

Dear Senate Inquiry - Shared Parental Responsibility Bill 2005

This is a my submission to the Senate Inquiry into the provisions of the Family Law Amendment (Shared Parental Responsibility) Bill 2005

<<http://www.theage.com.au/news/opinion/a-fairer-deal-for-children/2005/12/26/1135445524729.html>>

The Age (Melbourne)  
27 December 2005

A fairer deal for children after divorce  
By Andrew Hale and Barry Apelbaum

Equal parenting time is better for children and for many of their fathers.

Since the introduction of the Family Law Act in 1975, a generation of children has grown up living with mothers while visiting their fathers at weekends. According to the Australian Institute of Family Studies, about 88 per cent of children live with their mother after separation. Fathers have been shut out of a parenthood involving routine activities with their children and have been transformed into "Disneyland dads".

The law on separating parents will alter significantly if the Family Law Amendment (Shared Parental Responsibility) Bill 2005, introduced two weeks ago, is enacted.

The new law compels the court to consider making an order that the child spends equal time with both parents. If the court decides against equal time, it must consider substantial time. Both are subject to a history of child abuse, family violence and whether the making of such an order is practicable.

Crucially, the bill does not legislate a "presumption of shared parenting" or a "starting-point of shared parenting". It simply mandates the court to consider such an order, and it requires lawyers, mediators and parents to do likewise.

The proposed changes recognise a need for more shared parenting. For fathers, the outlook after separation is grim. Dads in Distress points out that young separated Australian men are 10 times more likely to die by suicide than through a car accident.

The Family Law Reform Association of New South Wales has reiterated the claim by fathers' groups that at least half the suicides of separated fathers are related to their harsh treatment by the family law and child support schemes.

Opposition to shared parenting is stronger among mothers than fathers, but it seems that opposition from mothers focuses on younger children, under six years old, and lessens as the child grows older.

On the other hand, several studies suggest that young Australians of both genders are expressing a strong desire to take part in raising children and family life when they become parents.

Increased shared parenting may have an effect on divorce rates. In Australia, about 80 per cent of separations are initiated by women, who at present expect to enjoy the residence of children. One recent study in the United States revealed that states with high levels of joint custody awards showed a significant decline in divorce, compared with the other states.

This may be related to economic factors, such as reduced child support payments, and mothers' reluctance to spend substantial periods without their children.

By far the strongest reason to encourage more shared parenting is the detriment caused to children by the absence of their fathers. Sadly, children report the loss of daily contact with one of their parents as the worst part of their parents' separation.

Psychologically, children living with just one parent are significantly more likely to have emotional or behavioural problems and account for more teenagers requiring psychiatric hospitalisation.

Children without their fathers tend to have lower self-esteem, and are more likely to drop out of school, suffer depression, feel different from other children at school, be involved in accidents, and to attempt suicide. They are more likely to develop criminal, delinquent and violent behaviour. Daughters are more likely to have difficulties with other men in their lives, to fall pregnant out of marriage and to divorce. Sons are described as less masculine, and more dependent.

For many parents, it is accepted that shared parenting is not a practicable option. Many work late hours and are simply not willing to share the role of primary parent. For others, shared parenting is increasingly seen as a realistic and desirable option. Children are conscious of it as an option and they are also encouraging a change in culture.

Even moderate amounts of conflict between parents ought not necessarily impede a shared parenting arrangement, provided the children are insulated from any conflict. To insist on an absence of conflict, may encourage it. If a father wants shared parenting, and the mother does not and believes the court's fallback order will be prime residence to her, she may promote conflict and be unco-operative to provide evidence for the court to reject shared parenting.

Differences in parenting style should not be fatal to a shared parenting arrangement. Indeed, different approaches may serve to enrich a child's upbringing. Provided the child is in the care of a loving parent, one parent ought not be disqualified from spending substantial time with the child simply because of a different parenting style.

Essential factors are the proximity of the parents' two households, their ability to care for the child, the child's wishes and the risk of any violence or abuse to the child or the mother.

Ultimately, it is hoped that the new legislation, if passed, will mark a significant cultural change in the way that family law treats fathers. When children wish it, and their separated parents are emotionally and physically able to provide for them, and are geographically proximate, shared equal time between households is practical and desirable.

The arrangement is obviously fair, and encourages co-operation for the benefit of the children. It would be a proud achievement if more children could continue to have a loving relationship with both their fathers and mothers.

---

Andrew Hale is a family law solicitor. Barry Apelbaum is a final-year law student at Monash University.

Thank you for reading my submission

Name: Ash Patil

Postal Address: PO Box 57, THIRROUL, NSW