



Family Law | Pre Mediation Advice | Child Support  
Domestic Violence | False Allegations | Discrimination

P.O. Box 28, Waterford Queensland 4133 Australia  
Tel: 07 3805 5611 Fax: 07 3200 8769 Mob: 0409 269 621  
Email: admin@mensrights.com.au



Community  
Service Awards  
2001, 2002,  
2003 and 2005

24<sup>th</sup> February, 2006.

Senate Legal and Constitutional Committee  
Department of the Senate  
Parliament House  
Canberra ACT 2600  
Australia

By Fax: 02 6277 5794  
By Email: legcon.sen@aph.gov.au

Dear Senators,

Inquiry after inquiry into improving processes and outcomes for Australia's separated/ing families have taken place. The current family law scheme, which impacts on thousands of parents and children each and every year, creating mayhem by adding to the rapid disintegration of already fragile relationships, destroying parents' capacity to support and care for their children and separating children from the parents who love them, still has not seen any meaningful improvement after years of procrastination, deliberation and broken promises.

Of course, the Family Law legislation and the Family/Federal Magistrates' Court system are not alone in contributing to the chaos. An over-zealous and often punitive Child Support Agency, which seems to be accountable to no-one at all; conflicting social security policies; governments automatically taking on the role of defacto husband and father without adequate consultation with both parents; excessive taxation on one hand and over generous hand-outs on the other creating the need for claw backs from the nearest viable contributor - usually the father in these circumstances, all play a significant role in contributing to the number of family breakdowns and the chaos caused.

In addition, State issues concerning domestic violence and child protection have proven to be a handy tool to eliminate a father completely from his child's life. Whether the allegations are true or not has little bearing on the outcome for that father - the evidence, if any, will never be tested properly in the courts. It is highly likely fathers innocent of any wrongdoing will be relegated to seeing their children at a contact centre. Just another industry spawned because of the courts' unwillingness to find a father 'not guilty' when there is no acceptable evidence to prove his guilt. The growing availability of Contact Centres provides judges with a reason to avoid finding a father not guilty of abuse. It is most unsatisfactory for our justice system to operate within a climate that causes a judge to think twice before finding a father innocent because he may find himself the target of hate mail, vilification in the media and calls for his re-education from those who avidly follow an anti-male and anti family agenda, often working to support and promote single motherhood.

## **How could we get it so wrong? How can we continue blindly to ignore the pleas of parents to restore their children to them? How can we ignore the desperate calls from children to see and be with each of their parents?**

Ample research tells us a shared and equal parenting outcome with two parents who love and cherish their children is good for them. If it is good for parents (the next best alternative to an intact family) and good for children, then it is good for society. Why is there a reluctance to put into place policies and legislation that will support the notion that both parents, together or not, are equally important and essential to their children's wellbeing? The practicalities are simple and do-able. If parents are able to provide care for their children up to 50 percent of the time they should be able to do so. If it is not possible for a parent to spend equal time, then they should not be regarded as any less of a parent for finding themselves in that situation and still be regarded as equally important.

It is nonsense to talk of prior interaction with children as being the guide to whether a parent can continue to have contact after separation (sought by some women's advocates). Are we to punish the father who has worked long hours, sometimes in the most dreadful locations away from his family, in order to provide for their every need - two cars, a designer style house, private school education, etc?

Even though a father may not be at home as often as the mother, the children still feel his presence and know to expect him back after work. They know he is away from them working to provide support for them. This is the way he shows his love for his family and as he is complying with society's expectation why after separation should his children be deprived of that interaction and why should he be relegated to a 20 percent or less parent?

After separation both parents have every reason to reassess their situation, in order to ensure their children are not deprived of their presence, care and attention. If it means fathers cut back on their working hours to ensure their availability, so be it. If mothers are not already working, they need to consider doing so to allow them some measure of independence from the government system of payments.

Parenting is a two person job. A father willing to participate fully in parenting his children should be encouraged, not encounter roadblocks such as child support. If he reduces his hours to share in the care of his children he may be penalized by the Child Support Agency who will continue to extract payments from him at his higher income level, based on his "**capacity**". Now there's an interesting word. When CSA was first envisioned 1986/87 the term "**capacity**" was used in relation to "**capacity to pay**". Child Support in adopting a judicial type application, without the ability to investigate fully the financial circumstances of both parties in their present situation, distorted the term to become "**capacity to earn**". After raising this issue repeatedly, we find CSA have dropped the "**to earn**" part and now just refer to "**capacity**"! The Agency has distorted the intention of Parliament and no-one is doing anything about it.

### **"Inquiry after Inquiry" The 1994/95 reforms:**

Reforms, suggested to be major<sup>1</sup>, were initiated by the Labour Government as a partial response to the findings of the Joint Select Committee on Certain Aspects of

---

<sup>1</sup> Bill's Digest, Family Law Reform Bill 1994 No1 and No 2, 13 October 1994

the Operation and Interpretation of the Family Law Act (JSC FLA) and recommendations made by the Family Law Council<sup>2</sup> in an effort to overcome the waywardness of the Family Court. Peter Duncan, Parliamentary Secretary to the Attorney General gave the following explanation for the reforms to the Family Law Act in a speech to Parliament in November 1994:

*“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.”*

The reforms were to:

1. remove the concept of parental rights and substitute joint parental responsibility,
2. remove the terminology of guardianship, which implied parental rights; and replace it with ‘special interest’ clauses to deal with long term decisions about children, such as education, health and religion
3. introduce the concept of the rights of the child to have contact with both parents and to be cared for by both;
4. change the wording custody and access to residency and contact;
5. expand access to mediation and counselling services,
6. define the relationship between contact orders and family violence orders.

FAILED

Let’s now look at the recommendations emerging out of the 2003 inquiry by the House of Representatives, Family and Community Affairs Committee into Joint Custody 50/50 and child support contained in their report Every Picture Tells a Story and the subsequent rejection/endorsement by the Government contained in their response to the draft bill, dated 8<sup>th</sup> December 2005.

The suggestions are to:

1. introduce a presumption of joint parental responsibility which can be rebutted if necessary
2. introduce child-focused amendments into the FLA that will refer to the need to ensure that children are given the opportunity for their parents to have a meaningful involvement in their lives to the maximum extent possible, consistent with their best interests.

---

<sup>2</sup> Comments on the Report of the Joint Select Committee on the Operation and the Interpretation of the Family Law Act, A Report to the Minister for Justice prepared by the Family Law Council, January 1993.

3. remove the language of 'residence' and 'contact' in making orders between the parents and replace it with family friendly terms such as 'parenting time'.
4.
  - a). require greater involvement of mediators, counsellors via new Family Relationship Centres. Prevent access to legal remedy without attending counselling. Exception to this will be if there are claims of domestic violence
  - b). A requirement to inform parents that they could consider substantially sharing parenting time as an option where it is in the best interests of the child and practicable.
  - c). A judge or magistrate would be required take into account the terms of the most recent parenting plan if the parents subsequently end up in court over a parenting issue.
  - d). change to the Act will also require courts to first consider substantially shared parenting time when making orders in cases where there is joint parental responsibility and each parent wishes to be the primary carer. Whether substantially shared parenting time is ordered will depend on the best interests of the child.
5. change to the objects of the Act to include the preservation of a child's right to safety, in keeping with the committee's conclusion at paragraph 2.29<sup>3</sup>, which refers to the addition to the principles of Part VII of the FLA which in effect will elevate the domestic violence cause to the same level as the child's best interest (refers to both actual domestic violence against a parent or other family member or child abuse or a 'reasonable' fear of either taking place in the future).

If we put these recommendations side-by-side you will see there is very little difference between the proposals for 1995 and the proposals 10 years later. We have to ask why?

Scheduled  
to FAIL

Is it because there is a lack of real commitment to change for fear of upsetting a section of the electorate? Perhaps the women's vote is proving too strong to risk alienation? They are after all the most vocal in raising allegations domestic violence and child abuse which are often based on highly questionably studies designed to come to a predetermined conclusion to support their claims. Perhaps there is a lack of understanding within the Parliament of the written bill and clever word smithing is covering up its shortcomings.

When the Report Every Picture Tells a Story was released it certainly caused confusion amongst the interested public due to the wording used. *Share parental responsibility* or *joint parental responsibility* does not deliver shared and equal parenting, yet a significant number of fathers were convinced it would.

Furthermore it is difficult to understand why so much energy and money was spent on the latest inquiry which raised the hopes of disenfranchised fathers and

---

<sup>3</sup> Every Picture Tells a Story, Report prepared by the House of Representatives Standing Committee on Family and Community Affairs, December 2003.

encouraged them to believe that at last the Government was listening to them, when what is on offer is already included in the Family Law Act.

Outcomes under the current proposals will not be improved and could well be worse with more resorting to false allegations of domestic violence or child abuse to avoid father parenting time.

For fathers, the requirement to attend counselling for 3 sessions at a Family Relationship Centre will cause undue delay in being able to apply to court to recover children or to seek residence or contact. By the time the counselling process has been undertaken and possibly failed, the applications to court made and a date given for a hearing, the mother will have well and truly established an almost unshakeable status quo.

Family law changes cannot be considered in isolation from other determining factors such as child support, pension payments either. One or all will interact and be affected by the other[s]. For example, the Parkinson child support proposals suggest lowering the number of nights the child needs to spend with the contact parent before child support takes into consideration his/her costs of contact. Currently child support does not reduce until the contact parent has at least 109 nights. Parkinson suggests lowering the bar to 52 nights. Whilst this may acknowledge the contact parents costs of caring for the child earlier in the equation, it also provides a new barrier for a parent seeking good contact with their child. In fact the barrier will be lowered to less than half the number of nights, causing us to fear a return to the 80/20 standard of every 2<sup>nd</sup> weekend contact scenario or less. We know from past experience the incentive to only agree to contact providing it is less than 109 nights is rife. Any number of nights up to 108 means maximum child support is paid. Lower the bar to 52 nights and the amount of contact fathers are able to achieve will reduce to less than half the current situation and return us to the tenuously based 'standard contact' – every second weekend. Fathers frequently struggle to uphold their children's right to have a meaningful relationship with them. It is our experience that a considerable number of fathers who already have more than 109 nights have refused to inform CSA for fear that if they do the mother will reduce the contact to maintain the maximum payments.

No matter how much emphasis is placed on encouraging *shared parental responsibility* or *shared parenting time*, this will not happen when money is the deciding factor, or when psychological needs of one or the other parent interferes with the logical acceptance that their children need both of them in their lives.

**A child's entitlement to be cared for equally by both parents should be included clearly in the legislation.**

Parental rights also need to be restored. This denial of parental rights has allowed authorities to undermine a parent's ability to care for their children as they should do. Children are told at a very young age their parents cannot tell them what to do. How do we expect parents to be able to cope appropriately with their children when the very authorities who should be supporting parents are active in undermining their ability to perform their duty as a parent? It is an onerous to expect that duties and responsibilities should stand alone without mention of rights. Parenting comes at a cost – on the one hand, the duties and responsibilities - balanced on the other by the rewards – the right to share in the bond of love and respect between parent and child; of being able to choose how to raise one's children safely and the right to enjoy

watching them grow into the competent, independent and caring young adults we hoped they would become.

The European Court has on a number of occasions upheld disenfranchised fathers' claims of a right to enjoy a 'family life' and provided compensation for loss when their country's legal system has not supported a relationship with their child[ren]. Australia does not seem to recognise this right to enjoy a family life, particularly if it is the father we are talking about.

To bring about real change it needed some courage to challenge the current agenda maintained by some single mothers groups and those in the bureaucracy and academia who are more interested in engineering the break down of family life to suit feminist ideology. In 1998 a member of the Attorney General's department dismissed my suggestion of shared and equal parenting because in her words, "how would mothers be able to receive their pension if they only have the children half the time?"

This Committee hearing seems to have come about at the behest of women's groups and it is disturbing Democrat Senator Andrew Bartlett is suggesting only legal and women's groups should be called before the committee.

He states the reasons for the referral to the LAC Senate Committee are necessary because:

- further analysis as to why the existing control of division of parenting by courts is not considered adequate:

Perhaps Senator Bartlett would better understand the circumstances if he read the transcripts of the hearings conducted by the House of Representatives FACA Committee. Time and again personal stories were told of the heartbreaking experiences of perfectly good parents who have lost contact with their children and their struggles to restore some semblance of family life through the family law system. It is quite obvious once a couple enters the court they are stripped of any parental rights and need to rely on the favour of the court to retain some minimal contact with their children. Neither parent should be regarded as more or less important than the other. Even if a parent is unable to see their children for the maximum 50 percent of time they should not be regarded as any less of a parent as they are now by the Family Court and many of its associates.

- concerns that this bill will see parents' interests take precedence over the best interests of the child:

Recognition should be given to parents' interests. We have frequently made reference to the fact that it is difficult to distinguish a child's interests as being distinct from those of its family – parents, siblings and others. As we pointed out in the MRA submission to the House of Reps. FACA Committee, Canadian social scientist K.C. Wilson suggests, in his book *Co-parenting for Everyone*<sup>4</sup>, that children have only two rights. His suggestion does not diminish the protection of children as you will see:

*1: The same right as any member of society to freedom from abuse and exploitation. This does not require new laws, but applying those we have. You often hear,*

---

<sup>4</sup> Wilson, K.C., *Co-parenting for Everyone*, Harbinger Press, pg 20

*“Children are our future”. Not true. They are part of society now and deserve that consideration.*

*2. The right to its entire family. The right to the advocacy and care and nurturing of both its parents equally, and through them the parent’s families. Why should the parent’s marital status have anything to do with this?*

Children certainly have rights which are protected by their parents, not just one parent, until they reach an age when they can exercise their own rights and adhere to the accompanying responsibilities.

In fact we need to be reassured that parental rights have not been removed from the Family Law legislation contrary to the recognition of parental rights mentioned in Australia’s Constitution in Part V, 51. (xxii).

The best interest of the child is not the only interest to be considered. Although this inquiry has specified that the “paramount consideration should be the best interests of the child” it is necessary to qualify how this terminology can, in our opinion, be misinterpreted and misused which will create a negative effect on the child rather than a positive one.

There is also the risk in using the ‘best interest’ as the “paramount” concern. It allows a court, such as the Family Court of Australia to presume it to be the sole arbiter in matters concerning children and their family, overriding any rights that should exist for the parents or the child.

Professor of Philosophy, Donald Hubin questioned what the best interest of the child really means.<sup>5</sup>

*The best interest of the child should always be the ultimate objective. However, the best interest of the children serves poorly as a practical criterion for courts to employ directly. This is true for several reasons. First, the best interest of the child is an “essentially contested” concept. Parents who disagree about who should have exclusive custody (or about custodial arrangements in general) disagree about what custodial arrangements are in the best interest of the children. That is, no parent goes to court with the position that the children would suffer under his/her plan, but that plan should be adopted by the courts anyway. And, parents who disagree about what is in the best interest of the children typically disagree about what counts as being in the children’s best interest. Like the Thomistic injunction to “Do good and avoid evil”, the objective of promoting the best interest of the child is rejected by no one. The dispute is over \*what\* is in the best interest of the children. Given this, the state’s commitment to promote the best interest of the children is, in practice, no commitment at all. It is empty rhetoric.”*

Warren Farrell, author of *Father and Child Reunion* also asks the question is the “best interests of the child theory in the best interests of the child”?<sup>6</sup>

He suggests that because divorce makes everyone feel guilty about the best interests of the child we take it to the extreme. He introduces:

---

<sup>5</sup> Hubin, D.C., Email Correspondence, Ohio State University, 19 Jul 1999.

<sup>6</sup> Farrell, W., *Father and Child Reunion*, Finch Publishing, pages 111-112.

*"the paradox of the best interests of the child" – that the real best interests of a child do not come from focusing on only its interests, but that a child's best interests are served only when everyone's interests are considered."*

Farrell maintains that:

*"To raise a child with only its own best interests in mind creates an adult who keeps only its own interests in mind. It is healthier to raise a child who understands that its own interests are best served when everyone else's interests are carefully and consistently considered."*<sup>7</sup>

Hubin comes to the same conclusion that the "best interest" should include others and asks, "..... what sort of guideline presumption can be expected to promote the best interest of the child? And I'll say because I think it matters, too, the parents".<sup>8</sup>

As recently as today 26/2/2006, internationally renown, Professor Matt Sanders, the creator of the Triple P Parenting program tells readers of the Brisbane Sunday Mail that:

***"We've reached a stage where there's a lot of talk about children's rights. But whenever we talk about rights, we have to talk about responsibilities as well. Children have a right to be parented well – but they need strong parenting. It's not about creating these self-indulgent youngster who think they are at the centre of the universe.***

***I remember I was talking to a mother one day and this toddler got annoyed that he was not getting her attention so he picked up a plastic lawnmower and hit her across the face with it.***

***I saw a tragedy in the making. It's not a pretty sight to see parents being bullied by their children."***

- **The effect of introducing shared parenting as a starting point for custody arrangements, particularly on victims of violence:**

The ability to rebut the presumption of shared parenting will provide protection for those at risk.

To overcome the misinformation promoted by some women's advocates that mothers do no harm to their children we need to publish widely the statistics that are available to show mother's, mother's boyfriends, step fathers, siblings and others present a far greater risk to children than do their biological fathers. Further research is required and when compiling statistics, clear definitions should apply when describing the relationship of the abused to the abuser. Often 'parent – male' does not distinguish between *step father, live in defacto or biological father*, giving rise to a false impression that male parents (biological fathers) commit much of the abuse. Some research just stops at 'parents' without defining even the gender of the abuser.

---

<sup>7</sup> Farrell, W., *Father and Child Reunion*, Finch Publishing, pages 111-112.

<sup>8</sup> Hubin, D.C., *Email Correspondence*, Ohio State University, 19 Jul 1999.



Similarly there is considerable evidence within Australia and from recognised international studies where the views and experiences of both genders are sought, which show domestic violence is not just committed by men. Women have proven themselves to be the equal of men and quite competent in this area of family abuse. There are also growing concerns for the increasing levels of violence perpetrated by young women.

I refer you to an annotated bibliography of studies prepared by James Adams and submitted independently to this Committee. The studies refer to a wide variety of topics – from the benefits of Shared Residence for both Children and parents; the lack of evidence showing sole custody is preferable; that men and women are equally violent to each other; that women are more dangerous to their children etc. to studies showing fathers want more time with their children, but believe they are unlikely to get it.

This Parliament has the ideal opportunity to change attitudes toward separating parents and their children. Most are not criminals, yet the treatment meted out by the Family Court and the opinion of the court associates, particularly family report writers would suggest an antipathy towards fathers which allows them to form the view that they are of little use apart from their ability to earn money.

When we expressed our disappointment with the recommendations contained in the report Every Picture Tells a Story we were told of the need to find common ground with the Opposition to ensure any changes would pass through the Senate. The Government now controls the Senate and has shown little hesitation in pushing through bills that would never have passed before the change in power balance. Why should the Government be so reluctant to put into place changes to Family Law that will recognise that most parents are not bad people, just unable to get along with each other? They should not be treated as if they are criminals. Parents and their children deserve to have their future relationship with each other preserved under our laws not torn apart as happens today.

The question we hope you will be considering, in preference to the implications of financial or political fallout will be .... Does this proposed legislation improve the chances of children being able to enjoy the company, love and support of both their parents equally? Or will the Judges continue to laugh and 'thumb their nose' in disdain?

For further information please contact the writer:

Sue Price  
Men's Rights Agency  
P.O. Box 26, Waterford 4133

Tel: 07 3805 5611  
Fax: 07 3200 8769  
Email: [admin@mensrights.com.au](mailto:admin@mensrights.com.au)