

Family Law Reform Association, NSW, Inc.

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

Our submission supports the amendments to the Family Law Amendment (Shared Parental Responsibility) Bill 2005. Much effort has been made to assist the government in drafting this legislation by groups such as ours who aim to improve the situation for children from separating or divorced parents. It is a fantastic move the government is making to overhaul the Family Law System in this country. We have the children's welfare as our number one priority and offer this submission to support positive changes.

Our submission will be brief and to the point.

Our association supports the notions of shared parenting and shared parental responsibility as far as is practical for individual families.

We support the requirement for parents to attend dispute resolution and develop parenting plans before taking a parenting matter to court.

We fully support improvements to enforcement of parenting orders.

We support better recognising the interests of children in spending time with grandparents and other relatives.

The article below was published in February 2006 which provides some perspective to opposition to the proposed amendments. We will refer to it throughout this submission as an authoritative source as Michael Green is one of the most experienced family mediators in Australia.

In 2003, the government commissioned an inter-party committee to examine our family law system. The committee's investigations were not done by members sitting on their seats in Canberra and chatting nicely to one another. For six months, the committee travelled the nation, conducted public hearings and received over 1,700 written submissions. The resulting report, "Every Picture tells a Story", ran to 240 pages, and contained 29 recommendations. There was unanimous support for far-reaching reform of the system.

The government responded, a draft Bill was produced, and this was subjected to further public scrutiny by way of another inter-party committee. Out of this process the current Bill, the Family Law Amendment (Shared Parenting) Bill, is now before the parliament.

Given all of the above, one would expect that the reforms would attract overwhelming support. That this is not the case bears close examination.

The objections emanating from pockets of resistance can be loosely grouped as follows.

Equal or shared parenting is not in the best interests of children. The National Association of Community Legal Centres (NACLC) paper (Seeing families right", NACLC, December 2005) claims: "There is no evidence that time shared equally with both parents is actually more beneficial to children." In a paper purporting to "ensure the full facts are widely

known”, the authors have conveniently ignored at least three US studies (for example, Bauserman (pdf file 80KB), 2002), and an Australian study (Smyth et al (pdf file 3.74MB), 2003). This research shows that joint custody or shared parenting of children after divorce brings positive benefits to both children and their parents.

It is bold indeed for the NACL to rely so heavily on the Rhoades report (pdf file 663KB) (2000) to support many of its contentions, when it is well known that the limitations of that report were trenchantly criticised by several commentators (for example, Moloney 2001).

The NACLC suggests that what is important for children after separation is stability. This is best achieved by sole-mother custody, reflecting the parenting responsibilities in the intact family. This is the no change argument. Thus the NACLC paper suggests that children have enough to cope with “without asking them to cope with more unnecessary change by requiring them to spend more time with the other parent”.

This is head-in-the-sand stuff. Separation and divorce are all about change and it is impossible to shield children from it. What is important is to engineer the necessary changes in parenting that look after them emotionally, intellectually and financially. The stability that children hunger for is not geographical stability, but the stability of meaningful relationships with the people most dear to them, their mothers and fathers, grandparents, relatives and friends, schools and communities. Shared parenting can deliver this.

Michael Green (2006)

Shared Parenting and Shared Parental Responsibility

We fully support the concept of shared parenting and shared parental responsibility. We also accept that in many cases 50-50 shared parenting time would not be appropriate. We believe that each situation needs to be negotiated between the parents in order to determine the regime that suits their family situation.

We totally reject the model that the Family Court and lawyers have used for many years that one parent is the resident (custodial) parent and the other parent only has parenting time for 2 days on every second weekend. Such parenting time is of little real value to children. Children need both mother and father role models which can only offer influence with a substantial level of parenting time from both parents. We encourage substantial shared parenting time and shared parenting responsibility.

Past experience has shown that the parent having “custody” of the child wins the prize. They receive much financial assistance in the form of tax relief, family payment, rental assistance, child care subsidies plus tax free child support from the “non-custodial” parent. This does not seem fair to many “non-custodial” parents who often bear a substantial child support burden which makes parenting difficult due to cost constraints.

As Michael Green goes on to say:

“The opposition to reform from lawyers can only be motivated by professional and financial insecurity. Over 50 per cent of couples currently sort out their own post-divorce arrangements with little or no recourse to the law. With increasing education and the realisation that such a process can be achieved without paying \$300-500 an hour to a lawyer, this trend is set to continue.

The brayings of feminist groups are rooted in a similar anxiety for self-preservation and in the feminist myth. Their support for the present system reveals a concern about power and money: if mothers share the parenting of children, it follows inevitably that they will have to share control of the family and of the resources that come with it, i.e. the home and financial support."

Shared parenting will greatly alleviate this situation and may even lead to a slight decline in the divorce rate as the prize associated with divorcing with children is reduced.

Shared parenting is much better for children.

Children of divorced parents exhibit negative behavior to a greater degree than do children of intact families (Peterson & Zill 1986; Barnes & Farrell 1992; Najman et al 1997). These behaviors are most marked in boys and have largely disappeared in girls by the second year following divorce (Hetherington, Cox, & Cox 1978). The misbehavior is directed primarily toward the sole custody parent (usually the mother).

It has also been found that boys from divorced families often exhibit delinquent-like behavior and have difficulty in controlling their impulses (Biller 1981; Buckingham 2000). Investigators believe that boys need a firm, positive identification with their fathers in order to be able to develop internalised controls over their behavior. The fact that post divorce boys have much less contact with their fathers would explain their higher incidence of delinquent-like and generally aggressive behavior.

National findings highlight that for more than half of the children of separating families, contact with their non-custodial parents (typically fathers) does not occur to a significant degree, culminating in a complete break or near break after two or three years. Survey data collected by the Australian Bureau of Statistics (ABS, April 1997), indicated that 42% of children in sole residence had contact with their other natural parent just once a fortnight, while 36% had contact with their other natural parent either rarely (once per year, or less often) or never. Of those who had contact with their natural parent rarely or never, 33% aged 2 years and over had contact only by phone or letter.

Sources

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Compared to children from intact families, children of divorce are more likely to experience:

Reduced Psychological, Socio-Emotional and Cognitive Well-Being, and Poorer Physical Health
Juvenile Delinquency, Substance Use, and Other Problem Behaviours
Lower Educational and Occupational Attainments
Increased Risk of Early Home-Leaving, Early Unplanned Pregnancy, Teenage Marriage, and Divorce
Increased Risk of Child Suicide
Increased Risk of Child Abuse
Increased Risk of Being Murdered
Weak Relationships With Parents and Other Kin in Adult Life

Child custody contests are recognised by experts as presenting great dangers to the emotional welfare of the children involved. Most existing studies on the impact of divorce indicate that it is a highly complex process, which represents a major source of stress and readjustment for children and parents. It is well documented that sole custody, which has had a long trial period, leaves serious problems for children and their parents. Let us look at what happens to children under exclusive sole custody in particular. The accumulated data suggests that children who are not forced to divorce a caring parent are more likely to be better adjusted after divorce.

Feelings of Loss and Abandonment
Loyalty Conflicts and Separation Anxiety
Unhappiness and Depression
Emotional Victimization

Source - Joint Parenting Association

Public opinion is overwhelmingly in favour of the notion of greater levels of shared parenting as shown from the survey results below.

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

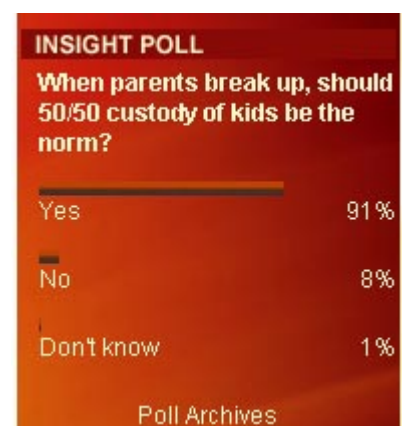
Results

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



Do you agree that both divorced parents be given legal rights to access to children?

▶ Poll

SKY news online

Do you agree that both divorced parents be given legal rights to access to children?



Results

90% of respondents said YES.
10% of respondents said no.

SkyChannel:
29/07/2004

Dispute Resolution

Separation and divorce are human events not necessarily legal events. Where children are involved experience and research has shown that children's matters can in the vast majority of cases be settled via a dispute resolution process such as mediation. The adversarial approach that the legal system uses tends to alienate the parties even further making future parenting difficult. A negotiated agreement on a parenting plan makes far more sense and will provide a far more satisfactory result for the children.

We totally support the concept of mandatory mediation on issues concerning children before any court action, where cases are suitable for mediation. In cases of *proven violence* the dispute may be more suitable for the court process. The proposed Family Relationship Centres will need to screen clients carefully to make this determination. As Michael Green goes on to say in his article:

"Another objection is that compulsory mediation may force separated parents, especially women, to negotiate with abusive former partners, and to agree to parenting arrangements that are not safe for them or their children.

This is not true and has never been true. No mediator or mediation agency will conduct a mediation session when family relationships are seriously affected by violence or abuse. In such instances, mediation is always seen to be inappropriate. The new family law provisions specifically exclude mediation in such cases.

Nor do mediators permit parties to agree to unsafe parenting arrangements. While entry into mediation may be required, remaining in the mediation session is voluntary, as is agreement to any proposals. Moreover, the parties have access to legal advice, either during the mediation or before signing any mediated agreement."

Mediation works very well for the settlement of children's matters. Experienced mediators can attest to that. It is a proven model. It produces a better result, is faster, cheaper and allows parents to continue parenting rather than becoming mortal enemies as often follows legal battles, making parenting difficult.

Enforcement of Parenting Orders

For many years we have heard complaints from divorced and separated parents about breaches of Parenting (Contact) Orders. Much court time has been unnecessarily wasted trying to secure enforcement with little success in many cases. Enforcement has been limited by the limited power of the Family Court to order appropriate penalties for breaching orders. Enforcement can take many weeks before being heard in court. We would welcome stronger enforcement of contact/parenting orders in order that children spent parenting time with both parents without being used as a tool or weapon by the other parent.

It is vital that parenting orders are enforceable, in order to prevent the parent with residency having a power imbalance over the other parent as now happens.

Recognising the interests of children in spending time with grandparents and other relatives.

We believe that most parents believe contact with grandparents and close relatives important in their children's' lives. Many grandparents and relatives could help with the caring of children in separated households. The quote below from the Joint Parenting Association says much.

"I receive so many phone calls from grandparents who spend Christmas alone. Some will pull down the blinds and sit and eat alone rather than admit that they are cut off from their grandchildren.... The best way to punish an ex-partner is to keep the children away from their grandparents. Unfortunately this punishes the children as well" (Friedman 1994).

Although researchers have focused our attention on the central participants of divorce, mothers, fathers and their children, there is growing recognition that court orders may also cut off grandparents from their grandchildren. Just at a point when a child is faced in most sole custody decisions with the loss of a parent, he or she also must bear the loss of grandparents and other relatives (Folberg & Graham 1979).

However, when custody is considered in context of extended family life, there has been relatively little research on the role of grandparents as a source of support for children

during and following their parents' marital transitions. In one recent exception Lussier and colleagues (2002) examined children's contact with and closeness to grandparents in different family settings (i.e., two biological parents, single mother, stepparent). Parent and child interviews and questionnaires regarding the children's relationships with maternal and paternal biological and step grandparents were studied. There were family type differences in rates of contact with grandparents as well as children's closeness to grandparents. Furthermore, children's and parents' view about these relationships with grandparents were modestly correlated, suggesting that children often held different views about their closeness to their grandparents than did their parents. Greater closeness to grandparents was associated with fewer adjustment problems

An earlier work by Ambert (1988) presented evidence that suggested the relationships between non-custodial parents and ex-affines (parents of their ex-spouses) were quite limited. However, no data was available in that study on relationships between grandparents and the children. Anecdotal and research information indicates that some grandparents feel excluded from the lives of their grandchildren, as a result of sole custody determinations in favour of their child's ex-spouse (Lovorn 1991; McMurray 1995; Family Law Advisory Group (2001). Further, if that anecdotal evidence is to be believed, grandparents are joining advocacy groups and demanding more grandparents' rights in ever increasing numbers (Friedman 1990; Head 1991a; Lovorn 1991).

Clearly, more research is needed of the potential victimisation of grandparents and all other relevant extended family members as a function of sole custody, particularly family members who live in or near the family home or share in childcare during the marriage. It would seem reasonable that curtailing the relationship between the non-custodial parent and their child, through either court order or contact denial by the custodial parent, would also victimise children, grandparents and other extended family members who may wish to stay involved after the divorce.

Sources

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Recently our Association agreed to affiliate with COTA (Council on the Ageing) to provide free information and telephone counselling to grandparents who desperately need some information and counselling when their grandchildren are suddenly removed from them, following the breakdown of their son/daughter's marriage. Most grandparents say that, prior to the breakdown, they have had a close relationship with their grandchildren, some even caring for them while their parents were working. They are shattered, crying, elderly people who are innocent victims of a system which allows one parent to do this. Some are, indeed, mourning for their grandchildren.

If this is happening to grandparents, think of the effect it is having on grandchildren. To be suddenly removed from loving grandparents and other family members and friends is devastating. This cruel practice is allowed to occur under the current system which gives no consideration as to the effect this conduct is having on children.

One lady's lovely story was that her grandson was sitting at her kitchen bench one day looking around the house. She said that she was one of the lucky ones to have been afforded the privilege of seeing her grandson on a regular basis. Out of the blue, he commented that 'I like this house Nanna – I always feel safe here'. With this simple comment, she realised that she had done her job of providing stability to her grandson, which was vital to him while his parents were in turmoil.

If Shared Parenting were introduced, it would ensure that the cruel separation from grandparents and others would not be inflicted on children. Extended family members and friends on both sides are a must in the emotional and social development of a child's life.

The government is to be congratulated on having the courage and energy to effect a new system of family law and practice so soundly based on reliable research and the aspirations of right-thinking men and women. If enacted, funded and supported by community education, it will bring enormous benefits to mothers, fathers and children.

We trust that the proposed amendments proceed through the parliament with positive changes for children, both parents, grandparents and close relatives of the children.