

**Committee Secretary
 Standing Committee on Family and Community Affairs
 Child Custody Arrangements Inquiry
 Department of the House of Representatives
 Parliament House
 Canberra ACT 2600**

House of Representatives Standing Committee on Family and Community Affairs	
Submission No:.....	<u>384</u>
Date Received:.....	<u>4-8-03</u>
Secretary:.....	



Dear Chairman;

**Please find attached my submission to:
 The Standing Committee on Family and Community Affairs
 Inquiry into child custody arrangements in the event of a family separation.**

Please also find included floppy disk copy of "word" version of same.

**My address for return mail, and any further correspondence is:
 Mr. Matthew Shields
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 And I may be contacted via mobile phone number 0417977445**

Matt Shields

Standing Committee on Family and Community Affairs
 Committee activities (inquiries and reports)
 Inquiry into child custody arrangements in the event of family separation

Terms of Reference

Having regard to the Government's recent response to the Report of the Family Law Pathways Advisory Group, the committee should inquire into, report on and make recommendations for action:

- (a) given that the best interests of the child are the paramount consideration:
- (i) what other factors should be taken into account in deciding the respective time each parent should spend with their children post separation, in particular whether there should be a presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption could be rebutted; and
 - (ii) in what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents.
- (b) whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children.
- (c) with the committee to report to the Parliament by 31 December 2003.

(1) (a) Upon application to a court, parents must be ordered to undertake a shared parenting arrangement in circumstances where there is evidence that a parent has removed a child from another parent without a substantiated and due cause.

Upon application to a court, parents must be ordered to undertake a shared parenting arrangement in circumstances of repeated contraventions of contact orders.

Upon application to the court, and in circumstances where there is evidence of deliberate psychological manipulation of a child by a parent, an enmeshed parent should be ordered to a diminished contact arrangement with the child, until such time as there is reason to resume a shared parenting arrangement.

A child has a right of, and entitlement to, an equitable arrangement of time and parental care from a parent. Upon application to a court, a court may further declare a child's right and entitlement to a parent. Upon application to a court, this entitlement may be altered where substantiated evidence would cause another reasonable parent in the same circumstance to make some other reasonable arrangement, but without diminishing that child's right or entitlement.

(2) (a) ???

(b) Child Support payments may be reduced on a dollar-for-dollar basis: by application to the Child Support Agency and for payment for prescribed matters. (ie school fees, school uniforms, agreed medical expenses etc.)

Child Support payments may be reduced or terminated by order of the Family Court.

The Catholic Education Office finds no footing for shared parenting within the Family Law Act:

"We act in accordance with section 60B of the Family Law Act; specifically that the child has the right to know both parents... it's the child's right you see...we don't interfere with that, that's why we give the school reports to the child, not the parent..."

Karen Wroughton assistant legal officer catholic education office Perth WA.

(Note: the legal officer from the Melbourne office of the Catholic Education Office provided the same answer almost verbatim to the same question.)

Idle ruminations upon the notion of shared parenting from another perspective:

I've given some thought to John Howard's proposal of 50-50 rebuttable shared parenting and I've come to the conclusion that he is categorically wrong on this one. It should be prohibited entirely.

Non-custodial parents have parental responsibilities; specifically to pay child support to their former partner; but these responsibilities do not extend to include any further contributions to the lives of their former children whatsoever.

The relatively few shared parenting decisions made in court is proof that we just don't need it. In the future those Judges who attempt to make shared parenting decisions should be horsewhipped for their stupidity and then sacked.

The Chief Justice of the family court has made it clear that the concept of shared parenting would make the whole process of family law unworkable. This makes sense because the notion of shared parenting is alien to the spirit of the family law act. We should take the advice of the Chief Justice and ban shared parenting right now. In fact anyone who attempts this obscene practice, should be fined, incarcerated, and perhaps horsewhipped along with the errant judicial officers as mentioned above.

Many people have suggested that shared parenting has the potential to cast children into harms way. I don't know who these people are, but they are obviously right. Anyone with half an eye can see that those parents who struggle to get contact with their kids are really desperate individuals who only want to cause their kids a serious physical injury.

Children who are denied contact with the non-custodial parent become emotionally enmeshed with the custodial parent and this is good because it makes the custodial parent feel important. Also these kids don't develop things like empathy, relationship skills, and a natural ambivalence of attitude; stuff that this society just doesn't need.

Denying a kid contact with the other parent is obviously good for the kid.

Ban shared parenting!

Standards of law and the "best interests of the child" principle.

I have some misgivings for the so-called "best interests of the child" principle. Given that the debate before the committee is conditional upon "best interests" then I wonder if the same type of complaints that are frequently leveled at family court decisions might not also dog the findings of this committee.

Beyond a reasonable doubt is the highest standard known to law. Regardless of its caliber it is a good, if sometimes less than imperfect opinion. This standard of law is a product of legal and social evolution across some hundreds of years. The meaning of beyond a reasonable doubt is sufficiently well understood that it does not warrant further explanation here except to say that it imposes a burden of responsibility upon a court such that the court may only make orders where the available evidence is sufficient to support a safe conclusion. It may not make orders for the wholesale protection of society.

The "balance of probabilities" is another commonly used standard of law. It is also an opinion, and a lesser standard than beyond reasonable doubt, but again it is not an unbridled mechanism. The court is burdened with a responsibility to acknowledge the contributions of all parties to a matter.

As a standards of law go, the "child's best interest" principle is a guess. It is a vague and wishy-washy thing, vague, lacking a frame of reference, a point of origin, some sort of direction or quantity to give it structure.

In the matter of *B v B* Justice Nicholson said that "in a finely balanced matter, if the matter cannot be determined then it is simply because that the matter has not been examined closely enough." What did Justice Nicholson mean by this? Was he trying to say that if your having trouble making a finding then you simply have to keep setting things aside until you are see only that particular thing that you want to see?

Justice Kirby later said that Nicholson was wrong. In the matter of *AMS v AIF Kirby* said that the child's best interests could be determined by taking into account competing applications?

What did Kirby mean? Was Kirby trying to suggest that the child's best interests could be found by carefully sifting through the pages of manipulations and vindictive from one highly conflicted parent or the other? Get fucked Kirby...you wanker!

The "best interests" principle may take into account: elements of truth, notions of equity and fairness, facts, the unacceptable risk principle, the wishes of either parent, or it may set aside as many of these components; as the judicial officer concerned may deem necessary to achieve the end that he or she wants to achieve. I am not suggesting that the best interests principle should be substituted by some formula; but I am in no doubt that a great many complaints arise from this noble, but empty legal euphemism. Any decision that selectively isolates the interests of the child but contemporaneously sets aside the wishes, hopes, ambitions and contributions of those important others in the life of that child (the parents) is a decision that cannot be said to be truly fair at all, not even to the child concerned.

Opponents of the shared parenting principle would argue that shared parenting abrogates of the "best interests" principle because it includes the wishes, hopes, aims and preferences of the parents. They would be right, and I applaud them for this observation. And I think it should.

Society must offer a child its parents.

Children routinely lose a parent in the process of divorce and for no other reason than that there is no mechanism to prevent a custodial parent from unilaterally excluding the other parent from the life of the child.

Opponents of shared parenting would have you believe that children need to be protected from harm during a marital separation. If there were reasonable grounds for believing that a child might be at such risk then they would be right. However if there were no such grounds exists, then they would be liars.

Marital separation is no good cause for a child to lose a parent.