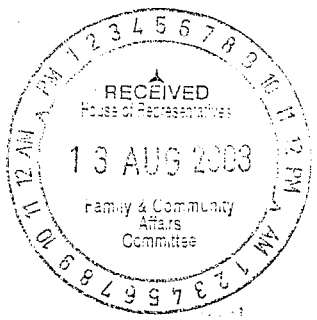
House of Representatives Committee on Family and Community Affairs

Inquiry into child custody arrangements in the event of family separation



The Lone Fathers' Association (Aust.) Inc.

August 2003

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General

The Lone Fathers Association Australia (LFAA)

This submission to the Inquiry is being provided by the Lone Fathers Association (Australia) Inc. (LFAA).

The LFAA is a peak body at the Commonwealth level. It represents a broad cross section of Australians, namely men and women who wish their children to be loved, nurtured, and supported to adulthood by both parents, even where the parents are separated - and also by step-parents, grandparents, and other members of the children's extended families as appropriate.

The Inquiry

The task of the Standing Committee is to inquire into:

- the factors that should be taken into account in deciding the respective time each parent should spend with their children post-separation, and whether there should be a rebuttable presumption of equal time;

- the circumstances in which a court should order that children should have contact with others, including their grandparents; and

- whether the existing child support formula works fairly for both parents in relation to their care of the children.

The need for strong families

The LFAA considers that strong families are the basis of a sound and successful society, and that the current divorce rate in Australia, at 53%, is an indication of a society which in major respects is dysfunctional and failing its children.

There are at present many cases where families separated in part as a result of misguided government and judicial policies could, with better policies and administration, have been reconciled, in the interests of both the children and the other members of the family. The failure to do this has damaged the lives of many children and other members of their families.

The adversarial model and the Family Court

Families do not cease to exist on separation. Divorce is between the parents, not between the parents and their children. The love between the parents and the children does not come to an end, unless parent/child alienation, a very serious form of child abuse, is allowed to occur.

The adversarial model employed by the Australian legal system is partly to blame, in many cases, for unnecessarily encouraging the conversion of parental conflict into

emnity and loss. Mediation (if necessary, mandatory) should be the main process adopted in resolving parental conflict.

The adversarial model, by causing both parents to fear that they will lose the children, effectively compels many parents to fight hard, where they can, through the legal system. This then tends to give the judicial authorities the appearance of parents in sharp conflict – although this conflict would usually subside when the more natural arrangement of shared parenting was granted.

There is also a serious problem in the philosophy and approach of the Family Court of Australia, which has the main responsibility for dealing with these matters. The Family Court effectively encourages and implements a model of sole parenting. This creates a "win-lose" mentality on the part of parents. The "loser" often becomes a mere transient in the lives of his/her children, and this is almost invariably bad for the children.

The Family Law Act stipulates that "Children have the right to know and be cared for by both their parents" *(Section 60B 2(a), Family Law Act)*. The Family Court could make shared parenting order even without parental consent now. But it has largely ignored this opportunity. The Court has, in fact, gone in the reverse direction, as the proportion of shared parenting orders granted has steadily declined over time.

There have also been major problems with the accuracy of advice given to the Government on shared parenting by the Family Court (and also the Family Law Council).

Beyond the above lies a more systemic failure on the part of governments to appreciate that in many cases "a stitch in time saves nine", that a better, fuller, more accessible, and less expensive system of marriage education would head off many problems before they became disasters. The existing programs in these areas need to be greatly strengthened, and governments need to make serious resource commitments to them through distribution of suitable informational and advisory literature to all intending and other couples.

Present situation in Australia

Over the last 30 years or so, an extremely large increase has occurred in the number of fatherless families in Australia.

Australia now faces a situation where:

- very few children of divorced parents now experience the type of care they would prefer, namely equal care by both parents;

- a large number of boys, in particular, are growing up without suitable male role models. Also, girls are growing up without male heterosexual role models that will be important to them in adult life; and

- many children in one-parent families, by the time they are 14-15 years old are using drugs, alcohol, and being abused by themselves or others in other ways.

> A great many do not manage to get jobs when they reach working age, and where they marry those marriages often end in divorce.

A host of problems have arisen as a result of this outdated approach on the part of the Family Court. These problems could be greatly reduced by the implementation, in cases of separation and/or divorce, of a rebuttable presumption of shared parenting.

Shared parenting

Shared parenting

Shared parenting includes both shared parenting responsibility and joint physical custody. Shared parenting responsibility embraces equal guardianship and equality between the parents in decision-making on matters such as religion, education, and health. Under joint physical custody, the children have something approaching equal time (not less than 30%) with each parent, and the children live alternately with both parents, in some cases on a weekly or monthly basis.

As the phrase indicates, a presumption of joint physical custody would be rebuttable. That is, it could be rebutted in appropriate cases. Joint physical custody would not be awarded where there was significant ongoing child abuse, e.g., as a result of mental disabilities, drug or alcohol addiction, or other major problems, although "one-off" problems could often be overcome through counselling and appropriate self reflection.

Shared parenting versus sole parenting

Children in sole parent families, in general, do less well than children in shared parenting families.

Empirical evidence clearly indicates that children raised by a divorced single parent are significantly more likely than average to have problems in school, run away from home, develop drug dependency, and/or experience other serious problems (Amato and Keith, 1991, Guidubaldi, Clemishaw, Perry, and McLoughlin, 1983, Hetherington and Cox, 1982).

Prima facie, the community should, in the interests of children, avoid having them living in sole custody arrangements wherever practicable. In a large proportion of cases the alternative of joint physical custody would be practicable, if it were not discouraged by the legislature and/or judicial authorities.

The greater cooperation between parents which necessarily occurs under a shared parenting model improves parental attitudes, in many cases out of sight, and results in great benefits to the children.

In summary, shared parenting would:

- privilege the rights of the children over the rights of the adults, by requiring each parent to recognise the rights of the child to parenting by the other parent;

- allow full scope for consideration of the needs and wishes of the children, through the inclusion, so strongly desired by the vast majority of children, of both loved parents in their lives;

- be firmly based on a large body of research that clearly shows that children in shared parenting and joint physical custody are better off than children in sole

parent families. The preference in some quarters for sole parenting is, to a large extent, based on ideology and political self-interest;

- recognise that children would, in general, be much better protected from physical or sexual abuse in shared parenting families than in sole parent families;

- recognise that sole parents who before the separation/divorce had stayed at home will under shared parenting and joint physical custody be able to both share the responsibility of raising the children and join/rejoin the paid work force to pursue their careers outside the home.

- recognise that, in the absence of changes to the Child Support formula, there would in most cases would be only a relatively modest effect on existing child support payments, because child support is principally calculated on the basis of income rather than time spent with the children;

- enable fathers to help their children by doing more of what fathers traditionally do to support the lives of their children in intact families. In addition to providing most of the family's income, and doing housework as appropriate, fathers would be able to continue maintaining house, vehicle(s), garden, and other property in good repair, dealing with tradespeople, government authorities, neighbours, schoolteachers, medical professionals, clergy, and others, helping the children with homework, sport, and cultural activities, and transporting the children to and from activities and services;

- take account of the need to ensure that the presumption was rebutted in any cases where this would cause risk or disruption for the children on a scale sufficient to cancel out the benefits; and

- recognise that, as established in other places where a presumption of joint physical custody has become the rule, that the presumption leads to a reduction in litigation.

Shared parenting and joint physical custody, even when awarded against the wishes of the mother, has been shown to lead to more involved fathers and better adjusted children.

Poverty in separated families

Separated parents are a very large group (perhaps the largest in Australia) affected by poverty, and this situation is not improving. 500,000 or so men and 100,000 are now living separately from their children.

Whichever aspect of poverty is examined, and however poverty is defined, one will keep finding deep connections between poverty and the phenomenon of family breakdown and (often unhelpful) interventions by governments. Young people in low-income households often come from broken families. People with disabilities are often separated from their spouses. And people of workforce age in households reliant on government incomes are often unemployed non-custodial parents, and

sometimes unemployed custodial parents. And many indigenous people are also separated parents.

Much (and perhaps most) poverty in the Australian community, and particularly as it affects children, cannot be understood without addressing these deep connections, and particularly the connection with sole parenting.

Connections between shared parenting and child financial support

The reports from studies which also investigated child support issues have showed that when joint custody was awarded, more child support was paid than when sole custody was the arrangement.

One US study showed that when sole custody was the arrangement, 64% of child support was paid (by mother's report), while when joint custody was awarded despite the mother's preference, there was almost perfect compliance (94% by mother's report). Results of a similar nature could be expected in Australia.

See also "Child financial support" below.

Protection of children from abuse

Some groups opposed to shared parenting claim that children and mothers would, under such a regime, be at risk of violence from their fathers.

The LFAA believes that it is extremely important that children should be protected from violent adults, including parents. However, the evidence clearly indicates that that is, in general, a powerful argument *in favour of* a rebuttable presumption of joint physical custody, not an argument against it.

The issues of violence needs to be properly analysed and understood by defining who is actually committing most abuse against children. The fact is that the leading abusers of children are mothers and their subsequent partners, whether male or female, not the biological fathers of the children. An Australian Health and Welfare Report shows that most substantiated abuse takes place in single parent households, followed by blended family households. In the case of sexual abuse, also, children are *least* likely to abused by their biological father, with less than 1% of this type of abuse being attributable to those fathers. The problem of violence in fact lies, mainly, not in joint parent families but, rather, in *sole parent families.*

Men tend to be discriminated against in family law matters as a result of a community perception, fed by gender-ideologues, that domestic violence is overwhelmingly perpetrated by men. This community perception is, in fact, completely incorrect. Domestic violence is, in reality, not a gender-based phenomenon, but rather a phenomenon reflecting individual personality and cultural attitudes, and the way in which it is recorded is greatly influenced by the actions of agencies and law enforcement authorities.

Calculations based on research by Headey, Scott, and de Vaus (1999) and an ABS study of women's safety (1996) indicate that, while approximately 250,000 women in

Australia are affected annually by domestic violence, ranging from minor to major in character, there are something like 390,000 men in Australia affected annually by similar experiences.

Calculations based on data received from the Australian Institute of Health and Welfare indicate that hospitalisation rates in Australia from domestic violence are similar for men and women (46% and 54%, respectively).

The total number of reports received by the police from women in the ACT divided by the number of women estimated to have been assaulted by their partners in a recent year was approximately 50%. The corresponding figure for men, as reported by the police, was only about 2%. This indicates that very few men in the ACT who are assaulted by their spouses report that experience to the police (and are taken seriously by the police), whereas a high proportion of women do. As an indicator of the sex distribution of perpetrators of domestic violence, police statistics in the ACT therefore underestimate the relative amount of violence against men by more than 95%, and are for the purpose of that comparison entirely useless. If the statistics in other States are in any way similar, those statistics should not, by themselves, be used for any type of purpose in relation to family policy.

A comment from one Australian father:

> "The most mean-spirited opposition to joint custody is that it should be barred or restricted for the population at large because of the risk of domestic violence among some families. The opponents argue from a presumption of pathology, and urge a rule that would assume that the worst behaviour of the most extreme individual is the norm. Immoderate mothers rights activists working to persuade parliamentarians against joint custody are pushing even more so to prevent fathers from being involved in their children's lives, based on the myth of fathers being a potential for domestic violence.
>
> "Policy cannot be made by anecdote, and the law should not be based upon this presumption of pathology. The law should serve the vast majority of the fit and loving parents who simply want to be with their children. What is clear from the available evidence, is that children in joint custody have a much better prognosis for positive post-divorce adjustment than children in sole custody. The accumulated evidence suggests that children who are not forced to divorce a caring parent are more likely to be better adjusted after divorce" (Y. Joakimidis).

Discrimination against men also applies to some extent to community services as well. For example, there are estimated to be, at present, about 300 refuges for women and children in Australia. There is, however, only one such refuge for men and children. This latter was established by the LFA in the ACT, and then handed over by an incoming government to an organisation which included individuals who had previously proclaimed their "feminist" credentials and asserted that there was no need for such a service. (See also below.)

Male suicide rates

The suicide rate for Australian men in the prime fathering age groups, the 20's and 30's, is now amongst the highest in the world, and continues to increase rapidly. The ratio of male to female suicides in Australia rose from 2.1 in the 1980's to 4.1 times in the 1990s. It is worth noting that the suicide rate for men in the ACT in 1998 was fifteen times the rate for women. Rates of drug taking by men have also greatly increased.

A large proportion of male suicides are associated with family law-related problems. This proportion has been estimated, in recent research, to be about 70%, or 1,750 men a year. That is the equivalent of a Bali bombing every fortnight. And there are always children involved as well, children who have lost their father for ever.

The LFA receives at least 5 calls a fortnight from the parents or wives of men who have suicided as a result either of being hounded by the CSA or as a result of the non-enforcement of Family Court access orders. If the Parliament continues to allow these things to happen year after year, when it is aware of the situation, it will be culpably negligent.

Experience of other countries with shared parenting

In the area of shared parenting, the US is twenty years ahead of Australia, and has proved that shared parenting not only works but has beneficial effects on children and families generally. The US has also proved that there are large financial benefits to governments though reductions in single parent pensions and family payments. A number of other countries have also implemented shared parenting, including Scandinavian countries and some provinces in Canada.

US states differ widely in their policies towards joint physical custody. Joint physical custody is usually defined as a schedule where the child has at least a 30% time share with each parent. In some US states with no preferred custody option, judges have favourable attitudes towards joint physical custody and frequently grant it.

Awards of custody, by type of custody, selected US states, 1989-1990

State	Joint physical custody (%)	Father (%)	Mother (%)	Total (%)
Montana	44	8	48	100
Kansas	42	8	50	100
Connecticut	37	5	58	100
Idaho	33	10	57	100

Source: Kuhn and Guidubaldi, 1997.

For the 19 states in a sample employed in a study by the US Department of Health and Human Services, the average rate of joint physical custody awards in 1990 was 15.7 % and in two states joint physical custody was awarded in nearly half the cases.

Divorce rates, by joint custody level, US sample of 19 states

Shared parenting level	Year (per thousand)				
	1980	1989	1990	1993	1994
High	5.42	4.74	4.76	4.54	4.36
Medium	6.06	5.04	5.04	4.94	4.84
Low	5.25	4.88	5.02	4.92	4.87

Source: Kuhn and Guidubaldi, 1997.

As the above table indicates, divorce rates have declined *nearly four times faster* in High shared parenting states in the US, compared with states where joint physical custody is rare. As a result, the states with High levels of joint physical custody now have significantly lower divorce rates on average than other states. States that favoured sole custody also have more divorces involving children. These findings indicate that public policies promoting sole custody appear to be contributing to the high divorce rate.

Australia, if placed in the above company, would be at the bottom end of the Low group for the percentage in joint physical custody, and would be the worst performer in terms of trends in the divorce rate – which, for, Australia continues to rapidly increase rather than decline.

Current presumption in favour of sole parenting in Australia

The question needs to be asked as to why there is in Australia a presumption in favour of sole parenting.

The answer lies partly in history. A policy approach in favour of "maternal preference" in the custody of children was developed in the US during the nineteenth century, and a similar approach was adopted in Australia. The US policy was subsequently developed into an approach based on the supposed best interests of the children, and that approach also taken up in Australia.

What "the best interests of the children are" in complex family situations, however, is often to a large extent a matter of personal opinion. The best interests of the children cover a multitude of issues which can be resolved in a various different ways, including according to ideological notions - as, regrettably, frequently occurs at present in Australia. Asserting that judicial judgements were arrived at on the basis that the decisions were "best interests of the children" does not necessarily make them so, or produce satisfactory results.

The maternal preference/sole custody approach is now well out of date, if indeed it was ever fully appropriate. In the US maternal preference was declared in the 1960's to be unconstitutional. If Australia had a Bill of Rights similar to the US it seems almost certain that maternal preference would have been declared to be unconstitutional here too. Maternal preference arose from the situation that in earlier times most mothers stayed at home and looked after children, usually in large families. That situation has not applied in Australia for many decades.

Opposition to shared parenting by the legal establishment

The maternal preference/sole custody approach continues, nevertheless, to be supported by most of the legal "establishment" in Australia, including, pre-eminently, the Family Court itself.

The reasons for this may include that many of the present generation of lawyers have grown up under the present system, and/or have helped to create it, understand it and are comfortable with it, in many cases have been overly influenced by the philosophy/ideology behind it, and have a personal investment (both intellectual and financial) in it.

Commentators with a legal establishment background often have a problem in seeing the issues in this area in the same way as ordinary members of the community, because their work experience usually brings them into contact only with the problem cases, and not the cases where joint residency works well - or would work well if it was given a chance. They tend to have a jaundiced view of joint physical custody, and little experience with the benefits of this type of care.

Inconsistency between the Family Court approach and the views of the Parliament

The policy being pursued, *de facto*, by the Family Court on sole parenting has not been endorsed by the Australian Parliament, and is, in fact, in conflict with the view of the Parliament.

The statement was made by Senator Missen in 1974 on behalf of the Liberal Party, for example, that the intention of the new Family Law Act 1975 in Australia was to:

> "create the concept of *joint custody* under the law".

Mr Peter Duncan, Labor Minister, in his Second Reading Speech explaining the 1995 Bill to the legislature stated that:

> "The original intention of the late Senator Murphy was that the Family Law Act would create a *rebuttable presumption of shared parenting*, but over the years the Family Court has chosen to largely ignore that. It is hoped that these reforms will now call for much closer attention to this presumption and that the Family Court will give full and proper effect to the intention of the Parliament."

Comments coming from the Family Court in relation to shared parenting suggest that the Court has been so disinclined to follow instructions by the Parliament that it has forgotten that those instructions were ever made.

What the LFAA considers to be a serious failure of the Family Court to keep up to date is exemplified by the recent statement by Nicholson CJ, Chief Justice of the Family Court, that "in the 21st century ... almost one in three marriages end in divorce ..." (e.g., approximately 30%).

The divorce rate in Australia has not, in fact, been approximately 30% for nearly 30 years. It is currently running at more than 50%. The failure of the Court to stay in touch with facts of such fundamental significance appears to strongly suggest a lack of interest by the Court in the *overall outcomes* of its judicial decision-making processes. This has not been in the interests of the administration of family law in Australia.

Ideologically-based arguments against joint physical custody

The largely ideological and anti-male claims that have been made against shared parenting to date in Australia (see, for example, claims by the Association of Women's Legal Services) include the following:

- fathers already have as much contact with their children as they need, or should have;
- some fathers do not make use of the contact they already have;
- many fathers do not deserve the contact they already have;
- fathers are having more contact now than they were in the past,
- it is not natural for fathers to have more contact than they are currently having;
- if fathers deserved more contact they would already have it;
- we do not know how to predict when fathers should have more contact;
- children will not like having more contact with their fathers;
- mothers work harder than fathers, do not receive enough child support, and are sometimes the victims of violence by their ex-partners; and
- some fathers are not good role models for their children.

In the LFAA's view, there is no general basis for claims 1, 3, 5, 6, 7, and 8 above, and claims 2, 4, 9, 10 are largely irrelevant as arguments against shared parenting in general.

The LFAA believes that it would be more true to say that:

- many children need more contact with their fathers;
- the level of contact made by some fathers reflects their deep traumatisation by their experiences with the Family Court;
- existing Family Court policies are effectively biased against men as a result of their *de facto* maternal preference/sole parent approach;
- the rate of increase in contacts between children and their fathers in recent years has been very small;
- it is not natural for children to be artificially restricted in seeing their fathers;
- children usually love to see their fathers;
- fathers work at least as hard as mothers, especially when caring for their children. By far the majority of child financial support is paid where there is proper contact between the parent and the child. Many men are victims of violence by their partners; and
- some mothers (and their subsequent partners, male or female) are not good role models for the children.

Criticism of gender-ideological arguments by authorities in US states where joint physical custody is currently in force

The attitudes towards shared parenting coming from ideologues in Australia and other English speaking countries have been well described by a top California family court judge, who attacked the efforts of these people to *undermine the state's child-centred joint custody law* (Lectric Law Library).

Los Angeles County Superior Court Commissioner Judge Richard Curtis in a 4,500 word statement urged the California Legislature to turn down bills violating the principle that children need the love and nurture of both parents. He described AB2116, one of three pending bills, as a "mean spirited attack on joint custody brought on behalf of angry embittered parents who are incapable of cooperation in their children's best interest and who only wish to bend the court system and our healthy child-centred body of law to their end of controlling their children and controlling the other parent through their children."

Although unnamed, his target in part was NOW ("National Organisation of Women"), leader of a drive aimed at destroying the state's strong joint custody law that serves as a national model.

The anti-joint-custody amendments to Californian law being promoted by NOW would stress the supposed importance for the children of the "primary caretaker". But "primary caretaker" is the code phrase", Judge Curtis indicated, "for a lot of

inappropriate public policy statements they wish to promulgate". Using it, NOW's ultimate goal is to transfer custody determinations from judges to administrators. "They don't want equality, they don't want justice, they don't want individuals dealt with as unique people with individual needs ... They would be perfectly satisfied with an administrative system which delivers cookie cutter results as long as they're playing with a deck stacked in their favour", he said. However, as Judge Curtis pointed out, studies have shown that single custodial fathers are every bit as capable of nurturing their children in their own way.

"Passage of the bills" (i.e., rolling back shared parenting), according to Curtis, "would intensify litigation and nullify current practices' success in persuading couples to mediate and settle ...". "... it is very important that the trial court *has the power* to impose joint custody on the far larger majority ...who come to court ... tightly wrapped" (i.e., basically rational) "but in an uncooperative frame of mind...most such parents will learn to put aside their differences for the sake of giving their children a peaceful life and benefits of having two involved parents".

Curtis warned, "if the backers manage to hornswoggle the Legislature into passing this bill, they will have succeeded in getting you to say, 'The public policy is ...to discourage parents to share the rights and responsibilities of child rearing.'" (It can be argued that this latter, at least in a *de facto* sense, is current public policy in Australia as interpreted by the Family Court of Australia.)

"They will have succeeded in putting the child right back into the middle of their petty personal conflicts"(as, sadly, is the case in Australia at present). "The bill backers, he concluded, "like all zealots, victims, and self-righteous people, have a peculiar warped view of reality which prevents them from seeing the other side...They are very, very dangerous one-sided and unbalanced people from whom to take policy suggestions."

The above strictures by the judge apply as much in Australia as in California and elsewhere, and the implications for Australia are clear. The best interests of the vast majority of children require shared parenting, i.e. the continuing love and involvement in their lives of both their parents.

The same way of thinking that is seeking to turn back the clock in California is seeking to prevent the clock going forward in Australia. The Australian Parliament should not allow itself to be influenced by that mentality.

Mediation as the preferred mechanism for resolution of conflict

Under a shared parenting regime, as recommend in this submission, mediation between the parents would be obligatory except where there was clear and present danger to one of more of the parties. Parenting plans where feasible would also be prepared.

Mediators would have wide powers to implement mediation processes, and make reports where parents do not cooperate with these processes. A mediator would the first person to be involved and take action in the family law system upon a separation occurring.

An arrangement should, at least in cases where this is possible, be made and agreed between the parties within 30 days of a decision to separate.

Mediation would provide a way for couples to work out their differences that might be impossible if they were left to their own devices. It would provide a third party to take some of the "heat" out of the situation, to ensure that all relevant considerations are taken into account, e;g., the position of grandparents, and to help ensure that the interests of the children continued to be paramount in the discussions.

A mediator could help by providing information about ways in which shared parenting could work to best advantage. With adequate legislative backing, a mediator could help also to discourage false accusations of abuse by one parent against the other.

Contact orders

Where a court makes an order for contact which is inadequate or unsuitable, or the government fails to provide the administrative resources (e.g., through bureaucratic support) necessary to make the enforcement of these orders a practical reality, an effective support system is not being provided to the families affected.

An effective administrative mechanism for enforcing court orders is essential to restore balance in a system which rigidly enforces child financial support obligations, in part for the benefit of residential parents (and with draconian child support percentages in some cases), but effectively ignores enforcement of contact orders designed to provide for the emotional support and guidance of their children by non-residential parents.

Such a mechanism would help to prevent an entrenched pattern of behaviour developing where residential parents flouted court orders from the separation onwards by denying access ordered by a court. The present situation is one where provision of access by residential parents is essentially optional, because in most cases there is little or no effective follow up by the system, and attempts by an aggrieved parent to obtain redress are extremely expensive and often futile. What is needed is a change in community attitudes which accepts that access of children to the emotional support and guidance of both their parents is an essential human right of the child, and that court orders for access are very serious matters and must be implemented.

To bring about this change in community attitudes, it will evidently be necessary to establish an agency, namely a child access support agency, with some features similar to the child (financial) support agency. The child access support agency will need to be supplied with sufficient administrative resources to keep adequate record of access ordered but not provided, and provide adequate administrative support for the enforcement of those orders. Legislation similar to the child (financial) support legislation will be required to give effect to this.

There would be large benefits to children from achieving and maintaining this contact with their non-custodial parent, and these benefits would continue on into teenagehood, when parental guidance becomes particularly important.

The effect of the new arrangements would be to integrate much more closely than at present the process of courts making access orders and the actual process of implementation of those orders, in the best interests of all the members of the family.

Child support

Child support and parents

There is strong evidence available to the LFAA, from the tens of thousands of people who ring the Association for advice, that the CSS in its present form, when combined with the operation of family law, provides encouragement not only to unemployment but also in some cases parental suicide. The parameters of the CSS in some income ranges are draconian and highly damaging.

The LFAA strongly supports the principle that both parents have an obligation to help ensure that their children are cared for, both financially and emotionally. But the Government's insistence that all payments under the CSS must be calculated at a flat rate on gross income is at the root of a fundamental injustice in the formula. The total of compulsory payments ("debts to the Commonwealth", etc.) can reach very high levels, especially at the margin. Often a non-custodial parent will resort to the dole just to enable him/her to survive. This is a very socially undesirable result, and the resulting net cost to the economy and the taxpayer is very high.

In contrast to the very large bureaucratic structure which enforces child financial support, there is virtually no governmental support for the enforcement of child access, so necessary for the emotional support and guidance of children. The result strongly contributes to the present serious lack of balance in the operation of family law.

This situation would be further aggravated if the Government were to accept the report, recently released, of the Australian Law Reform Council on DNA testing. The LFAA believes that, regardless of the ALRC report, pressure will continue to build for the law to recognise the right of parents to know whether the children they are compelled by the Government (through the CSA) to support financially are in fact their own. This would be the only fair result for both parents and children.

To make it a criminal offence, as recommended by the ALRC, to find out whether a child that a "parent" is financially supporting is his own or not is so bizarre that it could not long survive as law.

Relative outcomes for residence parents and non-residence parents

The following table shows information provided by the Child Support Agency (CSA) about the levels of "private income" and "final income" after child support and family payments of both non-custodial parents and custodial parents where the NCP has an earned income of $108,000, the custodial parent has no earned income, and there are three children.

While incomes are, of course, not often this high, the example is useful in clarifying the nature of the fundamental problem in the CSS formula, which lies in the parameters in the formula, e.g., the percentage child support rates.

Private (earned) income and final income after child support and family payments, non-custodial parents and custodial parents

Details	Pre-separation	Post separation				
		Payee		Payer		
		No relevant dependants ($ per annum)	One relevant dependant ($ per annum)	Single, no relevant dependants ($ per annum)	Partner and one relevant dependant ($ per annum)	Partner and one step-child ($ per annum)
After-tax earnings	67,530	-	-	67,530	67,530	67,530
Parenting payment	-	10,603	10,603	-	-	-
Youth allowance	-	-	1,684	-	-	-
Family tax benefit A	-	3,088	2,059	-	15	936
Family tax benefit B	2,752	2,752	2,752	-	1,919	1,919
Child support	-	31,188	28,118	-	(28,118)	(31,188)
Total govern-ment payments	2,752	16,433	17,098	-	1,984	2,855
Total household income	71,152	47,631	45,216	36,342	41,346	39,197

Source. CSA.

Total household income	71,152	47,631	45,216	36,342	41,346	39,197
Cost of earning an income (estimate)	7,500	-	-	7,500	7,500	7,500
Disposable income	63,652	47,631	45,216	28,842	33,846	31,697

Source. LFAA.

In the above case, the non-resident parent's income is *reduced* through compulsory payments of tax and child support by $72,390, i.e., by 67%. The residential parent, although earning nothing in either the pre-separation or post-separation stages, has

her/his income *increased* through government subsidies and compulsory payments by $47,631.

The total turnaround, imposed by government, in income availability as between the two parents is therefore $120,021.

This is an extremely large reduction from gross to net personal income in the case of one parent and an extremely large increase in the case of the other parent. The redistribution of income is obviously far in excess of what could possibly be justified. It provides a very strong disincentive to work on the part of the "non-residential" parent, and (while the "non-residential" parent is working) a very strong disincentive to work on the part also of the "residential" parent,

This highlights the extreme inefficiency and inequity (and some would say the plain lack of common sense) of the current child support formula in at least some income ranges.

Cost of earning an income

The above calculation actually overstates the disposable income of the non-residential parent, because it fails to take into account the cost of earning a living, particularly travel costs and the cost of clothes for attendance at work. For a person earning that level of gross income, those costs can easily be in the range $5,000-$10,000 per annum.

When the cost of earning a living is taken into account, the income positions of the non-residential parent and the residential parent could then be, non-residential parent $28,842, and residential parent, $47,631, where the non-residential parent has earned *all* the gross income, and may have a new spouse to support.

Cost of contact

It should be appreciated that, even after that, a non-residential parent who has his children staying with him/her for up to 2 days and nights a week *still* has to meet the costs of accommodation and otherwise caring for his children, and probably also the cost of transporting them to and fro. Note that in accordance with the Child Support formula the "cost" of those children to him/her might be expected to be at least 29% (two sevenths) of the full cost of their support. 29% of $31,188 is $8,890. So the NCP's disposable income after that expense, that is the income available for himself/herself, would be just $20,000, out of gross earned income of $108,000.

The costs for non-resident parents exercising regular contact with their children have been estimated (Henman and Mitchell) and found to be very high.

Where contact is with one child for 20% of the year, the cost of this contact represents about 40% of the total yearly costs of that child in an intact couple household with a medium income, and more than half of the total yearly costs for that child in a household with a low income. Household infrastructure and transportation are the reasons for the high costs.

This means that the CSS results in the non-residential parents on separation bearing costs approximately equal to the *entire cost* of the children in an intact family situation.

Overall effects on incomes

To provide further relevant information, the following table shows the overall effects on incomes in Australia, on average, of payments in the form of child support and social welfare payments by governments.

Incomes, benefits, and taxes, by group, 1998-99

Details	One parent with dependent children only ($ per week)	Lone person ($ per week)	All households ($ per week)
Private income	267	371	770
Direct benefits	212	86	104
Gross income	479	457	874
Direct tax	44	93	177
Disposable income	435	365	698
Selected indirect benefits	282	83	188
Disposable income plus indirect benefits	717	448	886
Selected indirect taxes	50	41	79
Final income	667	407	806
Total benefits allocated	494	169	292
Total taxes allocated	94	133	256
Net benefits allocated	400	36	36

Source. ABS.

This table confirms, in overall terms, the relatively large net payments made, on average, to single parents with children (e.g., custodial parents) compared with the corresponding payments to the group of individuals that includes non-custodial parents, as well as younger and retired single persons.

Government/CSA explanations offered for the features of the CSS

Comments on some of the Government/CSA explanations offered for the parameters in the CSS include the following.

> *"The CSS eases the financial burden placed on the taxpayer to support separated families and returns the onus of supporting children back to their parents".*

This is only the case, however, if the parents concerned do not lapse into unemployment, as so many of them do, in the knowledge that by far the greater part of any extra income they earn will be seized by the government.

> *"The child support percentages are designed to reflect child rearing costs in families with varying numbers of children".*

However, the percentages do not reflect these costs at all well. In separated families, when the cost of contact is included, the non-residential parent will often, even usually, be levied at a rate higher than the entire cost of child support in an intact family (see above).

> *"Parental expenditure on children increases as household income increases."*

Children will of course benefit from higher consumption expenditure in a family which has a higher income. But it is quite misleading to claim that the "costs" of children have somehow increased as a consequence. The point is that most costs of running a family are not directly assignable to the children. They are *joint* costs, for consumption that benefits all members of the family, e.g., shelter, heating and lighting, safety, car transport, space to carry out family activities, and use of furniture and household equipment and appliances. There is therefore a question as to how these costs should be properly taken into account when calculating the "costs of children".

As the LFAA has been pointing out to successive governments now for more than ten years, there is a fundamental confusion in the conceptual basis used by government for calculating the "cost of children" for formula purposes. The government, on the basis of "research" carried out by ideologically oriented academics - mostly in the US but subsequently copied by local academics – has in effect determined that (1) the percentage "cost of children" is the *same thing* as (2) the percentage of their gross income that parents in an intact family would typically *choose* to spend on the family, divided by the number of people in the household (less the share of the parents).

But these two concepts are not the same thing at all.

Firstly, the families in question in this type of calculation are *no longer intact.* That means that there are now a whole range of costs that are much higher than before, for example, relating to the need for two residences rather than one and the cost of contact with children. Other things being equal, the same level of total gross income

will inevitably mean a much lower standard of living, even if gross income does not change.

This reduction in the standard of living must, in fairness, be shared between all members of the household. If that does not happen, one member of the family (the non-residence parent) will be forced to bear not only his/her own necessary reduction in standard of living but also the reductions in standard of living for the other members of the family. It needs to be recognised that it is the act of separation itself that reduces the standard of living of all members of the family. The percentage "cost of children" concept does not adequately recognise this crucial fact.

Secondly, after a separation, a parent's situation is now usually completely different from what it was before, and the pattern of expenditure that the parent would *choose, including in the best interests of the children,* may be quite different. It may, for example, be seen as necessary, to protect the family, to increase the rate of saving out of income, leaving less for consumption. Therefore, a formula based rigidly on what a parent would choose to do in a completely different situation is neither appropriate nor sensible.

The conceptual confusion involved in the government/CSA notions about the cost of children is evident in the claim, for example, that the "cost" of a second child is less than the cost of a first child, etc. The cost of children in a family will in fact, after abstracting from age differences and special circumstances, be about the same for each of the children. The second child does not cost significantly less than the first.

The claim was made in "Child support in Australia" (page 195) that "second and third children each cost about a half of the first child". The logic of that does not survive examination.

If one divides a disposable income (after family saving) of $40,000 by three, because there are two parents and one child, one gets $13,330. If the gross income was $70,000, this would equate, in a typical "cost of children" calculation, to 19% of gross income.

If, on the other hand, one divides a disposable income (after family saving) of $40,000 by four, because there are two parents and two children, one gets $10,000. If the gross income was $70,000, this would equate, in a typical "cost of children" calculation, for the two children together of twice $10,000, that is, $20,000. This would equate to 29% of gross income.

And, if one divides a disposable income (after saving) of $40,000 by five, because there are two parents and two children, one gets $8,000. If the gross income was $70,000, this would equate in a typical "cost of children" calculation, for the three children together, of three times $8,000, that is, $24,000. This would equate to 34% of gross income.

Quotients in the calculations are $13,330, $20,000, and $24,000. The researchers naively concluded from the above that while the first child "costs" $13,330, the second child "costs" only $6,670, and the third child "costs" only $4,000.

Therefore, the "research" by Espenshade, van der Gaag, etc., referred to in the design of the CS formula, has only really demonstrated that, if one divides any given disposable income of a family (after allowing for saving) by the number of people in the family, families with more members will have less income per head, because the family's income has to be divided up between more people.

That does not establish anything one way or another in relation to the artificial concept invented by the researchers of an independent, concrete, underlying "costs of children". That concept has been useful for political purposes. But it is illogical, and the Committee should re-examine it very closely.

> *"The higher disregard income for payees is in recognition of the significant contribution to the children already being made by the payee."*

The point is, though, that the payer is *also* making a significant contribution along similar lines (housing, travel). As well, there is double counting in this, because much of the expenditure by the custodial parent is being funded from moneys received from the non-custodial parent. *Only the money required to be spent by the custodial parent on herself/himself* should be exempt in this type of calculation, as also for the non-custodial parent. There is no reason in logic for there to be any difference between the disregard incomes for both payees and payers.

Even if the CSA statement were correct, the difference between disregard income and exempt income, at approximately $20,000, is far, far too large.

> *"Ultimately, decisions about how CS is spent are best made by parents".*

Indeed. But what this actually means in practice is that most decisions are made by one parent only, namely the residence parent. This is not the same thing as "parents".

> *"The CSA does not have data on suicides".*

The CSA can easily obtain this information from death certificates, and in the LFA's opinion should have done so. It should do so now.

Superannuation payouts represent realisation of property (savings). They are clearly not payments of income, and should not be included as income for child support purposes.

The CSA does not at present adequately explain to non-custodial parents that any payments made for children need to be explicitly nominated to the CSA, to avoid being ignored by the CSA. This should be done routinely.

Marginal rate of non-discretionary payments

Marginal rate of non-discretionary payments on gross income (three children)

Non-discretionary payments	$20,001	$50,001	$60,001
Cost of earning income (at 5-10% of gross income)	5-10%	5-10%	5-10%
Income tax and Medicare	31%	43%	48%
Child support	32%	32%	32%
Total of above non-discretionary payments	68-73%	80-85%	85-90%

As the above table shows, marginal rates of non-discretionary payments on gross income at moderate levels of gross income, for a paying parent with three children, soon rises to close to 90% of gross income.

Research done in the US indicates that income earners generally lose interest in earning extra income when the total marginal rate of non-discretionary payments from income rises beyond much above about 75% of gross income - that is, where take-home pay falls below about 25 cents in the dollar at the margin.

A rate of 90%, as determined in effect by the child support formula on moderate levels of income, is far in excess of 75%. The great majority of income earners are not interested in a take-home pay of ten cents in the dollar, even if a large proportion of the money removed from their pay-packet is being paid to an ex-spouse.

Present child support legislation actually *forces* many paying parents to continue to work at levels that they would never choose voluntarily, under the threat of enormous financial penalties, and where their personal returns are minimal or even negative. Given that this effectively amounts to civil conscription it is not clear that the legislation in question is even legal under the Constitution.

At a meeting between the Prime Minister and the LFAA in 1999, there was discussion on the topic of what would happen if industry was required to pay a marginal rate of corporation tax of 90% (the current rate is 30%), so that industry retained 10 cents, instead of the current 70 cents, out of every dollar of profit.

The general conclusion was that under those circumstances nearly all new investment would immediately cease, and probably a large part of current output as well, industry would divert most of its efforts into finding a way to evade the tax, the tax system

would be brought into total contempt, and the government would be driven from office at the earliest possible time.

While child support is not the same thing as tax, and the vast majority of paying parents wish to conscientiously provide for their children, there are, as indicated above, many very close parallels between the two, which will be ignored at peril.

Family law and politics

Unbalanced current state of family law in Australia

The present unbalanced state of family law in Australia provides a strong encouragement to women to separate from their husbands, to the disadvantage of their children, if there are any problems in the marriage. Approximately 70% of divorce applications are currently being made on the sole application of the wife, and wives also participate in a further 20% of applications that are made jointly.

Kuhn and Guidubaldi, 1997 expressed the view that:

> "If one spouse can anticipate a clear gender bias in the courts regarding custody, they can expect to be the primary residential parent for the children. If they can anticipate enforcement of financial child support by the courts, they can expect a high probability of support moneys without the need to account for their expenditures. Clearly they can also anticipate maintaining the family residence, receiving half of all marital property, and gaining total freedom to establish new social relationships. Weighing these gains against the alternative of remaining in an unhappy marriage may result in a seductive enticement to obtain a divorce, rather than to resolve problems and remain married.
>
> "Sole custody allows one spouse to relocate easily and to hurt the other by taking away the children. Potentially higher child support arrangements with sole custody may provide a motive for divorce as well. With joint physical custody" (by contrast), "both social and economic motives for divorce are reduced, so parents may simply decide it is simpler to stay married".

In the same context, a retired Victorian Family Court judge Geoffrey Walsh was quoted (1996) as saying:

> "...the woman has had all the power, the man almost none. More often than not, that power is exercised unreasonably... The court's decision to award sole custody of children to the primary care giver, almost invariably a woman, has meant many fathers have been denied regular contact with their children."

Supporting services - the story of MAACS, and activities by Government Departments

The Mens' Accommodation and Crisis Service (MAACS), run by the LFA ACT, was established by Minister Stefaniak in the ACT in March 1999. MAACS was designed to provide emergency accommodation and support to fathers, and in many cases also their children, left homeless as a result of domestic discord.

MAACS was the first service of its kind in Australia. The LFA had been lobbying for this service for 20 years. It was established against strong opposition from the ACT Domestic Violence Crisis Service (DVCS), which has an avowedly "feminist"

charter. MAACS received ongoing funding of $100,000 per annum, compared with an average of $400,000 per annum per refuge for women's refuges.

The LFA, during its three-year tenure in running MAACS, filled an increasing part of the yawning gap in current practice in the ACT in relation to:

- genuine holistic case management and coordination with other relevant services for men and their children. This included, importantly, assistance in obtaining legal advice and legal aid;

- information services for men about relevant issues and services;

- advice to supplement and temper that coming from sources such as the now officially established Office of Women, and from some groups associated with Partnerships Against Violence, and

- peak body consultation with the community about relevant issues.

In late 2001, the former ACT Department of Education and Community Services (DECS) decided, following continuing lobbying by certain opposition groups, to put MAACS out to tender.

For the proper administration of the contract with the service provider, it was, in the LFA's view, incumbent on the funding authority to act in accordance with the considerations that:

- the contract between the service provider and the funding authority specifically provided that any declared dispute between the parties should be subject to a mediation process; and

- there was a requirement to comply with relevant policy guidelines in formulating the decision to put the service out to tender, a requirement to carefully consider the criticisms made by the LFA of what was, in this particular case, considered by the LFAA to be an extremely faulty "evaluation", and a requirement, under Government guidelines, in assessing tenders to check referee reports back with the referees themselves.

It was also, in the LFA's view, necessary for the proper administration of the contract that the funding authority avoid:

- recording, maintaining, and/or utilising incorrect and prejudicial information about MAACS' operations which MAACS had no effective chance to correct or rebut;

- asserting a requirement under law to do things that were not in fact legally required (e.g., to put the MAACS service out to tender), and/or impeding the LFA's legitimate political role, by the letting of the tender at a time which would preclude action by the LFA (e.g., the day before the ACT election);

- being unduly influenced, in drawing up tender Terms of Reference for the tender and in making assessments, by the opinions of any other agencies which may have been opposed to the establishment of MAACS in the first place, and/or by arranging, for example, for Departmental officers in receipt of incorrect and prejudicial information, to sit on the tender evaluation panel.

Unfortunately, the above stipulations were, in the LFA's view, not met.

As to the reasons for why they were not, it not our place to speculate. However, in the LFA's opinion, the tender process for MAACS' successor service was fundamentally flawed.

The LFA was primarily responsible for the policy initiative leading to the establishment of MAACS. Its successor service played no role in those developments, apart from some of their leading members actively seeking to block them. To replace the initiator of the project with the opponent of the project, and a different ethos, should have required very strong supporting reasons - which were not available.

This, in our opinion, tended to undermine public confidence in the allocation and distribution of public funds in the welfare and support sector in the ACT, and damaged the overall ability of the community sector in the ACT to provide this necessary, unique, and very valuable service to a seriously disadvantaged section of the community.

MAACS was able, in a high proportion of cases, to help families not only to deal with their family crises but also to reconcile in a way that was safe for all the family members. MAACS's clients were overwhelmingly positive about the service they received while at MAACS (see attachment). The LFA believes that, in the interests of fathers and their children in potential marriage breakdown situations, services of this kind should being strongly encouraged, not only in the ACT but in other locations around Australia, but should not be run by self-proclaimed "feminists" or their close associates.

The failure to establish such services would be yet another example of failure to deal with the many cases where separated families could, with better policies and administration, have been reconciled, in the interests of both the children and the other members of the family.

Advocacy and politics

Shared parenting as a rebuttable presumption in cases of family breakdown is an objective that the LFAA has been pursuing for at least 20 years. Unfortunately, some parliamentarians have been reluctant to actively consider such a change. Some in the major political parties have apparently feared that support for such a move would alienate the female vote.

That fear is, in reality, misguided. In the experience of the LFAA, whose members have spoken personally and individually to literally hundreds of thousands of men and women, the great majority of both men and women would appreciate any changes that

would bring greater commonsense into family law. They do not see a great deal commonsense in the law as at present administered, even though individuals will often exploit that law where they see a personal advantage in doing so.

It would be politic to reflect on the reality that the great majority of men unjustly prevented from sharing fully in the lives of their children have their own mothers still living, and often also sisters and female cousins and friends who share their pain. These women vote too, and they number in the millions.

Recommendations

Shared parenting/family law general

Shared parenting

Equal shared parenting should be stipulated in the Family Law Act as the default position in cases of divorce. Shared parenting should be defined to include both *joint parenting responsibility* and, where practicable, *joint physical custody/residence.*

Shared parenting responsibility should be taken to mean, as far as possible, equal parenting in all things. Shared parenting responsibility should include, as a starting presumption, equal guardianship and equality between the parents in decision-making on matters such as religion, education, and health.

Joint physical custody should be taken to mean something approaching equal residency time (not less than 30%) for the children with each parent.

A presumption of shared parenting should be rebuttable. Joint physical custody, in particular, should not be awarded where there was clear evidence of significant ongoing child abuse, for example, as a result of mental disability, drug or alcohol addiction, or other major problems - although "one-off" problems could often be overcome through counselling and appropriate behaviour modification.

The presumption of shared parenting should not be rebuttable purely on the basis that there was conflict between the parents, and parents involved in conflict should be expected to work on reducing that conflict in the interests of their children. An onus should be placed on a parent objecting to shared parenting to make a convincing case for alternative arrangements to be implemented. The concept of "primary carer" should cease to have the status it has under existing legislation and practice.

On separation, a certificate of shared parenting should be immediately obtainable from a court of appropriate jurisdiction by either parent. The terms of that certificate should be legally binding on both parents unless and until a court ordered otherwise. There should be no presumption that a sole parenting situation established *de facto* and without consent would be endorsed and continued.

Effective provision should be made for the rights of children to have access to their grandparents.

The Family Court system

It should be recognised that there is a strong need for a more user-friendly tribunal than the existing Family Court, and for much greater flexibility in the family law and court system overall.

The present system should be re-designed to encourage a child–centred, non-adversarial process for dealing with custody and access issues, and a process where

the needs of the child are central to decisions made. In particular, provision should be made for parents to be able to readily talk to each other in a non-legalistic way.

To this end, a Family Assistance Bureau should be established, to provide a wide range of relevant assistance to people either contemplating separation or in the early stages of separation. The Bureau would provide personal development assistance to parents as well as information and debt counselling advice services. (See resolutions from LFAA National Lone Parent Family Issues Conference, 1990.)

Judicial officers and counsellors should receive better training in the issues on which they are required to make determinations.

Provision of information about the system

Energetic action should be taken by the Government to overcome the present high degree of ignorance of the family law system throughout the community generally.

Substantial improvements should be made in the amount and quality of information about family law and domestic violence matters available to non-custodial parents, to assist them, inter alia, in representing themselves in court, where this should be necessary.

Children

On separation, childrens' issues should be dealt with as the first priority.

In determining arrangements for separating families, the opinions of younger as well as older children should be listened to.

Information about affected children should be sought from the childrens' schoolteachers, even in preference to court-appointed counsellors who, by comparison, have much less knowledge of the children's activities and interactions over an extended period of time

The method of preparation and utilisation of family reports by Court-appointed counsellors should be changed. These changes should take account of the fact that many of the people who prepare family reports at present are not adequately qualified, one parent may not know what is being said by the other parent during the process of preparation of reports, and the principles of the common law are being regularly flouted.

Steps should be taken to ensure better cooperation in future between the court system and State authorities in the investigation and resolution of child protection issues.

Mediation

Mediation should be obligatory except where there was clear and present danger to one of more of the parties.

Mediators should be appointed with wide powers to implement mediation processes, and make reports where parents do not cooperate with these processes.

The Mediator should the first person to be involved and take action in the family law system upon a separation occurring. Arrangements arrived at should make appropriate reference, where applicable, to the grandparents, and there should be penalties for significant breaches of the arrangements.

The initial separation should be considered to be a trial separation, allowing for a possible reconciliation, with a 30-day cooling off period during which there would be no child support payable.

Offences

Statutory offences should be created under the Crimes Act for certain breaches of law traditionally considered to be family law matters. These should include misrepresentation of important matters in Family Court hearings, failure to deliver or collect children in accordance with Family Court orders, name changing to defeat access and custody and access orders, and interference in the orders of the court by step-parents.

Publication of Court decisions

Section 121 of the Family Law Act, preventing the publication of proceedings in the Family Court should be radically amended or repealed.

Legal aid

Legal aid should either be provided to both parties, or neither, to avoid a procedure where one party can, not having to meet costs, can drag out the process.

DNA testing and paternity issues

DNA testing of children for paternity should be made as affordable as possible.

DNA testing of children for paternity should be available to either parent when they want this.

Access/enforcement of contact orders

Where joint physical custody is not possible, contact orders for access by non-custodial parents should be enforced.

To help bring about a necessary change in community attitudes in this regard, a child access support agency should be established, with some features similar to the child (financial) support agency, to provide the necessary administrative support for the enforcement of court orders for access.

Residency should, where practicable, be automatically reversed after three denials of access. The offence of perjury in providing false testimony in the Family Court should be activated and prosecuted in relevant cases.

Provision should be made to ensure that costs imposed on the non-residential parent by denial of court-ordered access are paid for by the residential parent.

As for full shared parenting, non-residency parents should have an equal entitlement to confer with the children's school-teachers, and have equal access to medical information, and equal entitlement to Medicare cards and ambulance cover for children, and there should be equal sharing of access expenses.

Domestic violence

There should be recognition that domestic violence is not gender specific, and that DVOSs are frequently used by one partner as a tactic against the other.

Energetic efforts should be made to end the current strong bias against men in the operations of some domestic violence agencies.

All decisions in relation to DVOs should be adequately based on solid and reliable evidence, as opposed to mere allegations.

Consideration should be given to determination of all final DVOs by the Family Court, rather than by a Magistrate's Court.

Severe penalties should be imposed for false accusations of domestic violence or sexual abuse.

More information should be provided to men, in particular, about the operations of domestic violence agencies and the law relating to domestic violence.

Parental health

It should be recognised that men's health is more likely to be severely affected by the family law system than by divorce, as such.

It should further be recognised that the health of all family members is linked, and that all are of equal importance. And that in, the case of men, a sharp decline in health is frequently associated with the loss, through divorce, of the man's key role as father, or grandfather, and educator of the children, and the loss of childrens' innocence and the relationship.

The current situation where there are no men's refuges like MAACS other than in the ACT should be corrected.

Child support/property issues

The Government should recognise that parents are still required to parent their children after separation, and that parenting involves heavy costs, and that the CSS at present largely ignores the costs of contact between parent and child.

Likely future child support payments should be properly taken into account at the point where property settlements are being determined.

If the present Child Support Scheme continues, the Child Support formulae should calculate child support payable, at appropriate flat or declining percentage rates, on the basis of net income after tax rather than gross taxable income. This should be done in order to base the formulae on a truer assessment of actual capacity to pay.

When this is done, the cut-off point above which no additional child support is payable should also be reviewed. If (but only if) an appropriate declining percentage rate of child support on net income was adopted, this cut off point could be raised, as the present "cliff face" effect in terms of required payments at the margin is highly inefficient in terms of incentive to work and highly inequitable.

Disregarded income in the formulae should be the same for both non-custodial parents and custodial parents, to ensure that like amounts of child support are provided by people with like capacity to pay.

The formulae should be tuned to ensure that children in first and second marriages are treated, as far as possible, absolutely equally.

Measures should be taken to strongly discourage one parent from disadvantaging the other parent by not working.

The CSA should be required to be much more sensitive to the impacts of their actions on the people they are involved with.

Property

Property settlements should be speeded up through the clearer specification of percentage guidelines, taking into account length of marriage, etc.

There should (see above) be a cooling off period before a property settlement is reached.

Comments on some arguments raised by groups opposed to shared parenting

Ref	Arguments raised by groups opposed to shared parenting	Comments on arguments
1	A large majority of men who are separated (stated to be 64%) have contact with their children.	This contact in a large majority of cases (80%) is only very limited, and well below what is possible and beneficial for most children. Hence the need for a rebuttable legal presumption of shared parenting.
2	There is no Australian research showing why more contact does not occur.	If this is true, it is not an argument for not taking action to implement a rebuttable presumption of shared parenting. Lack of research in question would appear to reflect a lack of interest in the issue on the part of status quo-oriented bodies, organisations, and individuals operating in the family law and families research areas. There is no shortage of primary information from "non-residence" fathers about they problems they experience in relation to contact with their children.

3	A recent study on contact arrangements showed that 25% of mothers believe that were was not enough contact between father and child.	Some fathers are so grieved and traumatised by their experiences with the family law system that they cannot bring themselves to have further contact with their family. There remain the vast majority of separated fathers/children who want and could provide more contact if it was effectively permitted. This contact should in future be encouraged, including through a statutory rebuttable presumption of shared parenting.
4	Where fathers have good relationships with their children mothers are keen for contact to occur.	Any implication that many fathers do not have good relationships with their children and therefore should not be encouraged to spend more time with them is incorrect. Fathers spending more time with their children is something that should be strongly encouraged, including through a statutory rebuttable presumption of shared parenting.

5	The rate at which fathers are awarded residence of their children is increasing.	The rate is increasing far too slowly, and the rate itself is far too low. More fundamentally, the whole presumption underlying the argument, namely that residency should be sole rather than shared, is inappropriate.
6	20% of orders for residence are (now) made in favour of the father.	An improvement from 1.5% to 2.0% of total cases, including those by "consent", over 20 years is not a cause for celebration.
7	Shared care is the least common post-separation arrangement, with only 3% of children from separated families in shared care.	This discloses a poor state of affairs. In other comparable countries it has proven possible, with enlightened legislation, to achieve much higher rates of shared care. Any implication that there is very little shared care in Australia because no-one wants it is incorrect. Most fathers want shared parenting, and this is, in general, in the interests of the children.

8	US studies have shown that where shared residence couples make these arrangements they do so voluntarily, often without legal assistance and irrespective of legal provisions.	Not an argument against changing the law in Australia. Shared parenting arrangements made in the US, as also in Australia, are made "in the shadow of the law" Because the law in relation to shared parenting in the US is different from the law in Australia, different arrangements will tend to be made in the US. This is the main reason why the rate of joint residency is much higher in the US than in Australia. If the law was altered in Australia as proposed, there would be many more voluntary arrangements made in Australia of the American type.
9	These studies have also shown that the relationship between shared residence parents are commonly characterised by cooperation between the partners and low conflict prior to and during separation.	Not an argument against a statutory presumption of shared parenting. The same result could be expected to occur also in Australia if the law was changed. This result would be assisted by an understanding on the part of all persons embarking on marriage in future that they could expect in the great majority of cases to be able to develop close relationships with their children, secure in the knowledge that marital separation would not cut them off from continuing contact with the children.

10	There is to date no Australian research looking at predictors of successful shared residence arrangements in separated families.	The present administration of family law in Australia strongly discourages shared parenting, so that there are relatively few examples of it occurring. However, this is a fault in the law and the administration of family law rather than anything else. The absence of research of the kind indicated is not an indication that there is not a major problem.
11	Children in shared parenting arrangements have "emotional and psychological space to traverse" as well as physical space.	Not a valid argument against shared parenting. Children in sole parenting arrangements will lose vital emotional and psychological benefit if prevented from having the experience of living for extended periods with each loving and supportive parent.
12	Women do most of the domestic work in relationships prior to separation.	Caring for children embraces considerably more than cooking, laundry, and cleaning. It also embraces other work that fathers typically do for the benefit of the family. This work by fathers includes, in addition to helping with the housework, keeping house, car, garden, and other property in good repair, liaising with tradespeople, government authorities, neighbours, schoolteachers, medical professionals, clergy, and others, helping children with sport, and transporting children to and from activities and services.

13	Women spent twice as long as men caring for children.	If this is true, it would not necessarily indicate that women were more effective than men in caring for children. It would probably mean that women were doing less of other things that men typically do for the benefit of their children (see above).
14	Of "single parent families", 75%-85% are headed by single mothers.	There should, as far as possible, be no such thing as "single parent" families. The vast majority of children have two living parents, not just one (single) parent. The existence of a large majority of "single parent families" headed by single mothers is not the manifestation of an inexorable law of nature. The existence of this majority is the deliberate result of legislation as interpreted by the Family Court. The situation can and should be changed.

15	In a 1993 study, wives' income levels (post separation) had dropped by 26%.	In two-thirds to three-quarters of cases, wives make the decision to leave the marriage. That indicates a degree of acceptance on their part of likely consequences. Part of the reason for wives' incomes falling, where this does happen, is their choice to be "single parents". The 1993 study referred to is considerably out of date. According to Minister Vanstone, there has been a significant improvement in child support payments to residence parents since 1993. The consideration that, in a 1993 study, wives' income levels, post separation, had fallen is not an argument against shared parenting. It may be an argument in favour of it, given that shared parenting would both reduce the divorce rate and increase the reliability of child support.

16	The degree of financial disadvantage experienced by women post-separation may be exacerbated by a number of factors.	Spousal violence is at least as likely to be initiated by women as by men. The argument about domestic violence therefore also applies to men as victims. There is no evidence that women are disadvantaged by the division of marital property. If anything, the evidence is the other way. Disadvantages that women might have in earning lower incomes tend to be counterbalanced by high percentage rates of child financial support levied on their ex-husbands.

17	A survey conducted by the CSA in 2000 revealed that only 28% of payees reported always receiving payments on time.	A misleading statistic. The statement made would be consistent with, say, 80% of payers always providing the full amount of required child support payments, but occasionally being a week or two late on a payment – and the remaining 20% of payers meeting most of their obligations as well. In the US, which has a similar child support system, the rate of payment default by female non-residence parents is known to be twice as high as it is for male non-residence parents, and there are problems also in the UK. If it were true that a large proportion of child support payments was not being made at present, that would be a strong argument *for* shared parenting, not against it. Shared parenting would increase the likelihood of payment of the full amount of child support.
18	40% of child support payments are never received.	Amanda Vanstone, Minister for Family and Community Services, has stated that 80% of child support payments are now being made. If Vanstone is correct, the 40% figure is wildly wrong.

19	Many women are victims of violence. One in five Australian women have experienced family violence by their current or former partner, representing a total of 1.4 million women.	There have been something like 100 professional scientific studies done in English-speaking countries of the incidence of family violence. All of these studies have concluded that women are at least as likely as men to both initiate and engage in family violence. These studies indicate that, if it is true that one in five Australian women have experienced family violence by their current or former partner, then it is also true that one in four Australian men have experienced family violence by a partner. The criticism of men in the statement referred to is, therefore, at least equally applicable to women. It is not an argument for men in general to be discouraged or prevented from having greater residency of their children.
20	There is a high incidence of domestic violence in cases going to the Family Court. A 2002 study found that 86% of resident women described violence during changeover or contact visits.	The sample was tiny. The informants may have been self-selected. (See also above.)

21	Role models are not always good for young men. ...	This applies particularly to women attempting to operate as role models for boys whose fathers have effectively been removed from their lives. The great majority of children can usually, with some guidance, make up their minds as to the appropriateness of particular models. Boys have a particular need for an adequate masculine model, and girls a particular need for an adequate feminine model. The apparent implication that because some male potential "role models" might be unsuitable we shouldn't have any of the good ones is unsupportable. Not an argument for not having shared parenting.
22	Some boys grow up with neglectful or abusive men	Equally, some boys grow up with neglectful or abusive women. This is the reason there will often be a major need to have the second parent there as well, to provide a necessary positive role model and other emotional support for the children.

The LFAA hopes that the above submission will be useful to the Committee, and proposes to follow it up with further supplementary material on a number of aspects of the above.

The LFA will be very happy to follow up on any further questions that the Committee may wish to ask.

BC Williams

Barry Williams MBE JP
President

8 August 2003

Attachment

Client feedback to the Men's Accommodation and Crisis Service (MAACS)

Of clients who completed the MAACS exit forms over an extended period, 90% indicated that they regarded the service provided at MAACS as "Very satisfactory" (the highest possible rating). The same rating was given also to the extent to which they were comfortable with the staff, and the usefulness of the information supplied.

Several clients have informed us that coming to MAACS saved them from committing suicide. Many clients have telephoned, even months later, to thank the Chairman and staff for the service provided.

Comments received by MAACS from our clients have included the following:

AB

"Once again I'm writing to you to express my heartfelt gratitude for all the help your organisation has offered me through the very difficult time of my divorce proceedings. Through my personal ordeal I have been assisted by many generous organisations. Without a shadow of a doubt, I believe that I am in a position to say that the kind of services offered by your organisation are the most appropriate for the needs of men dealing with marriage breakdowns, *particularly, and most importantly, for cases where children are involved.*

"The facilities offered at the MAACS residence stand well above any comparable men's accommodation available throughout the ACT.

"Last but not least, a special word of thanks to the Lone Father's Association (Inc.) organisation for making possible that MAACS be a magnificent reality in offering such an important community service".

MS

"I wish to thank you and MAACS for assisting me back to my feet when I was overcome with my marital problems and found myself homeless in June 2001.

"I am grateful to you for your efforts to ensure that men faced with crisis do not become destitute and that true compassion and genuine sincerity is extended to those facing the discriminatory establishment known loosely as our legal system.

"For 17 June to 17 July of this year, you and your staff took me in and provided me with secure shelter during my trepidations. Counselling and support were most graciously forthcoming during this troubled time for me, and the assistance provided by your organisation, in my opinion, was pivotal in the direction of my life.

"I am glad to say that, with the assistance of MAACS, I have been allocated a public housing flat located close to the Canberra City Centre and have regained my self-confidence and my self esteem.

"It is unfortunate that men are subjected to ill-advised and ill-informed presumptions held by members of the judiciary in this country. When publicly persecuted and ridiculed, safe-havens such as the crisis centre in Kaleen provide a suitable respite from the unjust. The management and staff at the crisis centre have proved themselves to be professional and competent in dealing with men facing tragedy. Any claims of shortcomings could only come from short-sighted plebeians and are unwarranted.

"I wish to convey my gratitude to you, once again, for what you have done for myself and men in general. Should you require my support or if I may assist you in any way, please do not hesitate to call on me."

RB

"Many thanks to you (Lui), Jim, and Barry for your help and assistance to me while I was staying with you, say hello to the others there who treated me with respect, it was much appreciated. I will always remember what you done for me.

P.S. *I (now) have my son Joshua living with me,* he is 13 years old, I got him before he got into drugs ... I am a very happy man to have Joshua ..."

NC

"I write this in regard of the care and attention I have received at MAACS. I have found this to be exemplary in every way. I found the accommodation facilities to be of the highest possible standard.

"I found the assistance of yourself (Barry), Jim, Lui Rytir, and Charles Foley of the utmost assistance.

"I also found the accommodation both homely and comfortable for both myself *and my children* which was much appreciated in my time of need. ... as a facility to help men in time of need I found this facility unsurpassable".

"I would however like to mention that whilst in MAACS I had numerous contact(s) with my wife which had left me feeling that most of our problems had been overcome. Alas each time she returned to her own women's refuge and counselling sessions, her attitude and opinions had drastically been altered.

"I was left of the opinion that the counsellors in her women's refuge had forced ideas on her in an outright biased way without knowing myself or personal circumstances. I feel as if this matter should be looked into and if at all possible corrected."

KC

"I think that this place is the best for men. It is about time there is. The men here are very helpful and understanding and very supportive. You could not get much more support than that. They are so helpful. I couldn't stress that enough.".

"I appreciated the fact that there was a caretaker who was available after hours to talk to and assist me in other ways."

PG

"Thank you for allowing me to stay here, albeit temporarily ...

"The house is fantastic: clean, hygienic, wonderful facilities, my room excellent, my bed comfortable. The house rules are sensible and make me feel secure.

"It was just four days ago that I had all but "given up" ... Just as I was facing the reality of being literally homeless (a 55 year-old streetkid), I was lucky enough to follow a series of phone messages to eventually reach Jim at MAACS.

"That was, indeed, the turning point of my life.

"My four days here have given me the opportunity to stop the panic, take stock of my situation, plan a strategy (for accommodation, etc), follow referrals from the Support Worker to receive material help (food, clothing), get back into a routine of eating sensibly, showering regularly, using the laundry, relaxing, reading, and enjoying the company of peers ...

"MAACS is a wonderful concept.

"The staff are fantastic; kind, helpful, courteous, pleasant, empathetic ... perfect in this situation. Their patience and tolerance is exceptional.

"I will never forget MAACS and staff, an absolute blessing in my life."

GM

"Hi there. Joshua and I arrived safely up in Brisbane and have settled into the house here ... Joshua started at his new school yesterday and already has made some friends. We *both* thank you for what you have done for us."

PW

"It has been a week since I moved out of MAACS. I would like to thank you for the great help you and staff members of MAACS and Lone Fathers have provided through this period.

"No doubt this has been the most difficult period in my life, being thrown into the alleged domestic violence situation with no justification. This is done to such a extent that I still cannot believe that this can actually happen in this great country.

"The concrete advice and discussion you people provided has certainly improved my ability to ability to manage and handle the situation. Most importantly, you have helped me to regain my confidence. I can imagine life would be much harder if it was not because of this help.

"The physical living conditions at MAACS were also good. The place is clean and well managed. *I particularly appreciate the baby facility I used for my baby.*

"I think I was lucky to have lived at this place over this period. I believe that people with similar experience would feel the same if they did."

BS

"I just would like to say a big thank you for all your help during my stay here and for being so helpful when my children came over to stay with me. They even said to me that they like Lui, he is nice, and to say thank you for your gifts.

"I have enjoyed the talk we had, so once again thank you Lui for being a friend."

KM

"I would like to express my sincere gratitude to Mr Barry Williams and the staff at MAACS, Kaleen, Jim, Lui, and Charles, for their professional support during my stay at the Crisis Accommodation Centre for Men. This service that the LFA provide is most professional and needed in the time of the modern separated father and the children. Thank you."

CS

"In my opinion, there has been an excellent delivery of high quality service in all areas, i.e., personal comfort, accommodation, counselling, etc. There is a total team effort to coordinate all levels of support, and it becomes evident that the staff constantly seek to improve the quality and delivery of the service."

LP

"During the time I have spent here with my *two children and carer,* I have come to the conclusion that this place is in great need of more funding and more staff. And an extension on the length of time that fathers are allowed to stay. Although this house is a blessing for single fathers, and the workers Jim ..., Phil, and Lui, carry out their jobs and responsibilities with true professionalism. This organisation can greatly benefit from more funding, employees, and extending the time of allowed stay ... "

MM

"All the support and help was great. It has provided me with a useful stepping stone toward my future, and has given me good access to services (i.e., housing, Centrelink, etc.) No improvement necessary."

MT

"Like a family. All OK perfect."

2001