

This is my submission to the Legal and Constitutional Committee.

First of all, let me give thanks to the Senate Legal and Constitutional Committee on allowing public submissions on the proposed Family Law Amendment, as this is a difficult and contentious subject I have put a lot of thought into this submission. It is a debate that is long overdue and badly needed.

I personally have not been through the Family Court as my separation six years ago was fairly congenial. However, the arrangements worked out between my ex-partner and I over our two children's residence was influenced by societal norms. I worked full-time so it was arranged that I have the kids every second weekend and half the school holidays. I now regret agreeing to this arrangement and, if I had the time over again, would have pushed for 50/50 shared care, or as close as possible to it. At the time, however, I assessed what I had witnessed and heard about the Family Court and made judgments on these episodes. This is what I faced at the time.

I have two close friends that had had their arrangements dealt with by the court and I closely witnessed the desperation, heartache and disillusionment they and their children felt with the process. Both were accused of violence (never proven) and child abuse (never proven) and ultimately had judgments that left them financially ruined, enslaved to jobs indefinitely and with little real contact with their children. Neither lifted a hand to their ex-partners and neither abused their kids in any way. This last point is highlighted by the fact that both sets of children have now freely chosen to live with their fathers permanently. Out of 7 children only 1 still sees her mother, as they were all deeply traumatized and forever scarred by the experience. I had close relationships with both mothers before they decided to leave my friends and would never have imagined them to be so cruel, vindictive and selfish as they were to my two friends and, especially, their children. I believe that they were greatly influenced by lawyers and women's groups that were only interested in making money and pushing an ideological agenda. With a few variations, my brother had also gone through this harrowing experience. Multiply this scenario by dozens of others I have known - mates, work mates, acquaintances, friends of friends etc. and you can see why I made the decision I did.

It is for this reason that I believe a change of direction by the court would have an effect on wider society. Fathers are reluctant to push for anything more than their ex-partners want because they also know people, or have heard of them, with the same stories of my friends and others. For this reason it also has an effect on intact relationships. My wife, yes I did remarry, has said to me on two occasions when arguing; 'if you don't wake up (do what she wants) you won't see your son again'. She has even gone as far as to hint that she would threaten my relationship with my other children, 'because she can'. You may wonder why I am married to this person. The fact is that she was not like this until we were married and had had a son. The fact is that every woman knows that she has this power and every man knows it too. Now I am not saying that every woman is vindictive, cruel and selfish, it is simply a fact that every one in society has been affected by the changes in family dynamics over the past thirty years and the Family Court is part of that change.

If people understand that they can't simply end a relationship, where children are involved, and know that they will more than likely get the settlement that they wish, things will change. They will not automatically assume that they will be supported financially by their ex-partners, they will realize that they will most likely have to share in the responsibility of bringing up their children - both financially and emotionally - and that they won't be able to exercise any control whatsoever over their ex-partners. Maybe then the rate of divorce and fatherlessness will begin to decline in Australia.

A lot of work has been done of late that shows that fatherlessness or under-fathering has long term effects on children. They are much more likely to leave school early, be victims of abuse (physical, emotional and sexual), break the law, become drug addicts, have low self-esteem and, generally, have psychological scars that never completely heal. This definitely impacts on society and can only spell mayhem for the future, especially if things don't change now.

For far too long the fate of separating families has been steered by a dated mind-set among family law judges, lawyers, government departments, social workers and the wider community. This mind-set presumes that the best place for children are with their mother, all supported financially by their father. It does not take into consideration major changes in societal thinking, laws, customs and circumstances that have taken place over the last fifty years. These changes have seen a shifting of expectations in traditional parenting roles. While I disagree that fathers were ever any less important in their children's lives, which is implicit in the above-mentioned mindset, fathers now take a much more hands-on role in regard to day to day care of children. On top of these new obligations, fathers are still expected to retain their traditional role of major financial provider, ultimate regulator in discipline and emotionally unruffled backbone of the family. They are, quite literally, doing more than their fair share. Yet when it comes to family separation, this contribution is not taken into consideration and incredibly, in the case of financial provision, can even be used as an argument to show a lack of contribution to the care of the children.

All around my community, a working class town near Newcastle, on a daily basis I see fathers taking an active, pro-active even, part in their children's upbringing. Most of these men work full-time, yet they still find time to spend on developing their children's moral essence and self-respect and to simply have fun together. Many of these fathers are coaches in their children's sporting teams. All organize one-on-one days out with their kids, camping trips, fishing expeditions, anything that gives them a chance to spend special time with their children. On top of this they do housework, give day to day child-care and take on other traditionally female family roles such as shopping, errands and the like. And all still do the traditionally male family roles such as mowing lawns, house maintenance, car maintenance etc.

It amazes me that some sections of society still find cause to bring out statistics that say how much work women do in and outside the home and imply that men still are not doing their fair share. Maybe they aren't asking the right questions or both sexes. Maybe it is because these 'studies' are done by middle-class feminists that don't really know what's going on in the real world, down here at the coalface, where the vast majority of Australians live. Where people can't afford to get a tradesman in to fix the leaky ceiling or whatever, where families would have to not eat properly for a couple of weeks if they had their car fixed by a mechanic. Where mothers work and children need care from elsewhere, where mothers rightly see themselves as individuals and take time out for themselves and children need care from elsewhere. Fathers do this work. Please consider this shift in a father's role and realize that most men do these things on a daily basis. Both children and fathers suffer as a result of prolonged separation.

It really bugs me that father's are routinely denigrated by feminist groups - most of which are financed by men's taxes. Whenever the debate over custody of children comes up, as evidenced in the SBS, Frontline program last year and public comments of late, these groups bring out the well-worn, statistically unfounded, routinely academically refuted and highly discriminatory argument of male violence. While I am sure that violence occurs in some families and more than likely is at biggest risk when families are being broken apart, the vast majority of father's care deeply about their children and would do anything they

can to prevent any harm - physical, emotional or sexual - coming to their kids. Yet these women's groups consistently use this ideologically driven and ridiculous argument of inherent male violence to block any pragmatic solutions to the question of separating families.

The truth is - backed by a plethora of academic evidence - women are as violent as men are, family violence occurs in a minuscule percentage of the population and false accusations are rife in the family law arena. Further, statistically the safest place for a child is in the home of their father. While these women's groups machine-gun from the hip about male violence and abuse in the family, they are very silent on the indisputable facts about child abuse. Mothers, especially single mothers, are by far the most likely to abuse their own children. Throw in a boyfriend or step-father and a child's risk of abuse rises exponentially. This, in itself, should debunk the mind-set that the best place for a child is with their mother. Please don't be swayed by ideologically driven feminists that will no doubt be throwing up domestic violence figures that are based on flawed, self fulfilling, research.

The proposal that separating couples sit down and attempt to work out a fair and reasonable parenting plan is a sensible and well-meaning one. To be sure, there is a growing body of evidence that points to a much lower detrimental impact from separation on all parties, including children, when joint custody is the outcome, even where joint custody was awarded against the wishes of one party. However, I see a few problems arising from it if other dynamics of separation are not protected against. For instance, there is a large amount of evidence that shows that women often use false allegations of violence and child abuse against fathers in an effort to raise the likelihood of full parental custody, more favorable property settlements and higher child support payments. The only way that parties can get out of this forced negotiation is where violence or child abuse is present. Will this encourage more false accusations?

I would like to give my tacit support to the proposed Family Law Amendment (Shared Parental Responsibility) Bill 2005. I say tacit support only because I don't believe the amendments go far enough. I believe that the first amendment should read: the introduction of a presumption of joint parental custody. The last amendment should read: the introduction of a presumption of spending time with grandparents and other relatives. And I call into question the second and third amendments. The second talks about parents developing parenting plans, while the third amendment talks of improving enforcement of parenting orders. Does this mean that a non-custodial parent will only have recourse if there is a court order in place? If it does, then the amendment will not be worth the paper it is written on. Custodial parents will not be forced to stick to parenting plans, which is the biggest complaint of non-custodial parents and was the main impetus in getting the proposed amendment even considered. Besides these points I do believe that these changes are a good start.

Thank you,

Nigel Rae.

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