



***Submission to the Senate Inquiry
into the provisions of the Family Law Amendment
(Shared Parental Responsibility) Bill 2005***

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Executive Summary

The Australian Christian Lobby (ACL) believes there is a significant and unjustified bias towards mothers in decisions regarding child custody, instead of considering the interests of the mother, the father and the child.

This submission limits itself to the principles of shared parental responsibility.

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 cases¹. 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.

The Australian Christian Lobby believes that the default in child custody arrangements should instead presume equal parenting responsibilities with both parents, unless there are proven mitigating circumstances or unless the parents themselves agree to alternative arrangements. Overseas experience shows shared parenting to be in the best interests of the child, as outlined below.

The bill must enshrine in law the default presumption of shared parenting, with sole custody being the exception to the rule. Legislative force is required to change the current culture of litigious and adversarial family breakdown to one of co-operation.

The Impact of Fatherlessness

The Australian Christian Lobby (ACL) believes that the family is the basic unit of society. Strong marriages and strong families have both social and financial benefits.

Families should receive considerable support to help them flourish. Both mothers and fathers play an important and unique role in their children's lives. However, in the event of family breakdown, ACL believes the best arrangements are those that encourage peace between the parents and that recognise the right and need of children to enjoy a close and loving relationship with both their parents and with grandparents and other relatives on both sides of the family.

Current custody arrangements overwhelmingly favour the mother, meaning that the majority of single parent families are fatherless families. Fatherlessness has been said by some to be an epidemic in western society, with attendant personal, social and financial costs.

“Fatherlessness is the most harmful demographic trend of this generation.”²

“There exists today no greater single threat to the long-term wellbeing of children, our communities and our nation, than the increasing number of children being raised without a committed, responsible and loving father.”³

According to published research:

- Family breakdown, rather than unemployment, is the main cause of rising poverty levels in Australia (Monash University)⁴;

¹ Family Court of Australia Public Interest Statistics, Residence and Contact Orders for Children by Outcome 1994-95 – 2000-01 available at http://www.familycourt.gov.au/presence/resources/file/eb001e42e1bda11/Residence_and_Contact_Orders_95-01.pdf

² David Blakenhorn, *Fatherless America*, New York, Basic Books 1995, p1

³ Wade Horn, “Fathers and Welfare Reform”, *Public Interest* no 129, Fall 1997 pp 38 - 49

- Fathers, even more than mothers, had a beneficial effect on children in their first year of school, according to a Melbourne study of 212 children. “The more regular involvement the father has with the child, the better the child does in his or her first year of school⁵”;
- Fatherlessness is estimated to cost Australia \$13bn per year⁶;
- Fatherlessness increases the risk of child abuse. A former Australian Human Rights Commissioner, Brian Burdekin, has reported a 500% to 600% increase in sexual abuse of girls in families where the adult male was not the natural father⁷.
- Divorced men are three times more likely to commit suicide than divorced women perhaps due to their limited access to their children under sole custody arrangements⁸.

As researchers at the Australian National University have noted, the impact of family breakdown on children is severe⁹. This is no surprise when children effectively lose a parent in the process.

The Benefits of Shared Parenting

Shared parenting has been shown to have many benefits. A meta-analysis by the Maryland Department of Health and Mental Hygiene examined 33 studies, which included 1,846 sole custody and 814 joint custody children as well as children in 251 intact families. Researchers found that children in joint-custody settings had fewer behavioural and emotional problems, have higher self-esteem, and better family relations and better school performance than children in sole custody (usually with the mother). Moreover, the bulk of the 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.”¹⁰

Shared parenting has obvious benefits for fathers and for children. It may also benefit mothers by providing much needed parenting support and by providing them with an equal opportunity to participate in the workforce.

Opponents of shared parenting express concern that children will be at risk of domestic violence under this system. Courts should certainly act to ensure the child’s safety from violent or abusive adults. However, it is important to note that a recent New Zealand study challenged the view that domestic violence is largely perpetrated by men against women, instead concluding that, “domestic violence most commonly involves violent couples who engage in mutual acts of aggression.”¹¹ The deliberate attempt to isolate a child from a parent without just cause could itself be seen as an act of abuse.

Shared parenting is becoming the norm in many other countries and in many states of the USA. In January 2006, the Italian Senate approved a bill making joint custody the norm in divorce cases. Divorce rates in those US states with high joint custody arrangements have declined nearly four times faster than states where joint custody is rare. American states with high levels of joint custody now have significantly lower divorce rates than other states. The

⁴ Bob Birrell & Virginia Rapson, “More Single Parents Equals More Poverty”, *News Weekly* 18/10/97 p8.

⁵ Caroline Milburn, “Fathers Keys to Success,” *The Age*, 5th October 2002, p5

⁶ Professor Bruce Robinson, University of Western Australia, *Fathering from the Fast Lane*, 2001

⁷ Michael Pirrie, “Child Abuse Law Alert,” *The Herald Sun* 28/08/93

⁸ Australian Institute of Health and Welfare, *Suicides and Hospitalised Self-Harm in Australia* 2001.

⁹ Bryan Rodgers, “Social and Psychological Wellbeing of Children from Divorced Families: Australian Research Findings,

¹⁰ R Baserman, “Child Adjustment in Joint Custody Versus Sole Custody Arrangements: A Meta-Analytical Review,” *Journal of Family Psychology* 2002 16(1): 91-102

¹¹ David Fergusson, L John Horwood and Elizabeth M Ridder, “Partner Violence and Mental Health Outcomes in a New Zealand Birth Cohort,” *Journal of Marriage and Family* 67 (December 2005); 1103 – 1119.

authors concluded that their findings indicated that public policies promoting sole custody might be contributing to the high divorce rate.¹²

The Senate Inquiry should examine the reasons why custody laws in some US states have led to a high rate of shared parenting whereas joint parenting remains rare in other US states. This might provide valuable lessons on how to give legislative force to the bill in order to change practice at the court level.

Shared parenting needs to be reinforced throughout the whole process, for example by ensuring that counsellors in Family Relationship Centres have the knowledge and skills to help parents make shared parenting work for them and their children and by ensuring that both fathers' and mothers' groups are represented equally on key decision making committees.

The Family Law Court

Despite growing evidence of the vital role of fathers in their children's lives, the culture of sole custody persists in the Family Court. Discussing the 1995 changes to the Family Law Act, Labor Minister Peter Duncan 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 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 Parliament.¹³ “

Joint custody is typically not awarded if one parent opposes it. The 1995 changes did not have the desired effect on the Family Law Court, which remained strongly in favour of sole custody arrangements favouring the mother. Following the law change, joint custody orders in fact fell from an already low 5% to an even further low of 2.5%¹⁴.

The legislature sets the parameters within which the judiciary operates. The history of the 1995 changes to the Family Law Act shows that it is not enough to ask the court to 'consider' shared parenting arrangements. Rather the Family Court must be directed to make shared parenting the norm unless there are strong reasons against it.

Conclusion

Courts should act in the best interests of the child. Research shows that it is in a child's best interests to maintain strong, meaningful relationships with both parents. Sole custody clearly does not deliver this outcome and is rightly referred to as single parenting. Courts should be directed to make joint custody the default arrangement, in recognition of the child's right to equal parenting time with both parents, unless there are proven mitigating circumstances or unless the parents themselves agree to alternative arrangements.

¹² John Guidubaldi & Richard Kuhn, "Child Custody Policies and Divorce Rates in the United States," *11th Annual Conference of the Children's Rights Council* October 23-26, 1997. Washington, D.C available at <http://www.gocrc.com/research/spcrc97.html>

¹³ Duncan P, Consideration of Senate Message, House of Representatives Hansard 21/11/95 pp3303.

¹⁴ Family Court of Australia Public Interest Statistics, Residence and Contact Orders for Children by Outcome 1994-95 – 2000-01 available at http://www.familycourt.gov.au/presence/resources/file/eb001e42e1bda11/Residence_and_Contact_Orders_95-01.pdf

The Australian Christian Lobby

The Australian Christian Lobby (ACL) is a non-party partisan, non-denominational political lobby group that represents the views of hundreds of churches and thousands of supporters Australia wide. The Christian constituency reflects a sizeable percentage of the broader community. 68% of the Australian population declared themselves Christian in the 2001 ABS Census and about 2 million Australians attend a church regularly. As such, while ACL does not claim to speak for all these people, its policy suggestions may resonate with large numbers of them.