

DISSENTING REPORT BY FAMILY FIRST

1.1 Family First recognises the unique and irreplaceable role of mothers and fathers. Family First believes parents have the most important, and the toughest, job of all – raising children. They have the primary responsibility for nurturing, raising and educating their children, who are our nation's future. As a society, we should do everything we can to support parents in this vital role.

1.2 Focusing on the *Family Law Amendment (Shared Parental Responsibility) Bill 2005*, Family First believes the key question we must answer is: **what is in the best interests of the child?** That is Family First's top priority; the welfare of children.

Everyone loses from marriage failure

1.3 Some marriages fail: that is a sad and unfortunate fact of life. Everyone involved in the dissolution of a marriage is affected. It is crucial that we find the best way of dealing with these situations to minimise the damage to children and their parents. Children often bear a large part of the cost of separation:

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.¹

1.4 The group Fathers4Equality points out that:

Divorced parents report symptoms similar to bereavement, and both parents experience feelings of loss, previously unrecognised dependency needs, guilt, anxiety and depression. Non-resident parents are left with the pervasive sensation of the loss of their child, while the continued presence of children and a familiar home setting gives resident parents a greater sense of continuity.²

1.5 Not surprisingly, both male and female non-custodial parents are often greatly distressed by a relationship breakdown and being separated from their children:

The rate of suicide for adult males has been rising since the 1970s, and each year in Australia more than 1000 men aged 25-44 take their lives. Australian research found that more than 70 per cent of male suicides were associated with a relationship break-up, and men were nine times more likely to take their lives following a break up than women. Research suggests that non-residential mothers may face a similarly increased suicide risk, as do non-residential fathers.³

1 Submission 88, Lone Fathers' Association (Aust) Inc, page 12

2 Submission 109, Fathers4Equality, page 5.

3 Submission 109, Fathers4Equality, page 6.

1.6 As the Lone Fathers' Association points out:

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 ...⁴

Family law should provide the framework for ongoing relationships

1.7 Family First believes that family law should provide the framework for meaningful parent-child relationships as far as is practicable after the breakdown of a marriage or de-facto relationship. Indeed, "...the mother, the father and the court have a duty to ensure that each child maintains contact and involvement with both their mother and their father."⁵

1.8 Family First does not believe that family law is working, because it acts against the continuation of meaningful parent-child relationships.

The current default of the Family Court is an award of sole custody, in favour of the mother in approximately 70% of cases and of the father in approximately 20% of cases. Sole parenting places a heavy burden on mothers, deprives children of their dads, and causes terrible distress to fathers. It can also limit children's access to their grandparents in some cases.⁶

1.9 The statistics show how many children have a non-resident parent:

In Australia, of the 1.1 million children aged 0-17 years with separated parents in 2003, 84% of children live with their mothers and have non-resident fathers.⁷

1.10 Family First believes the present operation of family law that delivers mostly sole residency does not serve the best interests of children and, in many cases, leads to significant negative impacts on the relationship between the "non-custodial" parent and their child, as well as increased stress on the "custodial" parent. While the principle of Shared Parenting or Joint Guardianship is important and beneficial to the child, Family First does not believe it goes far enough.

Family First supports a rebuttable presumption of joint residency (or equal parenting time)

1.11 Family First supports the introduction of a rebuttable presumption of joint residency for children after a relationship breakdown, so that both parents can have the maximum meaningful involvement in their children's life, both in terms of time

4 Submission 88, Lone Fathers' Association (Aust) Inc, page 9

5 Submission 6, Festival of Light, page 2.

6 Submission 5, Australian Christian Lobby, page 3.

7 Submission 109, Fathers4Equality, page 2.

and their parental responsibilities. This is essentially the same as a presumption of equal parenting time.

1.12 Family First believes the Committee has dodged the important issue of equal parenting by referring to the conclusions of an earlier inquiry, writing that "ultimately, the FCAC [House of Representatives Standing Committee on Family and Community Affairs] Report did not recommend the inclusion of a presumption of equal parenting time in the Act and the Committee does not intend to revisit this particular issue."⁸

1.13 Joint residency is good for children:

Australian and international research shows that children are better adjusted in shared parenting situations and regard equal time arrangements as fairest. Comparisons of 'joint' and 'sole custody' groups in over 33 studies showed that children in joint legal and physical custody were better adjusted, whether adjustment was appraised by mothers, fathers, children or professionals. Maintaining close relationships with fathers leads to better behavioural and emotional adjustment among children, and better school achievements. Many adolescent children living with their mothers also express a distinct desire to spend more time with their fathers.⁹

1.14 The advantages of joint residency include:

- Both parents being able to more fully participate in their parenting roles and significant decision-making, under the principle of "joint guardianship" or "shared parenting";
- Helping to achieve stronger and more meaningful relationships with both parents and children, which are vital for children's wellbeing;
- A better chance of continued relationships between the child and their grandparents and extended family members.

1.15 One submission highlighted the importance of extended families:

Children benefit from shared parenting in maintaining contact with their maternal and paternal grandparents and extended family on both sides. The role of grandparents is often critically important in divorced families. Children who have enough time with each parent are able to spend time with all their grandparents ...¹⁰

1.16 The value of these relationships should never be underestimated. They are so important to children's development, providing a greater sense of purpose, belonging, and inheritance. Participation in extended family life improves children's chances of building resilience.

8 Committee report, paragraph 3.14.

9 Submission 109, Fathers4Equality, page 3.

10 Submission 109, Fathers4Equality, page 4.

1.17 It is crucial, therefore, that the child has contact with their wider family on both sides, unless it can be established that such contact would cause the child physical, emotional or mental harm.

- Most studies indicate that children themselves favour this outcome.
- A presumption of joint parenting would give both parents a clear understanding of their expected responsibilities during any discussion prior to separation. It would also put each parent on an 'equal footing' at the commencement of any proceedings concerning residency orders.

1.18 The presumption of Joint Residency could be rebutted in a number of circumstances:

- One parent may argue to the court that joint residency would not be in the interests of their child in their particular circumstances, perhaps due to work or travel commitments;
- The Court may determine it could not be ordered because residing with one parent could pose a threat to the physical, psychological or emotional well being of the child.

1.19 Sole custody arrangements have caused much distress to non-custodial parents (in most cases fathers) in our community. Because of the way the Family Court follows precedents in determining residency orders, most parties have strong incentives to pursue sole residency orders, and in too many cases the father loses.

The benefits of joint residency for children

1.20 The benefits of joint residency for the children include less psychological problems in later years, far greater academic achievement, and a reduced likelihood that they will become victims of sexual abuse.

1.21 One submission stated that:

...the bulk of studies showed that children in joint-custody arrangements are virtually as well adjusted as those in the intact families, "probably because joint custody provides the child with an opportunity to have ongoing contact with both parents."¹¹

1.22 As one example Dr Michael Lamb, Head of the Section of Social and Emotional Development at the US National Institutes of Health wrote:

"...Parenting plans that allow children to see their fathers every Wednesday evening and every other weekend clearly fail to recognise the adverse consequences of weeklong separations from non-custodial parents...Instead of promoting parenting plans that marginalize one of the parents, custody evaluators should promote continued involvement by both parents..."¹²

11 Submission 5, Australian Christian Lobby, page 4.

12 Submission 94, Joint Parenting Association, page 3.

Conclusion

1.23 The *Family Law Amendment (Shared Parental Responsibility) Bill 2005* is the result of a number of parliamentary inquiries, starting with the House of Representatives Standing Committee on Family and Community Affairs inquiry which began in June 2003. This Bill is central to the hopes of many people in the community, particularly parents and also extended families, who have been damaged by the entrenched views of the Family Court against equal parenting.

1.24 But Family First is strongly of the view that this Bill does not go far enough.

1.25 The Bill should focus on equal parenting "time" rather than equal parenting "responsibility". That is what children need most of all – time with their mother and father. And love. Equal parenting basically means shared residence. Shared residence doesn't mean sharing living arrangements, but sharing bringing up the child so the child will spend some days at mum's house and some days at dad's house each week. If parents do not see their child and engage with their child, it does not count.

1.26 If a parent has done nothing wrong, they should not suffer by being excluded from equal time with their children. That is wrong and unfair.

1.27 The question we must always ask is: what is in the best interests of the child? That is Family First's top priority; the welfare of children.

1.28 The Family Court is the worst place for Australia's children. We know that "in 2000-01 only 2.5% (329) of residence orders were for joint residence."¹³ In almost 98 per cent of cases, an Australian child will lose one of their parents after a Family Court decision. We are in danger of creating a stolen generation.

1.29 That is why Family First will be introducing amendments for rebuttable presumption of equal parenting time, or joint residency for children, after relationship breakdown. That is the best outcome for children, who will be far better off if we can ensure families can stay together, even after a marriage has failed.

Senator Steve Fielding

Leader of the Family First Party
Family First Senator for Victoria

13 House of Representatives Standing Committee on Family and Community Affairs (2003), *Every Picture Tells a Story: Report on the Inquiry into Child Custody Arrangements in the event of Family Separation*. Page 22.

