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WITHOUT PREJUDICE

To: The House of Representatives Standing Committee on Family and Community Affairs

Committee on Family and Community Affairs	
Submission No:	108P
Date Received:	7-8-03
Secretary:	

Dear Sirs,

I am writing with reference to the recent enquiry for a proposal for changes in the Family Law Act that will encourage shared custody of children.

I do not support such a proposal for reasons given below. Most of these reasons are culled from my personal experience (I am the mother in the recent High Court case U vs U).

**** Domestic violence is not taken seriously by decision makers in Family law. It has been shocking that U vs U failed to take into account the domestic violence perpetrated to the mother and admitted by the father at the trial stage.**

The child in this case ("N") now witnesses and experiences a different form of domestic violence – control and abuse by the father in the form of neglect to the child, emotional abuse to the child, verbal abuse to the mother and control of the mother and child through various vindictive means of manipulation.

If there is to be shared custody of the child/children in situations as above, then the risk of this abuse and other abuses and forms of neglect will be multiplied. This is severely detrimental to the best interests of the child.

**** Currently, the child is already divided into weekday and fortnightly/weekly contact regimes by the Family Court. The shared custody proposal will further divide the child – and all the negative effects of current contact regimes – i.e. trauma, lack of focus in school work, nightmares, ailments, emotional stresses - will increase accordingly.**

The impact of the current residence order is such that my child has not been able to attend school functions, social occasions, friends' birthday parties and cultural and traditional events. She is also unable to visit her grandparents and family overseas. She has returned, on numerous occasions,

from most access weekends, unwell and unable to cope with the next few days at school.

In a shared custody situation, this problem will accelerate.

**** Paternal Pretensions** – while there is in all likelihood a small percentage of fathers who would genuinely participate in shared custody programmes, a larger number of the less pro-active fathers would take refuge in the new amendments.

I do not believe fathers will be giving up careers and trade to care for their children. How many more fathers will be sending children off to grandparents, girlfriends, nannies and day care organisations while they pursue their work interests, just because they have been granted joint custody? There will be a significant increase in the number of proposals by fathers wishing to take advantage of the shared custody amendment. How sincere would these proposals be?? How many of these proposals would actually suit the best interests of the child?? Is the judiciary capable of sifting the genuine proposals from the insincere ones?

“N” has a father who has been successful in detaining his daughter in Australia for the sake of contact visits. However, he falls into the bracket of the Paternal Pretension father group – he does not care for his child, encourage her at studies, visit her school, give her medication when required.....there will be a high percentage of such fathers who will abuse the shared custody situation as they already do the court system to wreak vengeance on ex partners through the children.

**** Presently, the Family Courts make blanket orders, not taking into account the individual needs of the children or the rights of the custodial parent.** The judiciary is not sensitive to the economic, emotional, social, cultural needs of the child. The burden of being divided in two homes will fall on the child and is not in the best interests of the child. The judiciary needs to be recommended into looking at the nurturing of the child and the custodial parent and ensuring the best environment, albeit the one environment, for the child. Children need to be involved in a happier childhood and fostering their activities – not running from one household to another and from one hostile situation to another.

Whilst contact is important, I believe that enforced contact and / or contact in a hostile environment especially where there is a high level of animosity

and / or abuse on the part of the separated partner – then that contact should be viewed as being detrimental to the child.

Enforced contact times do not make for positive relationships, even though one must respect the child's right to know both parents. Both the judiciary and the legal counsels involved should have the breadth of vision to realize this and strive to provide a more relaxed, stress-free access visit. Unfortunately shared custody will exacerbate a child's trauma in an enforced situation.

I believe the judiciary should exercise common sense, human rights, breadth of vision when making contact/custody orders not just applying magical mathematical formulae from sections and sub sections of the law – especially as they make orders for children.

Unfortunately at present, there appears to be a constant violation of the child's rights and a lack of quality decision making by the family courts.

**** A greater number of custodial parents are mothers. The subject of female impoverisation and hardship is a familiar one. However with shared custody and with the proposal that child support to the mother be lessened when the child is at the father's residence, will only increase the levels of poverty to the mother.**

When my child ("N") is with her father on weekends, my role as a mother does not stop. Indeed, her school clothes are being prepared for the week ahead, her belongings are tended to, the groceries for the week ahead are purchased and her dinner is prepared for her return on Sunday night. I cannot understand how child support can be reduced just because the mother does not have physical possession of the child on a weekend...the 'children jobs' do continue!!

I propose that while the joint custody proposal be abandoned altogether and that there be a serious overhaul of the current Family Law Act which protects the custodial parent (albeit the mother or father) and the rights of the child and that the trickle down effect of Family Court orders on children be one that is favourable to the unifying, positive growth of these children.

I propose that the current problems of protection of children, domestic violence, control and abuse, entrapment of custodial parents, detention of children and economic and emotional impoverisation of the custodial parent be resolved before any new amendment or proposal in the Family Law act is even considered.

I further state that when making any amendment in the Family Law Act that the law makers and decision makers of this country seek the counsel of those custodial parents who have experienced the hardship and perverse judgements and processes of the Family Courts and that such law makers and decision makers realize that the legal ideals in the Law Acts are far removed from the extremely debilitating demands of the custodial parents' daily reality.