

20<sup>th</sup> October 2003

Committee Secretary  
Standing Committee on Family and Community Affairs  
Child Custody Arrangements Enquiry  
Department of the House of Representatives  
Parliament House  
CANBERRA ACT 2600  
AUSTRALIA

Dear Sir/Madam

**SUPPLEMENTARY SUBMISSION**

My understanding is that it is in order to provide a supplementary submission to your inquiry based on having had the opportunity to absorb and consider the in-put of others. This supplementary submission is submitted based on that understanding.

My original submission was dated 4<sup>th</sup> August 2003 and since that time I have followed the inquiry as best as I could through the web site postings plus I had the opportunity of attending your Perth session in person. I have been gratified by the way the committee has gone about the inquiry and impressed by the quality and thought behind much of the questioning that has taken place.

Throughout the enormous volume of submissions, the huge number of words written and spoken, two things above all others surely stand out:

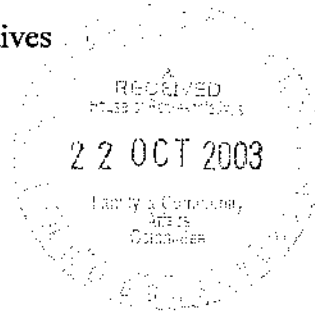
1. There is no one simple answer to all the problems, the concerns and the issues.
2. But change is most definitely needed if not demanded because the current system just has too many shortcomings and creates too much misery, injustice and tragedy.

This supplementary submission is written in my own name but on behalf of all those separated parents who are arguably the most unfairly treated by the current system and whose children, as a result, suffer the greatest loss.

I refer to all those separated parents who are & always have been good parents in all senses and measurements of that term; those parents who have the capacity, the desire and the make-up to continue to provide excellent parenting to their children. But who are being denied that opportunity purely and simply because of their gender.

I suggest there has not been one submission made, nor any words put to you, that in any way substantiate why the children of such parents should be denied (to the degree that they are), access to the love, guidance, support, skill and life experiences of one of those parents. I further suggest that this grouping makes up the bulk of separated parents. While I feel very sorry for those who have suffered domestic violence or have been partnered with a dysfunctional person, a drunk, a drug taker or whatever – none of that should have

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any bearing on the relationship I am to have with my children. Yet it does. That is why change has to be made – you cannot keep in place a system which is incapable of accepting that there can be two good parents in a separated family. This is particularly so in times of no fault divorce.

I note that Chief Justice Alistair Nicholson in his submission warned that if a rebuttable presumption of equal time was incorporated into the Act, then parents who sought to rebut the presumption would be required to put before the court evidence that equal time would be detrimental to the child. Exactly! And its primarily because the Family Court, over which Justice Nicholson has presided, has shown itself to be totally incapable of accepting and acting on evidence that shared care would be to a child's benefit, no matter how compelling that evidence. That there should actually be reasons why children are given extra time with one of their parents at the expense of time with the other should not be something which the Chief Justice should struggle with. Doubtless he might find it less convenient than the Family Court just continuing to play God, as it currently does, but convenience and expediency should not be what determines child custody considerations.

There are a number of issues or considerations that have been often referred to in various submissions which I would like to address.

#### **Best Interests:**

There is a lot of nonsense spoken on and around these two words. Children's best interests would be actually served if their parents remained in love and in a caring and happy relationship. You will have trouble legislating for that. However is it not self evident that if such a functional family set up cannot be guaranteed then the closest we can get to true best interests will most likely be achieved by the children retaining strong & meaningful relationships with each and both of their parents. Where did this notion come from, that spending more time with one parent at the cost of time with the other, could be seen as in a child's best interest? Presumably from some psychological theory on a particular day. I recently sighted a paper by Dr Tom Altobelli (Associate Professor, School of Law, University of Western Sydney) presented to the Family Law Practitioners Association Of Western Australia in about July this year. The paper covered various psychological articles recently released in the United States and was titled: "Contact Cases: Have We Been Getting It Wrong". The title says it all for me – at the end of the day it is all just theory – in fashion one day and out another. Every society probably thinks it has it right at the time but those who see this whole issue, of removing children from the care and influence of their fathers to the degree that currently happens, as having an uncomfortable resemblance to the stolen children issue, do have a point.

#### **Primary Care:**

These also are two words with the capacity to mislead the debate. Apart from the obvious example of breast feeding just what is primary care giving. Is one party going into the

workplace in order to be able to feed, clothe & shelter the family not a primary care giver task – what could be more primary than providing those basic necessities of life. The growth of the child care industry says much about how we as a society have moved our positions on what constitutes primary care giving.

**Children's Voices:**

The committee has referred to this on several occasions. As an issue of relevance it has the capacity to sound good but to what end. Of course what children want is important but all of us were children once and we all know that we want as children is for our Mums & Dads to love us and help us grow up and develop – is there any thing more natural.

Taking the notion of children's voices further than that is fraught with danger. While the innate honesty of children is a wonderful thing it is also easily exploited. While a court hearing directly from children would be relevant in cases where abuse or violence were an issue, in general terms we all know what children want and it is bewildering that the Family Court to date has seen it not fit to deliver it.

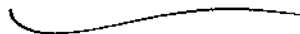
**That 50/50 Joint Custody would be unworkable:**

Why? In what ways does it change most of the considerations that have to be dealt with in 80/20 or 90/10 or 70/30 custody regimes that the Court has no trouble putting in place. Providing each parent is putting their hand up for 50% how does it suddenly become unworkable. This is no more than a throw-away line that has absolutely no substantiation backing it.

To conclude - the most compelling case for 50/50 joint custody would actually come from the one group who will not have made submissions to your inquiry. That group is all the happy, fully functional families out there. If you go into the living room of such families and ask the parents what they would do if the wheels fell off their relationship you tend to get universal feedback that they would **share** all considerations & that the children would spend equal time with both of them.

That this is not what happens when the wheels do fall off relationships says everything about pay-back, greed, manipulative power, selfishness and exploitation. It says nothing about the best interests of children. That is why change is critical.

Yours faithfully



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