

23 February 2006

St Leonards NSW

Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
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Dear Secretary

Re: Inquiry into the provisions of the Family Law Amendment (Shared Parental Responsibility) Bill 2005

I note that Senate is accepting submissions in connection with the above Inquiry until Friday 24 February 2006.

Please find attached my submission. I would be grateful if this submission is taken into account. Should any further information be required or if the Senate would prefer a personal presentation on any of the matters raised I will be happy to make myself available.

I hope this matter of supreme importance is able to be resolved by the Senate to the advantage of the children and also the parents who are suffering as each day of the present system goes by.

Yours sincerely

Bill Kable

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

This Senate Inquiry would seem to be directed at one aspect of the considerations with regard to allowing fathers more involvement in the lives of their own children. The allegation being investigated is that by directing the Court to order a fair, namely equal, division of parenting time as a matter of course rather than continuing with a system biased towards the mothers, the legislation may result in putting children and mothers at risk of violence.

The answer to the question put by the Senate Inquiry should be looked for in properly conducted research rather than hearsay. If the answer arrived at as a result of that research is that children and mothers are not being put at additional risk in the overwhelming majority of cases then this will remove a major obstacle in allowing the good and caring separated fathers time with their children.

The statements frequently made about the supposed physical domestic violence perpetrated by men have been characterised by emotion rather than facts. While myth has it that physical domestic violence is mainly perpetrated by men against women and that men inflict more serious injuries than women, further examination reveals otherwise

A review of 80 studies about aggression in heterosexual relationships showed that "women were slightly more likely than men to use one or more acts of physical aggression and to use such acts more frequently."¹ Closer to home, recent Australian research² reveals that:

1. "Men were just as likely to report being physically assaulted by their partners as women. Further, women and men were about equally likely to admit being violent themselves.
2. Men and women report experiencing about the same levels of pain and need for medical attention resulting from domestic violence.
3. Violence runs in couples."

On the other hand the most recent report by Access Economics was so flawed that when the errors were pointed out the authors had to issue a revision of the figures. Its conclusions were found to be meaningless. Among other problems, they grouped natural fathers and the new partners of separated wives. Thus any possible conclusion regarding general male perpetration of violence provides no insight into allegations against natural fathers.

The involvement of new partners is one the main complaints of fathers. The new partners spend more time with the fathers' children than the fathers do but the father is unlikely to know anything about the new partner. Why is there not more attention paid to this high risk practice of mothers handing responsibility for the children to anyone they please but being able to exclude the natural father?

In my own case I discovered that the new partner of my wife is estranged from all 6 of his own children from previous marriages for reasons that I am not aware of despite my frequent attempts to find some information about his past.

But it is not just the parents caught in the aftermath of separation who believe that children deserve to spend equal time with their parents. In properly conducted surveys, both in Australia and overseas, it has been revealed that the community does not support this unfair allocation of time. The Australian population has overwhelmingly signalled that they support parents having equal time with their children following divorce.

¹ Archer J (2000). Sex differences in aggression between heterosexual partners: A meta analytic review. Psychological Bulletin 127, 651ff

² Headey B, Scott D, & de Vaus D (July 1999). Domestic Violence In Australia: Are Women and Men Equally Violent? 2(3) Australian Social Monitor pp 57-62

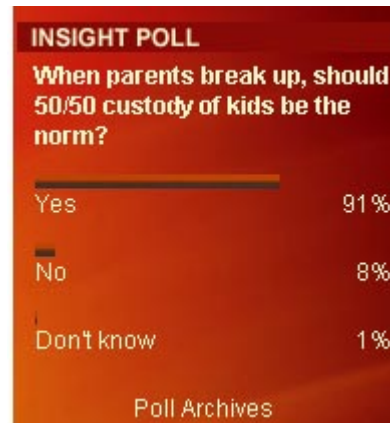
When parents break up, should 50/50 custody of kids be the norm?

Results

91% of respondents said YES.

8% of respondents said no.

1% of respondents said I don't know.



Insight: Who Gets the Kids?" - SBS - 23/03/2004

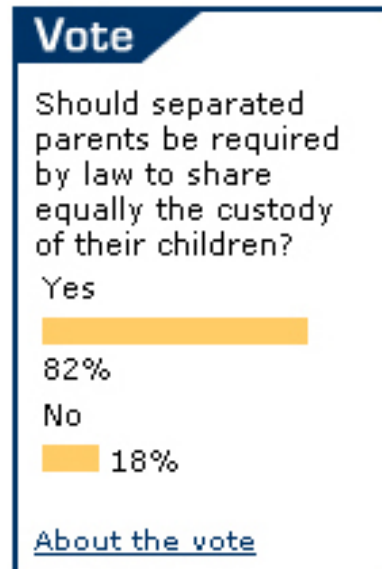
<http://www.sbs.com.au/insight/content.php3?comingup=1>

Should separated parents be required by law to share equally the custody of their children?

Results

82% of respondents said YES.

18% of respondents said no.



The Sunday Program: "Caught in the Middle". - the NINE network - 07/03/2004

<http://sunday.ninemsn.com.au/sunday/voterresults.asp>

Indeed child custody remains the issue identified by a majority as needing most attention.

FEDERAL POLL: Which Federal issue do you think needs the most attention in 2004?

Results

184 National security 4.2%

70 Superannuation 1.6%

2723 Child custody 62.6%

53 Childcare 1.2%

349 Tax 8%

162 Universities 3.7%

212 Home affordability 4.9%

424 Medicare 9.7%

80 Economy 1.8%

95 Unemployment 2.2%

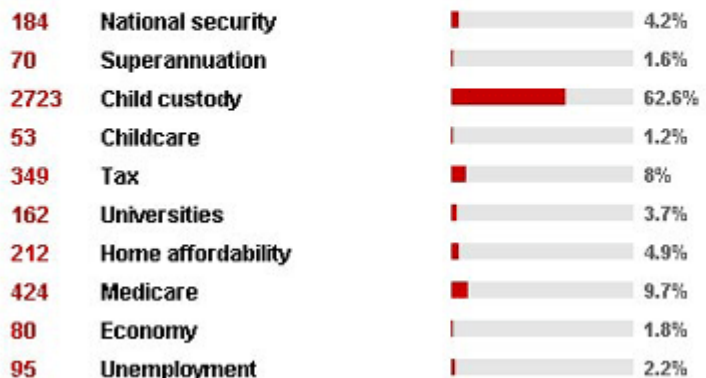
Daily Telegraph: - 26/03/2004

<http://www.dailytelegraph.news.com.au/story.jsp?sectionid=676160&storyid=679678>

Poll

Which of the following Federal issues needs the most attention in 2004?

Total votes: 4352



Politically it appears that some parties want to support the voters perceived as being the oppressed minority. Therefore the first reaction is to listen to single mothers and their representatives. This inquiry has a preponderance of women's groups rather than a truly representative invitation list, which would have to include males. Perhaps even more concerning is that the children are not given a voice. Again, and not surprisingly, the research shows that children want to see both parents following a separation.

But why are the separated mothers seen as the oppressed minority? Overwhelmingly it is the mothers who have the children reside with them after divorce; and the children are far more precious than the finances gained through the settlement. However even on the financial side it is the fathers who are overwhelmingly the payers to the Child Support Agency, sometimes being driven to poverty in order to keep the payments up. The mothers on the other hand are not pressured to financially assist in the raising of the children. The ongoing payments by the father may be made in a vacuum as far as the children are concerned if the mother makes it difficult or impossible for him to see his children, let alone play an important role in their upbringing.

And does this practice of unequal contact with the children actually benefit the mothers? They may be entitled to a higher rate of child support if they have more time with the children, but they will not get any meaningful child support if the father is not working. The top rate for two children is 27% of the father's gross wage but if the father is not working then a percentage of nothing is nothing. The inflated unemployment rates of paying fathers would indicate that something is wrong here and the real problem is the lack of incentive for these fathers to contribute to the welfare of their children financially, emotionally and in every other way. Moreover a large proportion of women become dependent on handouts whereas they should have the flexibility to go to work and develop other relationships. According to figures supplied by the Minister 60% of wives in the community do not engage in paid work. That figure could be expected to increase for separated mothers.

The fathers should be encouraged to spend as much time as possible with their children for the good of everyone unlike the present situation when fathers are seen as a cash cow but nothing more. This cannot be good for the mothers or the children let alone the disastrous effect on men. The suicide rate for separated men in Australia is a national disgrace.

I urge you to go further than a meaningless piece of legislation already in the Act anyway that "responsibility" should be shared or that judges should "consider" equal parenting time. I have never been consulted by my ex-wife on issues such as which school the children should attend, which sports they should participate in, which religion they should learn about or even which city they should live in. How could this piece of legislation be enforced anyway when the Family Court has a history of not enforcing its own orders and allowing perjury on a daily basis with no punitive action taken? So far as "considering" equal parenting time, shouldn't the court have been doing this on an individual basis for each case that comes before it in any event?

The parliament needs to send a clear direction to the Family Court; that there is to be a "rebuttable presumption of 50/50 parenting time". Where it is proven in court that there is the unusual situation of violence or abuse, or where the parents mutually agree to an alternate parenting plan then the presumption will be discarded. This is a fairer situation than presently applies where there is a de facto presumption for unequal parenting time that is almost impossible to override.

Bill Kable
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