled. This can propel some mothers to separate from the father for vindictive, selfish and/or greedy reasons, aided and abetted by Family Law practitioners with a vested financial interest.

A rebuttable presumption of shared parenting will alleviate this.

**(f) Grandparents, extended family, friends and significant others.**

There can be no doubt that these people can offer children a valuable perspective and a unique legacy.

Obviously, because of the inadequate opportunities afforded to the non-resident parent, children are largely deprived of the benefit of the participation in their lives by people who surround that parent. A rebuttable presumption of shared care will dramatically improve this situation.

## 2. Grounds for rebuttal

**(a) At the wish of the parent(s).**

Obviously, it is not in the best interests of children to insist that a parent participate in 50:50 care if they are unwilling to do so.

**(b) When manifestly impractical.**

**(c) In *bona fide* situations of violence or unsuitability of parent(s)**

Provided that it can be demonstrated that the involvement of a parent(s) would be deleterious to the children.

**(d) Conflict should NOT be grounds for rebuttal**

For the reasons presented in sub-paragraph 1(d) of this submission.

## 3. The operation of the Child Support Scheme

I believe that most parents who truly care about their children would recognise the need for a child support scheme. But in its current implementation, so-called "child support" has the appearance of legislated robbery of the non-resident parent and seriously impacts upon their ability to proceed with their own lives, not to mention the non-resident parent's ability to provide for their children.

### (a) The formula should be based on the true basic costs of raising children.

A study should be conducted to determine a reasonable figure for the true basic costs. Although I have only skimmed it because of its technical nature, the Budgetary Standards Unit study out of the University of New South Wales a few years back appeared to be a comprehensive inquiry that produced figures that were in accord with common sense.

The figure, once determined, should be indexed to inflation.

It should be remembered that a situation of shared parenting, by definition, automatically creates a natural child support scheme in terms of meeting the children's basic needs. There only remains the issue of meeting the fixed costs that span both parents' involvement with the children (such as school fees, schools uniforms and books, extra-curricular activities etc.)

### (b) "Lifestyle" and contributions beyond the basic costs should be voluntary.

I am sure that in most cases additional contributions will be volunteered if the payer can be confident that the monies are directly benefiting the children and not paying for, say, a holiday for the payee and their new partner.

### (c) Exempted income should be identical for both parents.

The purpose of exempted income in the formula should be to set a safety threshold to permit parents to maintain themselves at a minimum level. In this context, the fact that one parent may bear a greater proportion of the care of the children is not a factor – that is what the rest of the formula deals with.

Currently the non-resident parent's exempted income is in the vicinity of $10,000 while the resident parent's exempted income is around three times that amount.

### (d) The payer's contribution should be weighted in accordance with the payer's proportion of the income pool of both parents.

This is entirely consistent with s.4(2)(a) of the Child Support Act:

*"that the level of financial support to be provided by parents for their children is determined according to their capacity to provide financial support and, in particular, that parents with a like capacity to provide financial support for their children should provide like amounts of financial support"*

(e) **The payer's contribution should be *pro rata* the fraction of their time with the children.**

Recognising the costs associated with the time spent by the children with both parents.

(f) **Non-agency payments should be credited against a payer's liability at a rate of 100%.**

I believe that this measure will promote compliance.

Paying parents should be able to have influence over how their hard-earned money is spent on their children and will be bolstered by the knowledge that their money is directly benefiting their children. It permits payers to participate in the joy of providing for their children, and it is important role modelling for children to see both of their parents providing for them.

## 4. Conclusion

In his Australia Day address for 2001, the Prime Minister spoke of *"an ethic which demands from each of us and for each of us the giving and receiving of a fair go".* Hear! Hear!

My son and I both know that we will experience a quantum leap in the quality of our lives if we can just be given a fair go. I strongly commend the adoption of a rebuttable presumption of shared parenting in Family Law.

Thank you for considering this submission.

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