

Submission No. **1603**

Date Received: **22-9-03**

Secretary:

22 September 2003 resent 15th October 2003

Dear Kay Hull

I understand there is an inquiry into family situations. I am a father of five children and have recently gone through the dramas of divorce. I pray my situation is unique but sadly I believe it is becoming too common in the lucky country. I will give details of my experience to the present day. I will start by describing that the bonds between partners and bonds between parents and children are at the core of our natural and spiritual existence, universal across creed or culture.

The grief created by the disruption of those relationships strikes at the centre of our being. The death of a loved one and divorce are a kin. The health system does a great job to keep death at bay and preserve life. Just imagine if financial incentives were put in place to encourage more death of our loved ones. This is exactly what is happening to some families, financial incentives have been unintentionally created to reward people if they divorce. Add to this a growth industry that has been created on family breakdowns

These are the ingredients for a social disaster and exponential welfare costs.

My wife and I experienced marriage difficulties. We saw counsellors but my wife still wanted a separation. She consulted the centrelink people as to her expected income with five children. She decided with a pension and part of my income she could be financially independent. Our eight year old son refused to leave. She became irate and began screaming at him but after recalculating her pension, was happy to leave him in my care. I was warned if I didn't co-operate she would leave while I was at work. To keep my wife happy and ensure my families safety I reluctantly agreed to her relocating from Wagga Wagga to Brisbane and drove her and the four children to Brisbane and gave her the car in April 2001. I planned to relocate after securing a job and remained in Wagga with my son [REDACTED], but over the next few months of visits she became less interested in re-uniting. During my visits and attempts to re-unite she was concerned that my stays with her and the children would effect the pension.

In my efforts to re unite I found the policies of centrelink counterproductive to getting people back together.

I loaned money to pay for a new car for my wife and children as a sign of my commitment. Soon after she contacted [REDACTED] and filed for divorce. Lawyers contacted me for the removal of my son, he still wished to stay with me. The legal advise I recieved stated that the family law court would favour my son be relocated. So under duress I agreed and legal papers were drawn up. That christmas 2001 I cared for my children while my wife went to America to visit her internet contact. On her return she decided the children should stay with me. My wife's lawyer contacted her and demanded her to get the children from me. The children expressed a desire to stay with me so I applied to the courts. The case was heard In Wagga then moved to Brisbane two months later . So I left my children in care at home at Wagga Wagga and attended The family law court in Brisbane. I was told to put the children unaccompanied on a flight that day and have the children speak to a court counsellor next week. I could not afford the childrens airfare so I put it on a credit card and I made arrangements. The family law court was not interested in my concerns for the children travelling unaccompanied or my work commitments Again I was told by legal advise that the family law court would favour the children be relocated so under duress I agreed to the terms of relocating the children and no visits with them for six months only phone contact, this I was told was to help the children adapt to being relocated. I was advised to make consent orders otherwise the court might decide more unfavourable conditions. In my experience consent orders are not really made by consent but under fear or threat. one of many sad scenes I witnessed was a barristor standing in a crowded waiting room within earshot of all the parents awaiting news of sad outcomes .He was happily discussing the private education he was buying his children with money made from family breakdowns. Also seeing **children who only wanted a simple wish to be with their Mum and Dad but torn from one or the other.**

Over the next few months my wife made it extremely difficult to contact or call my children. I was allowed to see my children a lot sooner than expected because they drove her crazy on school holidays. Contact with my children was used as a weapon of hurt and to extract cash. I was warned on occasions to co-operate with demands otherwise I would never see my children again. My letters I sent my children went missing. Beds I purchased for my children were returned. My wife would try to stop the children coming to me at the door on times of agreed contact but they would get by her. I tried Video contact on the internet but nothing replaces normal parent child contact. Several months later my eldest son was sent back to me because of severe behavioural problems with mum (Contrary to opinions of the family law court counsellor) he has since settled down thankfully and remains with me.

Next came financial settlement \$53000. My wife's legal fees amounted to \$18000. That is why her Lawyer was so keen to have the children in her care, to ensure the majority of assets and hence payment. **Lawyers are adversarial by profession they want the best for their clients which is the parent not the children.** I represented myself in court on some occasions and had legal aid on others. **Because both parents love their children it presents ideal conditions for "sky is the limit legal fees". How much would you pay to have normal time with your child?**

I borrowed heavily to meet my wife's demands. I have witnessed financial ruins caused by divorce. Money given by me and by the taxpayer as assistance to care for the children has financed;

- A trip to America to see an internet contact \$4000,
- Four house moves in two years
- A wedding and relocation to South Australia
- The new husband and his dependents
- Lawyers wages
- Cost of living for the new partner and his dependents
- I had no say over finances intended for my children's welfare and future.

Because of the financial debt of divorce it left me with no money for travel and accommodation to see my children, adding to this I had a car accident while travelling with my children which destroyed the car. I began to accept the fact that I would have little future involvement in my children's lives in the future apart from birthday cards and letters and short phone conversations.

My ex-wife now resides in South Australia and is remarried. Her new husband was married once before. He has no income and has three children, one of which resides with him. A month after the settlement and new marriage I was told with little warning that four of my children would come and stay with me and remain in my care. This happens often I am told. The reasons stated for the children returning was they didn't mix well with the other children, behaviour problems, my wife's health and my second youngest son was having nightmares about missing dad. I struggle financially and I worry for the finances lost to my children's future but very glad to see light at the end of an emotional tunnel.

I see a few deficiencies which with your permission I will list;

1 Marriage is a misunderstood institution by some to be What can I get out instead of what can I put in in essence a lack of education of expectations in marriage. there is a need for an education of divorce processes as well.

2 Marriage was once a serious contract entered into to give a legal framework to the family unit, people can walk away from that obligation too easily and in some cases be financially rewarded

3 The Family law court is not accountable and does not allow public scrutiny of its' operations and no follow up, for example my son behavioural problems, because of being uprooted unnaturally

from me was not monitored at all. The few times that family law courts operations are discussed in the press was involving murder suicides and kidnaps, which are a result of poor management.

4 My wife was advised by court staff and by legal professionals to have court hearings done ex-parte so I was not aware of a hearing to give greater chance of having a court order in her favour. These happen very often, twice to my family.

5 Incentives for the legal profession are high. After my children were removed by the family law court my solicitor advised me to continue the legal battle. When I quizzed him on the chance of success he believed them to be slim, given that by the time our case could be heard after lengthy waitlists the children would be established in their new home. I declined not wanting to uproot the children again I was shocked at his attitude to spending the money on a case whose only beneficiary would be him.

financial incentives for the legal profession need to be removed. One solicitor suggested changing the locks on the family home to take control of the property as normal practice, thankfully my wife declined the advice.

6 For the parent paying maintenance there is no tax assistance. Just because the children does not live with you does not mean you don't have the expenses of their care, this is unfairly not recognized by the tax office. _

7 Under present maintenance arrangements a paying parent has little control on where the money is spent and may subsidize an overseas holiday or a new partner and their children instead of the payers children.

8 A male is still the breadwinner in most families so will presently still pay maintenance when remarried with one income. A female if remarried and the new husband provides income will pay no maintenance.

9 A person can quite legally claim a sole parent pension while with their partner and their partner is not required to be advised.

10 After settlement, assets divided in favour of the parent caring for the children does not have to be returned if the children relocates to the other parent, leaving them in poor circumstances to care for their children.

Suggestions to discourage separation.

1 Schools introduce courses by qualified instructors year 11 and 12 on marriage and/or having children

2 People be required to attend a certified TAFE course before marriage or having children to give parenting skills and assist couples develop a parenting plan mentioned below.

3 Before having children couples must decide on the financial and care arrangements if separation occurs. A separation parenting plan of the future children could be registered. There would be more love and less hostility present in those discussions, and hence less involvement of the legal profession. It would also ensure both parties would agree to and have control of possible outcomes. If the couple could not discuss these issues frankly then they may not be ready for children. **Discussing these issues after divorce in an emotional state is a financial win for solicitors and keeps the courts too busy.**

4 Maintenance payments need to be accountable so that the paying parent can ensure the money is spent on the children. This would discourage abuse of the system.

Conclusion

I hope my experience provides an insight that creates an understanding of the effect of our institutions on the individual's family commitment. I have witnessed the destructive nature of divorce or separation upon the innocent firsthand, it is difficult to convey the trauma involved with this disease of the 21st century. The original contract of marriage was morally and legally binding, in some countries divorce is still illegal. Our grand parents could not divorce unless adultery or a mental disorder could be proven and the gravity of the decision to marry and have children was generally understood. Those restrictions are now lifted and a large percentage of people do not understand the personal responsibilities of this new freedom as witnessed by our high divorce rate. In trying to care for vulnerable people the social welfare and family law systems have created conditions to give incentives for family breakdown. Unless the trends are reversed the welfare costs will blow out unsustainably, consequences to our social fabric on this and future generations will be devastating.

Supplemental

Subsequent to these events I received notice from the Child Support Agency I am to pay my wife a monthly amount. I must remind the reader I am caring for 4 children in my care as a sole working parent. My ex partner cares for 1 child and is married and both are unemployed. I contacted the Child Support Agency to see if there was an error. I was told that it was as per present policy and correct. So I have to take money away from my four children to give my ex-partner to care for one child.

I was told I could contest this but it would take 3 months to process. Add to this my wife had originally offered to financially assist me in the care of the 4 children in my care but now thanks to the Child Support agency now feels entitled to be paid and any protest would create a lot of angst and do a lot of damage to my efforts to create a harmonious environment in which the children can enjoy both parents. This would just add gritty sand into already difficult wound so I have little choice.

The policy is ludicrous paying for my ex partner and her unemployed husband to care for 1 child and make the other 4 in my care suffer financially.

Previous generations had the father traditionally too busy at work to be emotionally close to their children

this trend has now been reversed but family law and other institutions do not take this fact into consideration when drafting policies. I hope your committee will bring this fact recognition. One advantage in the process is that in the past poorer families suffered family breakdown. But now community decision makers are now more likely have the personal experience of family breakdown.

Please let me emphasize my suggestions from my experience

3 Before having children couples must decide on the financial and care arrangements if separation occurs

A separation parenting plan of the future children could be registered. There would be more love and less hostility present in those discussions, and hence less involvement of the legal profession. It would also ensure both parties would agree to and have control of possible outcomes. If the couple could not discuss these issues frankly then they may not be ready for children. **Discussing these issues after divorce in an emotional state is a financial win for solicitors who are taxing the children's family they should be assisting. This keeps the courts too busy wasting public resources, long waiting times for cases to be heard.**

4 The paying parent needs to have a say on where money is spent to ensure the money is spent on the children. This would discourage abuse of the system and reduce some financial incentives for family breakdowns.

Good luck and God bless your efforts



Appendum

Comments made by Chief Justice Alistair Nicholson to the effect that 50% custody is unworkable and not part of Australian life. With respect to my situation he is ignorant of the reality that the family law court did not make the best decision for my children and countless others, ie my sons behavioural problems. The present Australian life for seperated families was created by the family law court. Not as a result of community lifestyle. How many parents would choose to be seperated from their children? Fathers are driven from their children to avoid the pain for parent and child of being parted repetitively on contact visits.