INQUIRY INTO CHILD CUSTODY ARRANGEMENTS IN THE EVENT OF FAMILY SEPARATION

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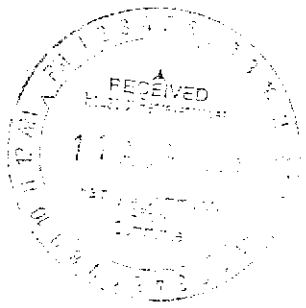

1. This is the about the 34th Government Inquiry into modern family law issues. The family law system in Australia is worse off today than 150 years ago.

2. That is consistent with the NSW parliament having discussions on 35 Matrimonial Cause bills in the period 1861 to 1893.

3. It is frustrating to think that in when 1842 when the NSW Legislative Council acquired the right to grant a divorce it took ten years before they received their first petition (Thomas Blake on behalf of his daughter Emmeline Blake to divorce Patrick Mehan.).

4. Our colonial ancestors had a higher regard for the legitimacy of their children and their accompanying rights of inheritance.

5. In the period 1953-55 twenty eight per cent of divorces in Australia were granted on the grounds of adultery, sixty two per cent on the ground of desertion and only five per cent on the ground of cruelty.

6. The belief that the 1873 divorce laws were enacted to punish female adultery is no different to the current argument that the ease in which divorce can be obtained in 2003 is to punish the husband and reward the wife (custody, property, and power).

7. It is worth recalling that feminists groups such as the United Associations of Women have been campaigning for Equal Guardianship of Infants since formation on the 18 December 1929.

> From its beginning the U.A. was concerned with those laws which maintained inequalities in the marriage partnership. Australian practice was based on English common law and legislation which automatically gave the husband and father rights over the wife and mother. ... *The Equal Guardianship of Infants Act of 1933* (NSW) was one example of their work in regard to political issues.[1]

8. It is a shame that equality feminists and organisations such as the U.A. have been battered by the gender feminists since the early 1970's and replaced by political groups such as the Women's Electoral Lobby (W.E.L.) in 1972 and more recently the Office for the Status of Women (O.S.W.).

9. The 'No Fault' divorce legislation which replaced the matrimonial offence criteria for a spouse to obtain a divorce has curtailed the 'Academy Award' performances of many a solicitor and barrister in that arena – assisted by the ease in which the marriage contract can now be revoked.

10. The legal profession have transferred these skills acquired over the past 300 hundred years not to a new theatre (court) but simply to a more modern

[1] 50 Years of Feminist Achievement – Winifred Mitchell ISBN 0-9595190-0-9 p.16

production (changes in law) – readily enabled by their monopolising of knowledge and procedural skills – to interfere in child custody disputes and property settlement matters under that nebulous term *'in the best interests of the child'*.

11. In New South Wales the matrimonial grounds for divorce were fairly static during the period 1873 to 1959 when the federal law superseded state legislation.

12. It is of historic interest that the courts awarded maintenance contributions that reflected the impossibility of stretching the husbands/father's inadequate income to cover the needs of two households.

13. In 1873 Judges were empowered to make custody order at their discretion generally to the 'innocent' party to the proceeding.

14. If **shared parenting** were considered the rebuttable presumption as a starting place by our legislators and judicial system, then the issue of Child Support would die a natural death after a long illness.

15. Parents would be financially responsible for their children whilst in their care and control. Financial issues such as education and schooling fees, sport and entertainment could be negotiated.

16. If an agreement could not be reached then mandatory mediation could resolve most issues. There is no equality in the current family court system or child support scheme.

17. I quote from the report for ***An Equality Act.*** 'In an Equality Act parliament could establish standards for the administration of justice. The **principle** of equality would be enshrined in Australian law. This would be of symbolic value and provide a benchmark against which government action could be judged. It would be used by courts in interpreting issues arising in cases before them. It would **not** provide a cause of action in individual private cases'.[2]

18. Great in principle until you read between the lines and come to the realisation it is only equality for women – not men and children the other 75% of the population. The same can be said for allegations of domestic violence and evidence presented to various state and federal courts.

19. Lying in court is common and rarely punished, but that doesn't mean it's a good idea. One of the things schools don't teach in courses on the court system is that in almost every trial, at least one of the parties will step up to the witness stand, swear to tell the truth *"so help me God,"* and then sit down and violate that oath. Lying under oath is an accepted element of many trials. If that weren't true, there would be little need for a jury. That's because a necessary part of deciding whose version of disputed facts is true - for example, was the traffic light green or red when the accident occurred? - often involves deciding whose story to believe.

[2] Equality before the Law: Women's Access to the Legal System ALRC 67 Interim

Once the jury decides whose story is true, it is the judge who applies the law to these 'facts' and ultimately decides what the judgment will say. Another fact little known to those who don't live in the court system every day is that there is rarely any earthly punishment for lying in court. There is, of course, the crime of perjury. Here is how California defines it (a definition that's pretty typical of those used by other states): *'Every person who, having taken an oath that he or she will testify...truly before any competent tribunal..., willfully...states as true any material matter which he or she knows to be false...is guilty of perjury.'*[3]

20. Domestic Violence, whilst not part of the terms of reference for the current inquiry is the ultimate weapon of choice. However, the research clearly suggests that both men and women must take responsibility as the instigators of relationship conflicts.

21. Stephen Baskerville is one of many academics who are exposing the myth of *male only perpetrator-female only victim*. There is no explosion of male violence against their partners which justifies the 25% contact regime ordered by courts to father's in family court disputes.

> First, there is no epidemic of violence specifically against women. In 1999, the socialist-feminist magazine Mother Jones, hardly a bastion of male chauvinism, reported that "women report using violence in their relationships more often than men" and "wives hit their husbands at least as often as husbands hit their wives." While the politicians of feminism, such as the National Organization for Women (NOW), refuse to acknowledge this truth, its theorists admit and even celebrate the fact. "Women are doing the battering," writes feminist icon Betty Friedan, "as much or more than men." In his book, "Women Can't Hear What Men Don't Say," former NOW board member Warren Farrell provides a bibliography of studies going back a quarter-century, many by feminist scholars, establishing beyond doubt that domestic violence is an equal opportunity problem. Professor Martin Fiebert of California State University has compiled a similar bibliography of 117 studies.

22. Baskerville links domestic violence allegations with custody disputes:

> Second, the hysteria over domestic violence is largely geared toward one aim: removing children from their fathers. Donna Laframboise of the National Post investigated battered women's shelters in the U.S. and Canada and concluded they constituted "one stop divorce shops" whose primary purpose was not to shelter abused women but to promote divorce. These shelters, many of which are federally funded, issue affidavits against fathers (sight unseen) that are accepted without any corroborating evidence by judges eager (for their own bureaucratic reasons) to justify restraining orders against fathers and the removal of their children. Feminists themselves contend that most domestic violence takes place within the context of "custody battles." "All of this domestic violence industry is about trying to take children away from their fathers," writes Irish Times columnist John Waters, who predicts: "When they've taken away the fathers, they'll take away the mothers."[5]

[3] Unknown source - California USA newspaper article
[4] A tool kit to destroy families- Stephen Baskerville Washington Times 9 December 2001 Commentary section (Forum), pB5
[5] A tool kit to destroy families- Stephen Baskerville Washington Times 9 December 2001 Commentary section (Forum), pB5

23. Then finally Baskerville tells us the truth about the risk of children being abused:

> Third and most serious of all, the most dangerous environment for a child is the home of a single mother. Children in single-parent households are at much higher risk for physical violence and sexual molestation than those living in two-parent homes. A British study found children are up to 33 times more likely to be abused when a live-in boyfriend or stepfather is present. *"Contrary to public perception,"* write Patrick Fagan and Dorothy Hanks, *"research shows that the most likely physical abuser of a young child will be that child's mother, not a male in the household."* Mothers accounted for 55% of child murders according to a 1994 Justice Department report (and fathers for a tiny percentage). As Maggie Gallagher writes in her 1996 book, "The Abolition of Marriage": "The person most likely to abuse a child physically is a single mother. The person most likely to abuse a child sexually is the mother's boyfriend or second husband. ... Divorce, though usually portrayed as a protection against domestic violence, is far more frequently a contributing cause." Adrienne Burgess, head of the British government's Fathers Direct program, observes that "fathers have often played the protector role inside families."

24. So-called Father's Rights organisations are now exploring our common law and constitutional rights to understand why the discriminatory legislation and practices in courts have disenfranchised them from their children. The St Pauls College of Common Law and The Common Law Advocacy course provide reasons why men and fathers deserve to be treated with equality.

> **No one person can sit in judgement of another.** All are equal in the sight of God, and therefore all are equal under the law. "Where two or more are gathered together in My name, there am I present" (Matthew 20:18). This is the basis of all Western judicial assemblies. The presence of two or more magistrates creates what is called 'judicial personality' - that is, a body capable of passing judgement upon individual persons. In practice, three magistrates are required by all legally constituted judicial assemblies; these include sporting, military and civil tribunals, and any body capable of exercising legal powers over its appellants. A court with a single magistrate on the bench does not possess judicial personality, and is therefore a court of common consent. Any judgement handed down under such circumstances is only binding in law if consented to by the defendant. That this is so is proved by the fact that right of appeal always exists within them; the defendant can appeal to successively higher courts for a retrial until the case is heard by a court possessing judicial personality, i.e. having three judges on the bench.

25. The recent High Court decision of *Luton & Lessels* rightly declared that child support is not a form of taxation. That decision is not in dispute, however, the policies and legislation surrounding the child support scheme are so hated that it is associated with being a type of tax. Of course the only tax we should pay is a legitimate tithing to our church.

[8]

> **Tithing is the basis of all taxation.** A member of a community is morally and legally bound to yield one-tenth of his income to the whole community for its upkeep and defence (Leviticus 27:30). Anything more than a tenth is government-sanctioned robbery.

[6] A tool kit to destroy families- Stephen Baskerville Washington Times 9 December 2001 Commentary section (Forum), pB5

[7] The Basic Principles of Common Law – Richard Garnaut

[8] ibid

26. The Federal Parliament is setting itself up for a massive representative action for their passing law that is repugnant to our common law and constitutional rights. Parliament is supposed to legislate to change existing laws not create new laws that disregard existing rights.

27. The Constitution of Australia has been protected by the High Court of Australia on our behalf. Parliament is breaking the law:

[9] ***Nature of Judicial Power***

6.3 Recent decisions of the High Court have emphasised that the judicial power conferred by Chapter III of the Constitution largely defines judicial process. The legislature cannot require or authorise a court in which the judicial power of the Commonwealth is vested to exercise judicial power in a manner which is inconsistent with the essential character of a court or with the nature of judicial power.

[10] The third, more elusive meaning of the rule of law, suggested Dicey, is that:

[T]he law of the constitution, the rules which in foreign countries naturally form part of a constitutional code, are [sic] *not the source but the consequence of the rights of individuals* as defined and enforced by the courts; that, in short, the principles of private law have been with us by the action of the courts and Parliament so extended as to determine the position of the Crown and of its servants; thus *the constitution is the result of the ordinary law of the land*.

[11] ... under this new common law *of the Constitution*, the common law *prevails over* legislation of either the Commonwealth or a State, in a situation in which it applies. This is because the Australian Constitution was not a new populist instrument, as was that of the United States, but in essence established a new legal framework designed to incorporate in a federal entity the British system of representative and responsible government. Hence the Court has in a sense constitutionalised certain elements in the common law...

28. There are some interesting statistics about how government funding is allocated for family law related proceedings. As an example I sight the NSW Legal Aid Commission report which operates as a female client slush fund.

29. Firstly, consider the number of clients by gender presented in the report for family law matters:

[12] Legal Aid Commission of NSW Client Profile – **Family Law**

Female 72.7%

With Dependants 44.7%

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[9] Review of the Adversarial system of litigation – Rethinking family law proceedings - ALRC IP22 November 1997 p. 50

[10] Introduction to the Study of the Law of the Constitution - A V Dicey, (9th ed 1939), ch IV.

[11] http://pandora.nla.gov.au/nph-arch/2000/Z2000-Oct-26/http://law.anu.edu.au/publications/flr/vol23no1/FederalLawReviewPeterBaile.html

[12] Legal Aid Commission of New South Wales 99 Annual Report pp 19 & 60

30. That means less than 30% were male clients. That wouldn't be too hard to swallow except the report fails to provide the gender breakdown for applications filed. Nor does the report indicate a gender breakdown for the 40% of applications that were refused.

31. The following table shows the 1998/99 figures taken from the report.

NSW LEGAL AID	
FAMILY LAW	**1998/99**
Applications Received	14,060
Applications Refused	5,820
Refusal Rate	40.7%
Total Funding	$22.081m

[13]**Table 1**

32. This systemic discrimination could be done away with under an Equal Parenting framework. Indeed ten years ago it was included in a government report for property that the starting assumption was that the parties had contributed equally to the property – so why not the kids?

[14]

> 2.24 The 1994 Bill did propose a 'starting assumption' that the parties had contributed equally to the property.

33. The link between custody, contact and child support was further established in the research paper *Estimating the Costs of Contact for Non-resident Parents: a budget standards approach, by Dr Paul Henman of the Macquarie University & Kyle Mitchell (2000).*

34. The costs associated with contact for the non-resident parent (father/CSA payer) are far greater than previously acknowledged. Realistic costs that the Payer must afford to provide contact with children are disregarded in the current Child Support formula. Many parents are forced not to have contact with the children because they simply can't afford it, or they provide the costs of contact at a basic level and children in their current family suffer significantly.

35. The following page illustrates the actual difference for three income levels of a CSA payer - $27,500, $50,000 and $80,000 incomes.

36. Why is it that Centrelink use the BSU report - which came out as a recommendation from the JSC 1994 Report - to pay out money but CSA use a flawed formula when collecting money? Voodoo Economics!

[13] Table 1: Legal Aid Commission of New South Wales 99 Annual Report
[14] Property and Family Law – Options for Change (Part VIII FLA 1975) p. 16 – ISBN No.0642-20960X

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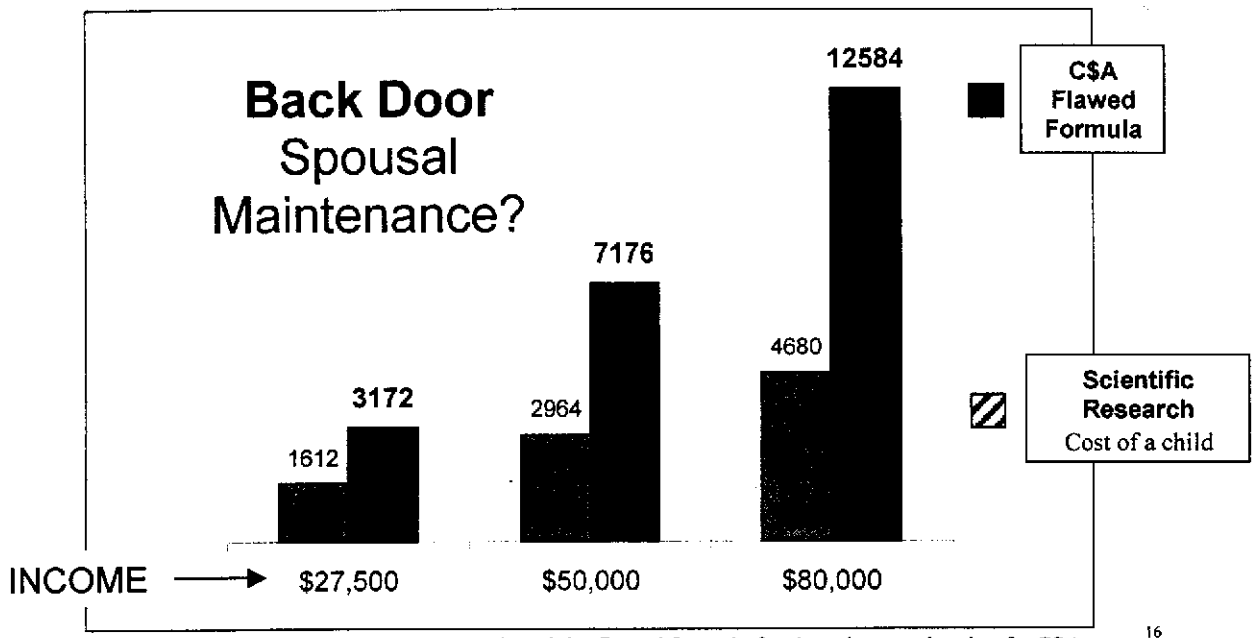
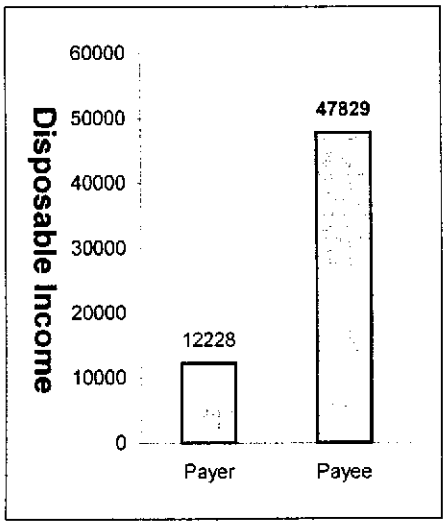


Chart: Comparison between BSU research and the flawed formula for three income levels of a CSA payer[16]
The above chart represents the amount of child maintenance a non-resident parent is forced to pay using the **C$A's Flawed Formula** in comparison to the actual **cost of raising** one child.



37. The above graph represents what DADs Australia estimates is the disposable income that a payer and payee have left over from a base income of $30,000 pa.

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[16] Chart: Comparison between BSU research and the flawed formula for three income levels of a CSA payer – DADs Australia Inc.

38. The **Payer** after paying tax, child support, medi-care, superannuation and GST will only have $12,228 to live on for a year. This equals **$235.00 a week** to pay mortgage/rent, food, utilities and other every day living expenses. The **Payee** after paying tax, medi-care, superannuation and GST, then receives child support, welfare and child care subside from the government which will lift their disposable income to $47, 829 a year to live on or $919.00 a week.

39. The report *Review of the Adversarial system of litigation – Rethinking family law proceedings* provides another reason why urgent change is needed in the family court system. The parents are 'forced' to use a solicitor simply because the court rules and legislation are too complex, or deliberately made to sound too complex, to ensure the legal profession keeps sacred its cash cow.

[17]

12.17 For example, duties to the administration of justice may be interpreted narrowly so that they do not restrict a lawyer's ability to present the best possible case for a client. Distinctions may therefore be made between fabricating evidence and not disclosing evidence. The consequences of this lack of candor in litigation can include:

- The deliberate suppression of relevant but unfavourable evidence
- The selective presentation of part of the evidence
- The selective presentation of biased expert evidence
- The failure to admit the truth of the facts asserted by the opposition
- The use of tactical attacks on the credibility of witnesses to suggest that the witness cannot be believed on oath, even though their evidence is known to be true.

40. This was repeated in a major finding from Out of the Maze – Pathways to the future for families experiencing separation report released July 2001, was Recommendation 4-a, concerning lawyers in the industry. It is not the code that is required it is the enforcement of ethics.

[18]

Recommendation 4

That all professionals and key staff working in the family law system adopt a multidisciplinary approach to resolving issues for families, and that priority be given to the following strategies to support such a holistic approach:

a. development of a national code of conduct for lawyers practising in family law to reflect the principles outlined in this report and to include a commitment to actively promote non-adversarial dispute resolution and other good practices. Lawyers who subscribe to and observe the code should be readily identifiable to clients and service providers; ...

b. ...

c. requirement for regular continuing legal education for lawyers who wish to be known as supporters of the national code;

[17] Review of the Adversarial system of litigation – Rethinking family law proceedings - ALRC IP22 November 1997 p.106

[18] Out of the Maze - ALRC July 2001 p.xx

41. What this says is that the legal profession is a law unto itself, protected by the judiciary and their various legal service complaint and investigative bodies – coincidentally full of lawyers. Fortunately every Australian male (and in particular father's and children) who has been through the family court system now knows how corrupt it is and how hollow is that most abused phrase *'in the best interests of the child'*.

42. The Pathways Advisory Group used four basic principles to underpin their contrived recommendations:
    1. best interests of the child
    2. use of non-judicial processes to resolve family conflict transition
    3. ensure safety from family violence
    4. responsibility of parents to provide financial support for their children.

43. The first principle is clearly an endorsement for Equal Parenting in that 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. Children have a right to contact, on a regular basis, with both their parents and with other people significant to their care, welfare and development. Parents share duties and responsibilities concerning the care, welfare and development of their children. Parents should agree about the future parenting of their children.

44. The second principle is not the current practice in that the legal profession and allied interest groups such as expert report writers and public servants have a vested interest in maintaining conflict between the oft used and derogatory phrase 'the warring parties'. I might add that often mums and dads are conscripted into the war by their respective lawyers – rarely is it a joint and voluntary venture by both parents to destroy their children's inheritance through litigation processes.

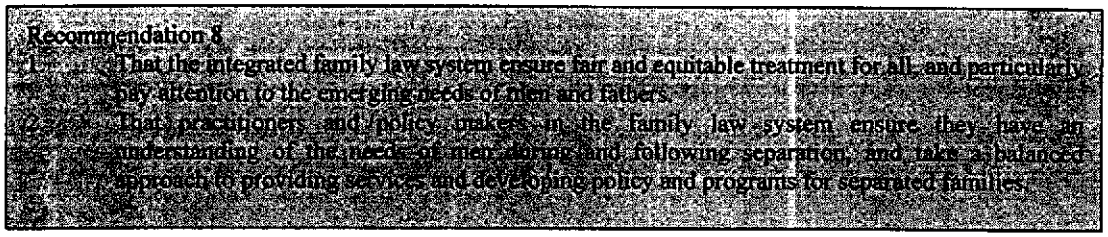
45. It is now well known by former clients of the legal profession (solicitors and barristers) that we are called punters – and we rarely pick a winner when it comes to choosing a lawyer as they are not worth an each-way bet, and those that are worth betting on are too dear and on the nose.

46. The third principle relates to manipulating clients in order to obtain an unfair advantage in family law proceedings. It is generally referred to as *'domestic violence'*. There is little acknowledgment from the courts that lawyers representing women are abusing the system by facilitating allegations of domestic violence.

47. The fourth principle is always financial support. This whole family law system is about money. It is like a skeleton with all the bones connected. The child support agency is linked to the family court which is linked to the domestic violence and false sexual abuse allegations...

48. What I found bitterly disappointing was the identification of **'emerging'** father issues that were covered briefly in Recommendation 8.

[19]


Recommendation 8

(1) That the integrated family law system ensure fair and equitable treatment for all, and particularly pay attention to the emerging needs of men and fathers.

(2) That practitioners and policy makers in the family law system ensure they have an understanding of the needs of men during and following separation, and take a balanced approach to providing services and developing policy and programs for separated families.

49. The structure of the child support scheme is demonstrably inequitable in that *it fails to properly take into account the resident parent's income*, in the calculation of a non-resident parent's liability. The formula percentage rates (18%, 27%, 32% etc...) of child support are not scientifically supportable and are *far too high* in most income ranges. These percentage rates of child support *increase rapidly* as income increases and in terms of after-tax income for payer's it is both unfair and inequitable. The CSA Scheme fails to take into account the heavy *direct costs of separation*, mostly borne by the non-resident father. The CSA has a proven history of insensitivity to the needs, both financial and emotional, of non-resident parent's who are often made liable for paying the mortgage/rent on two households as well as other expenses during a lengthy period in which a separation settlement is being worked out and the status quo of residency is accruing.

50. Simple remedies are no longer sufficient – the CSA must be abolished:
    1. The BSU report figures must be used to assess the proper level of child support at each level of income,
    2. The resident and non-resident parent's liability should be calculated on an after-tax basis.
    3. The percentage rates in terms of after-tax income should be flat over most of the range. (If the amounts of child support are expressed in terms of percentages of before-tax income, those percentages should be reduced significantly as before-tax income increases).
    4. For the calculation of net income, deductions should include income taxation, superannuation payments, health and medical insurance, and maintenance.
    5. The child support percentages under the revised scheme should be greatly reduced in respect of those income levels where current rates provide a crippling disincentive to work for non-resident parent.

51. The Joint Select Committee (JSC) found, and I quote from page 8, that *'complaints about the CSA included inconsistent advice, administrative errors and refusal to verify data or amend assessments when requested. The inaction or*

[19] Out of the Maze - ALRC July 2001 p.xxiii

lack of service is inexcusable and in many instances is attributable to the CSA not giving full effect to people's rights and entitlements under the legislation. In these instances it is not a fault of the legislation but is the fault of the CSA in not fully implementing the legislation. In part this is due to a lack of explanation of clients' rights by the CSA or people being unaware of their rights. The end result is an often appalling client service delivery by the Registrar and the CSA which often appears to reflect an expectation that the problems clients have, and the clients, will go away if their rights are not explained.'

52. The JSC was concerned that the objective that non-resident parents (or Fathers) share in the cost of supporting their children according to their capacity to pay may encourage the perception that the scheme is biased against fathers as it focussed solely on the contribution and capacity to pay of the non-custodial parent without mentioning the custodial parent's role in the support of the children.

[20]

Recommendation 4

The Joint Select Committee recommends that the objective of the Child Support Scheme that non-custodial parents share in the cost of supporting their children according to their capacity to pay be redrafted so that it reads as follows:

- **'... parents share in the cost of supporting their children according to their respective capacities to pay.'**

53. In May 1994 one third of the CSA's active caseload were private collect arrangements between parents. That left two thirds of registered liabilities as direct collect through the CSA collection function. The JSC considered that the collection rate would be a more accurate reflection of the CSA" performance if the child support paid pursuant to private collection cases was excluded from the calculation of the CSA's reported collection rate.

[21]

Recommendation 9

The Joint Select Committee recommends that the child support debts paid pursuant to private collection cases registered with the CSA be excluded from the calculation of CSA's collection rate.

54. The JSC was concerned that the first contact a non custodial parent had with the CSA was computer generated letter written in a bureaucratic and overbearing manner – developed in ton and content from ATO practice. Combined with the poor level of information provided by the CSA to clients over the telephone the JSC found it easy to understand why many non custodial parents felt alienated by the CSA.

[22]

Recommendation 32

The Joint Committee recommends that the CSA re-writes computer generated correspondence to provide clients with the information they require in a clear, concise and user friendly fashion.

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[20] Child Support Scheme – Joint Select Committee on certain family issues – November 1994 p.5
[21] Child Support Scheme – Joint Select Committee on certain family issues – November 1994 p.10
[22] Child Support Scheme – Joint Select Committee on certain family issues – November 1994 p.24

55. The JSC had serious concerns that the CSA did not verify the accuracy of the information it obtained prior to acting on same.

[23]

Recommendation 36
The Joint Committee recommends that the CSA staff be trained in the requirements of the *Privacy Act 1988*.

56. The JSC strongly believed that the CSA must comply with the statutory requirements of, and time frames set by, the child support legislation.

[24]

Recommendation 42
The Joint Committee recommends that the CSA complies with the statutory requirements of the Child Support (Registration and Collection) Act 1988 and the Child Support (Assessment) Act 1989 and allows the prospective liable parents the statutory time to exercise their rights under the Acts.

57. The CSA advised the JSC that it did not have a national guideline on the use of the Child Support Registrar's powers to amend a formula assessment under Section 75 of the Child Support (Assessment) Act 1989. The JSC considered that the CSA should develop a national guideline and advise both parents in accordance with Section 76 of the registrar's powers to correct factual errors and false or misleading statements in a formula assessment.

[25]

Recommendation 54
The Joint Committee recommends that the CSA develops a national guidelines on the use of the Child Support Registrar's power under section of the Child Support (Assessment) Act.

58. The JSC considered it important to minimise the CSA's intrusive practices by enabling parents to be given the choice as to how child support liabilities were paid. The JSC claimed it would avoid the necessity of unnecessary disclosure of personal information to non-custodial parents' employers and offer an incentive to non-custodial parents to comply voluntarily with their obligations.

[26]

Recommendation 55
The Joint Committee recommends that section 43 of the Child Support (Registration and Collection) Act 1988 be amended to require the Child Support Agency to give non custodial parents the option of voluntarily paying their child support liabilities, rather than being automatically place on autowithholding.

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[23] Child Support Scheme – Joint Select Committee on certain family issues – November 1994 p.25
[24] Child Support Scheme – Joint Select Committee on certain family issues – November 1994 p.30
[25] Child Support Scheme – Joint Select Committee on certain family issues – November 1994 p.38
[26] Child Support Scheme – Joint Select Committee on certain family issues – November 1994 p.39

59. There were 163 recommendations contained in the November 1994 Joint Select Committee in relation to the Child Support Agency. There has not been any parliamentary scrutiny to ensure compliance.

60. The Hon Brian Howe, then Minister for Social Security introduced *The Child Support Assessment Scheme: A User's Guide - How the Scheme Operates and How to Work Out Child Support Payments Step-by-Step* with the following Foreword to the User's Guide:
"The Child Support Scheme will ***deliver fair, adequate, secure and regular*** *child support (or maintenance) to children of separated parents. Assessment of the level of support by the Child Support Agency under a formula set out in legislation is a fundamental change from the procedures we have been used to in Australia. It will mean that the Child Support system becomes more accessible and certain. Parents will be able to settle their child support affairs without the need for the trauma and expense of court processes. Simple private agreements can be registered with the Child Support Agency - which will then collect the regular amounts of child support payable under them. Alternatively, parents who have custody of children can apply for assessment by lodging a three-page form at Social Security regional offices or Child Support Agency offices. The Child Support Agency will collect the amount of child support assessed by it under the formula."*[27]

61. During the period 1973 to 1997 there were 2,898,265 marriages, and 1,057,522 divorces. This can be presented as a 'net' divorce rate of 36.5% over that time period. Malcolm Matthias, formerly of Father's for Family Equity, suggested that if the 1970/1971 divorce rate of 1.0 per 1,000 population is taken as a reference point prior to 1975, then the increased divorce rate can be calculated relative to the 1970/1971 statistic. Divorces have increased over the 1973 to 1997 period. There have been **647,826 additional divorces** in the 25 years 1973 to 1997. Marriage has become a consumable commodity, with the median duration of marriage for separating parties declining to just 11.0 years in 1995. The divorce rate measured against marriage rate reached 49.4% in 1996, and 48.1% in 1997. The "no-fault divorce" concept must be modified.

62. The solemn "contract" of marriage is not being enforced, and those who instigate the break in the contract (females are in the majority) are in many cases being rewarded through favourable property, custody, Sole Parent pensions and Child Support arrangements. Divorce has become a growth industry through "welfare" oriented Government policies and associated Family Law. The increase in divorce after 1987, following the introduction of the Child Support Act, is evidence of the effect of introducing financial incentives to divorce. The "Main Features" of the ABS report listed on pages 5 and 6 of *Marriages and Divorces* show the progressive change in Australian society from 1985 to 1995:

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[27] The Hon Brian Howe, then Minister for Social Security introduced *The Child Support Assessment Scheme: A User's Guide - How the Scheme Operates and How to Work Out Child Support Payments Step-by-Step*

Figure 2: Changes in marriages and divorces by marital status in Australia 1985 to 1995

	1985	1995	% change
Marriages registered	115,493	109,386	-5.3
Divorces granted	39,830	49,666	24.7
Estimated resident population (persons 15 years + at 30 June			
Never married	3,410,112	4,343,898	27.4
Currently married	7,303,428	8,081,229	10.6
Widowed	792,733	870,814	9.8
Divorced	556,498	890,437	60.0
Total	12,062,771	14,186,378	17.6

(Adapted from Australian Bureau of Statistics *Marriages and Divorces* Publication No 3310.0)

63. The number of marriages has decreased by 5.3% over the period, while divorces have increased 24.7%.

64. The emotional and financial drain of men/father's directly attributable to a relationship breakdown and through their subsequent involvement with the Child Support Agency is a national disgrace. At the times of the last reforms a payer father or non-resident parent earning in excess of $50,000 per annum has the following hurdles to overcome: Federal tax (47¢/$1), Child Support (32¢/$1 for 3 children), superannuation (10¢/$1), Medicare (1.5¢/$1) and the costs of earning an income (10¢/$1) can produce a **negative** marginal income (-0.5¢/$1). **Where is the incentive for these** people to work?

65. The 'no-fault' Family Law Act (1975) and the Child Support legislation has created a situation where the instigator of family breakdown is rewarded through systemic cultural bias and favourable property, child residency and other financial arrangements, leaving the non-custodial parent (>92% male) without rights, but totally liable with responsibilities.

66. The continued application of outdated cultural values that underlie the perception that the female is the natural primary care-giver and what has "in the best interests of the children" or the paramountcy principle in:
    (a) The creation of a new "stolen generation" through the court ordered separation of non-resident fathers/parents (>92% male) from their children
    (b) Loss of the father's involvement in the raising of the children, to the detriment of the children, the father and the broader community
    (c) Psychological trauma associated with separation for the non-resident parent, their children and significant others including the paternal grandparents
    (d) loss of a sense of personal identity, personal worth and personal well-being,
    (e) the forced loss of personal property, on-going income and superannuation
    (f) the forced expenditure of child support payments in excess of the real costs of raising children

(g) the forced and/or consequential loss of employment, career and future retirement entitlements
(h) the forced implementation of these punishments for a crime frequently instigated and committed by the custodial parent, and enforced on the non-custodial parent by a bureaucracy for periods in excess of punishments handed out to burglars, arsonists, armed robbers, rapists and murderers.

67. No one likes being financially raped by the system, but having to endure the emotional and mental anguish and torment is a common hurdle for father's to overcome. Whilst the male suicide rates are not specifically part of this inquiry the government of the day cannot escape the reality that men cannot cope and are resorting to suicide to escape – not escape their obligations but to get away from the systemic culture and torture.

68. I read a book called *'Whores of the Court'* written by Margaret A. Hagen, Ph.D. in 1997. Hagen refers to Arrested Feminists – as those clinicians who wholeheartedly embrace the idea of woman-as-exploited-and-dependent-while utterly rejecting the plan for her liberation and independence. It is not that the Arrested Feminist clinicians have a better plan; It's simply that the need for one escapes them.

[28] The underlying logic of women's liberation went like this: Sex is political and politics is about power. Power relationships are either equal or unequal. Power is bad. In our society, men have more power than women, so sexual relationships between men and women are unequal power relationships, with women on the weaker end. This is bad.

69. Hagen states Arrested Feminists don't like or trust men: either they have been hurt by them, or they believe most women have been hurt by them, and the excess of pity they feel for female victims of men has been both blinding and immobilizing.... Pain, rage, and compassion have led these clinicians to rewrite the traditional Freudian script of life into the dysfunctional family model we have today.

70. On lawyers, Hagen writes: *'There are approximately 850,000 lawyers in the United States, with about 40,000 new ones being hatched out of our law schools each year. The ratio of lawyers to general population today is twice its historical average. Lawyers have to eat. [WHY?] Lawyers have to pay the mortgage, club dues, and green fees. Psychologically hyped cases are a gift from heaven - or from the state and federal legislatures controlled by lawyers.'*[29]

71. Psychologists have to eat too. [Once again WHY?] Psychology, like law, has been a growth industry over the last three decades, with an exponential increase in numbers of Ph.D.s, and M.D.s in psychiatry, as well as in numbers of graduates in

[28] Whores of the Court – Margaret A. Hagen 1997 p. 67
[29] ibid p.70

social work and counseling increasing tenfold... In some 2 to 10 per cent of those disputed custody cases, an allegation of child abuse was made and the determination of the reality of that claim dropped into the willing hands of the paid clinician. Estimating about ten thousand such cases annually, the added involvement of social workers and child projection workers would likely triple the usual per case expert psychological witness cost of $3000. That means that the child evaluation specialists in these cases are raking in an additional $60 million a year.[30]

72. Hagen writes in Chapter 8 In the Best Interests of the Child:

[31] The results of psychoexperts' contributions to resolution of custody disputes are often quite a shock to the parties involved. Many previously unaware people are brought to a stunned realization of the awesome power accorded the professional psychological decision maker in our legal system. Accustomed not only to making their own decisions about what is in the best interests of their children, but to the respect society accords parents faced with those daily decisions as well, parents in disputed custody proceedings are often affronted and outraged to find themselves the target of a stranger's evaluation for parental fitness. Bewildered and incredulous, they find that statements they make about their children, about their own lives, and about the lives of their ex-spouses will be weighed by a professional psychological evaluator frequently held by the courts to have a special lock on the truth.

73. It is my submission that Hagen hit the nail on the head and may have had S.68F(2) of the Family Law Act of 1975 in mind when she wrote:

[32] Who could make- who could presume to make – a definitive list of necessary or even desirable parenting knowledge, skills, and abilities? For one family, it is crucial that the parent have a strong sense of religious faith and practice to hand down to the children. For others, it is a strong sense of ethnic identity. For others, an active political conscience and the willingness to work for change in the world. For some parents, a life without a significant portion devoted to sports and physical fitness seems a life only half lived. For others, a life not strongly intertwined with matters intellectual is similarly a life half lived. One family believes that a child should learn a trade and get on with life right out of high school. Another believes that every child who is to have a decent chance must spend four years at college or university....

It should be absolutely clear to everyone that whatever the claims of highly paid professionals with impressive credentials and fancy-sounding titles, there is not, there cannot be, and there never will be any sound scientific research on the specific types of knowledge, skills and abilities that one must have to be the psychologically "superior" parent, to be the parent who should have custody of the children of a marriage.

74. The so–called '*in the best interests of the child*' phrase comes into play when allegations of abuse are raised by a party. The system treats the prevention of abuse as the ultimate goal and requires that everyone involved act not solely on the basis of knowledge but on the basis of suspicion alone. Parents, bureaucrats

[30] Whores of the Court – Margaret A. Hagen – 1997 p.71
[31] Whores of the Court – Margaret A. Hagen 1997 pp. 199-200
[32] Whores of the Court – Margaret A. Hagen 1997 p. 204

and those in the domestic violence and family court industry should know better than to interpret suspicion in such a trivial and vexatious manner.

75. Hagen, referring to the hired guns of the psychology profession, writes on page 228 that: 'The law took parental rights away from parents and effectively vested those rights in paid professionals who claim that their knowledge and their training makes them better parents than parents themselves, and better judges of the best interests of the child than parents, police, or the courts. Before their awesome authority – and their vast armamentarium of claimed knowledge – all the amateurs in the child welfare business must fall silent and bow the knee. The legislators brought their claim of unequalled expertise; the police and the courts have no choice but to buy it as well.'[33]

76. The legislators and courts have enabled the so-called experts to make decisions on behalf of our families by denying us that very same power – '*... The abstract need of society to protect its children becomes inevitably the rape of the rights of the real parents of individual children.*'[34]

35

> A common and relatively successful pattern for contact is where the child spends every second weekend and half of the school holidays with the contact parent. The formality of these arrangements may moderate as the child gets older and makes other access arrangements with the contact parent on a more casual basis. One variation on the traditional pattern being requested more frequently, usually by fathers, is joint custody or shared parenting, where children spend some residential time with one parent and some with the other. A number of submissions received by a major Joint Select Committee on their report the *Family Law Act 1975: Aspects of its Operation and Interpretation* suggested amending the Family Law Act to make joint custody the norm, with sole custody awarded only in cases where there had been child abuse or domestic violence. However, to make joint custody work, as Justice Alwynne Rowlands stated, it is necessary that the parents exhibit 'mutual tr5ust, co-operation and good communication' to such an extent that, in the words of one witness, 'you would wonder why they divorced in the first place?' What is lacking in joint custody is the concept of a fixed home and consistency, especially necessary for young children. ...

36

YEAR	CUSTODY	ACCESS
1983	6,500	4,500
1984	8,000	4,600
1985	8,100	5,200
1986	10,000	6,000
1987	9,500	6,000
1987/88	10,000	6,200
1988/89	14,600	9,500
1989/90	16,500	11,000
1990/91	18,500	12,000
1991/92	20,000	13,000

[33] Whores of the Court – Margaret A. Hagen 1997 p. 228
[34] ibid p.234
[35] Counsel of Perfection – The Family Court of Australia by Leonie Star (1996) p. 180
[36] Family Court of Australia Annual Report 1991/92 (estimates)

[37]

YEAR	Marriage	Divorce	Divorce as a % of Marriage
1970	116,066	12,198	11
1971	117,637	12,947	11
1972	114,029	15,655	14
1973	112,700	16,195	14
1974	110,673	17,688	16
1975	103,973	24,307	23
1976	**109,973**	**63,230**	**57**
1977	104,918	45,150	43
1978	102,958	40,608	39
1979	104,396	37,854	36
1980	109,240	39,258	36
1981	113,905	41,412	36
1982	117,275	44,088	38
1983	114,860	43,525	38
1984	108,655	43,124	40
1985	115,493	39,830	34
1986	114,913	39,417	34
1987	114,113	39,725	35
1988	116,816	41,007	35
1989	117,176	41,383	35
1990	116,959	42,635	36
1991	113,869	45,652	40
1992	114,752	45,729	40
1993	113,255	48,363	43
1994	111,174	48,269	43
1995	109,386	49,666	45
1996	106,103	52,466	49
1997	106,701	51,286	48

NOTE: De-facto relationships are not included

77. Is it any coincidence that the number of applications for both residency and contact (custody and access) has trebled in the decade 1982-92?

78. Is it any surprise that the marriage rate has decreased and the divorce rate increased in the last 28 years?

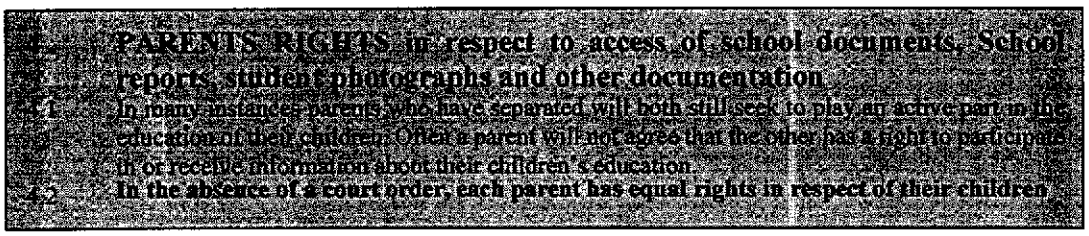
79. Again we won't investigate the correlation between the introduction of various anti-male laws such as child support, family law and domestic violence with the suicide rates in the same period.

[37] Marriages & Divorces in Australia (ABS No.3310.0)

80. There are many barriers that Father's have to jump over in order to even attempt to have the type of relationship with their child that they intended – 'no fault' divorce means dad suffers.

81. The NSW Education Department's policy on parental rights includes the following:

[38]



PARENTS' RIGHTS in respect to access of school documents, School reports, student photographs and other documentation

4.1 In many instances parents who have separated will both still seek to play an active part in the education of their children. Often a parent will not agree that the other has a right to participate in or receive information about their children's education.

4.2 In the absence of a court order, each parent has equal rights in respect of their children.

82. It is the absence of a court order that provides fathers with equal rights with respect to their children.

83. There are other issues that could be explored such as Borderline Personality Disorder, Mental Health issues, Domestic Violence allegations in response to the inquiry. One emerging trend is the use of Parental Alienation generally by the custodial parent to minimise the contact parent's involvement and bond with the children. Parental Alienation Syndrome represents an extreme form of brainwashing of children by one parent. It is always seen in the context of disputed custody or access situations. The goal of the brainwashing parent is to get revenge. The ultimate revenge being to block the other parent from having a meaningful role in their child's life. The syndrome has clear signs and symptoms, and with appropriate procedures, can be diagnosed and treated. This syndrome is also seen in more complex forms, when it is embedded in situations of alleged child sexual abuse or child kidnapping. Professionals who have not educated themselves about PAS often misdiagnose it, and their misguided efforts at helping can worsen an already bad situation.

PARENTAL ALIENATION SYNDROME

1. **Denial of Contact**: The weapon of choice and closely linked to domestic violence allegations. Contact between the child and the alienated parent disrupts the process of alienation. Uninterrupted contact between the child and the alienating parent enhances the process of alienation. In this situation there is little or no counter balance to the indoctrination of the child.
2. **Frustrating Contact**: There is a safety valve for the correcting of attitude and perspective of the child. The more frustration of contact, the more successful the alienation.
3. **Engineering/Manipulating Contact**: Denial or frustration will occur when a special event involving you and your child arises eg: birthdays, holidays, family fathering. The

[38] Family Law and the Schools Policy (post Aug 1997) Ken Boston - Director-General of School Education 14 July 1997

alienating parent is generally impeccable as they can sense the child's excitement and eagerness for access with the alienated parent. Alarm bells will begin to ring as the bond between the alienated parent and the child may be strengthened.

4. **Apportioning blame**: To strongly implant in the child's mind, reinforce and revise the notion that the other parent (alienated parent) is solely responsible for the breakdown in the relationship and any subsequent negative situation or hardship experienced by either the child or alienating parent. The anthem cry, *"Daddy left because he doesn't love you."*
5. **Name Change**: Overt form of disassociation from the father. It gives the child a new sense of identity, one that does not incorporate the alienated father. The wider community reinforces this false identity. A name gives a sense of ownership and a change of name by the alienating parent imposes sole ownership of the child.
6. **Exclusion from significant events**: School, religious ceremonies, sporting activities, birthdays, Christmas, Easter, school events, social activities. This tactic is usually coupled with an explanation for the alienated parent's non-attendance as "Daddy/Mummy didn't want to come" or "couldn't be bothered to come as they don't love you enough to come" or similar variations of this theme. Of course this explanation is provided courtesy of the alienating parent. This tactic contributes to the power base laid down and is used in conjunction with other tactics employed by them.
7. **New Partner**: With the suggestion and encouragement of the alienating parent the new partner will be groomed into the role of new father. The child will be encouraged and rewarded for referring to them as 'Daddy'. They will also be instructed that 'the new partner' loves them more than the alienated father because they are spending more time with them. This works best in conjunction with denial or frustration of contact.
8. **Punishment**: This abhorrent tactic is whereby the alienating parent will punish the child/children for showing emotion and affection toward the alienated parent, wanting to be with the alienated parent or in some cases merely mentioning the alienated parent. The punishment can take many forms including physical punishment, verbal abuse, and denial of privileges and temporary withdrawal of affection by the alienating parent. All facets of punishment applied are of varying degrees of severity and tend to increase as the child/children build up some form of immunity.
9. **Negative reinforcement**: This may take two forms. It may be similar to punishment but less severe and less overt. On the other hand it may take the form of the alienating parent rewarding and encouraging the child/children whenever they say or do something to the detriment of the alienated parent. The more hurtful the deed the greater the reward.
10. **Bribery**: The alienating parent promises the child/children presents, outings, special liberties, treats and sweets if they do the alienating parent a little favour. Some of the more common of these 'favours' include "Don't go to daddy/mummy this weekend (access weekend)", "Stay with me these holidays, we'll do...", "Don't ring dad/mum this week", "Be naughty when you go to daddy's/mummy's this weekend". The younger and more naive the child the more effective this tactic is.
11. **Threats:** Closely linked to and the pre-cursor to punishment is mentioned above. The alienated parent will threaten the child/children with a variety of punishments if they show affection or love toward the alienated parent, an eagerness to be in the company of the alienated or merely speak favourably of the alienated parent. The more severe the threats the more effective they become in the alienating process.
12. **Made to feel unwelcome**: This tactic is reserved for the occasions when the alienated parent slips through the net and is fortunate enough to be p resent at a significant event in the child's religious, sporting, education or social life along with the alienating parent. The alienated parent will be made to feel as uncomfortable and unwelcome as possible by the actions and words of the alienator. Generally these actions and words will not be obvious to others present as most of the foundations consisting of lies and scandal concerning the alienated parent will have already been spread throughout the group. Many in the group will have formulated an opinion on the alienated parent and their general disregard for the child/children based on the biased version gratefully supplied by the alienator.

13. **Demeaning & Belittling Father's**: Similar to the above where the alienating parent makes a point of speaking ill of the alienated parent wherever, whenever and to whoever is willing to listen. Generally this is target specific and the descriptions of the alienated parent, ' the two headed monster' is especially provided to people and at places that the alienated parent is likely to come into contact with in respect of things connected with the child. Favourites are sporting groups, schools, doctors, church groups and common friends.
14. **Money for nothing**: Whenever there is insufficient money to purchase a new toy, item of clothing or item for the household that the child wants, needs or have been promised the alienating parent will apportion all the blame to the alienated parent. They will dutifully inform the child that it is the alienated parent's fault that they can't have the item because the alienated parent has not given them any or insufficient money. This tactic may be employed irrespective of whether it is truthful or not and is independent of the amount of child support income received.
15. **Brainwashing**: The process with which the alienating parent poisons, indoctrinates or inculcates the child selective information. There is no requirement for the information that is supplied to be truthful. The alienating parent builds within the child's mind a perception of the alienated parent that best suits their purpose in the process of alienation. The younger the child and the more uninterrupted time spent with the child by the alienator, the easier the process and the more difficult it is to reverse. In extreme cases the distortion can be so great so as the child can be made to believe that the alienated parent does not exist or has no place in their life.
16. **Telling of untruths**: Similar to brainwashing, but it is less severe as it is not to the same degree. This tactic generally does not contain the repetitive element and reinforcement associated with brainwashing. However, can be quite successful with those young, naive and vulnerable.

84. No doubt the committee will receive thousands of submissions – but it is incumbent upon me to remind the committee of the evil triangle of issues (a) domestic violence, (b) custody and (c) child support.

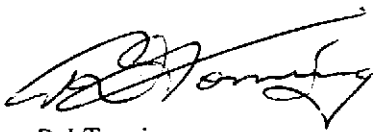
Men were just as likely to report being physically assaulted by their partners as women. Further, women and men were about equally likely to admit being violent themselves. Men and women report experiencing about the same levels of pain and need for medical attention resulting from domestic violence. Violence runs in couples. In over 50% of partnerships in which violence occurred both partners struck each other. People who had violent parents were significantly more likely than others to be violent to their own partners and to be victims of violence themselves. On the other hand, a huge majority of people whose parents were violent do not assault their own partners. Moreover, the vast majority of those who are violent did not have violent parents. The first two results run counter to conventional wisdom and to the hypotheses with which we began the paper. However, some degree of confirmation or at least plausibility derives from the fact that men's and women's reports on rates of domestic violence more or less agree. If the women are to be believed (as they have been by previous investigators), then so are the men.

39

[39] DOMESTIC VIOLENCE IN AUSTRALIA: ARE WOMEN AND MEN EQUALLY VIOLENT? Bruce Headey, Dorothy Scott, David de Vaus University of Melbourne University of Melbourne La Trobe University

85. Let's hope that the committee looks seriously at the advantages of Equal Parenting and recommends a presumption in favour of Equal Parenting – as many of the United States of America legislator's have done:

ALABAMA - 1997
ARIZONA - 1998
ARKANSAS - 1999 - presumption of joint custody
CALIFORNIA - presumption in favour of joint custody if both parents agree.
COLORADO - preference for joint custody
CONNECTICUT - presumption in favour of joint custody if both parents agree.
DELAWARE - preference for joint custody
DISTRICT OF COLUMBIA - presumption in favour of joint custody.
FLORIDA - presumption in favour of joint custody.
GEORGIA - presumption of joint legal and physical custody
IDAHO - presumption in favour of joint custody.
INDIANA - joint custody.
IOWA - presumption in favour of joint custody.
KANSAS - Presumptive Shared Parenting
KENTUCKY - equal sharing of parenting and custody
LOUISIANA - presumption of joint custody.
MAINE - presumption of joint custody - 2001
MARYLAND - Rebuttable Presumption of Joint Legal Custody
MICHIGAN - presumption in favour of joint custody if both parents agree.
MINNESOTA - presumption in favour of joint legal custody but not physical custody
MISSISSIPPI - presumption in favour of joint custody if both parents agree.
MISSOURI - presumption in favour of joint custody.
MONTANA - presumption in favour of joint custody.
NEW JERSEY - a presumption of joint physical custody and shared physical custody responsibility
NEVADA - presumption in favour of joint custody if both parents agree.
NEW HAMPSHIRE - presumption in favour of joint custody.
NEW MEXICO - presumption in favour of joint custody.
NEW YORK - presumption of shared parenting - 1999
OHIO - presumption in favour of joint custody.
OKLAHOMA - presumption in favour of joint custody -1999
OREGON - presumption in favour of joint custody.
PENNSYLVANIA - joint custody and joint legal and physical custody - 1998
SOUTH CAROLINA – joint custody
TENNESSEE - presumption in favour of joint custody if both parents agree - 1996
TEXAS - 1995
VERMONT - presumption in favour of joint custody if both parents agree
VIRGINIA
WASHINGTON - presumption in favour of joint custody if both parents agree.
WEST VIRGINIA - presumption in favour of joint custody – 1999
WISCONSIN - presumption in favour of joint custody – 1999



R J Torning
7/8/2003