

The Richard Hillman Foundation Incorporated

~ Pursuing Equality, Unity and ~~Justice for Families~~

House of Representatives Standing Committee
on Family and Community Affairs

Submission No: 1176

Date Received: 8-8-03

Secretary:

Submission:

to the Standing Committee on Family & Community Affairs

*on some Social, Political & Justice
Considerations Concerning the Adoption of
Shared Parenting.*

~ o o o ~

Produced by:

John Abbott

of

The Richard Hillman Foundation Incorporated

(Lodged on the 8th of August 2003)

Patron:	Hon. PETER LEWIS., JP, AFAM, MAIAST, RDA (Hort), MP MEMBER for HAMOND & SPEAKER of HOUSE of ASSEMBLY
Post to:	The RICHARD HILLMAN FOUNDATION INCORPORATED. C/o The Public Officer. PO Box 8309 Station Arcade, Adelaide, South Australia 5000.
Phone:	+ 61 08 8285 1940
Email:	rhfine@airnet.com.au
URL:	www.rhfine.org.au

- 1) That this inquiry has been called, shows the high level of public concern toward the present state of family law in Australia.
- 2) We strongly endorse the concept of joint parenting and submit the following in support of our beliefs.
- 3) As a group we have conducted negotiations with many politicians over the past few years, and noted their views on this concept. That the vast majority of our politicians are gravely concerned with the present "sole residency regime" is obvious. The serious impact of actual long-term social and health effects of this presumption is not always appreciated. We are aware that this inquiry will be receiving many submissions detailing the social consequences of family court imposed single parenting. Indeed, specific issues submissions have been filed by our foundation. In this submission we wish to highlight broad social/political/economic reasons in support of reforms to the Family Law Act.
- 4) Over the past 30 years, Australian society has moved to a tolerance of the family court driven model of single parent households. The social consequences of this model are only now emerging in horrifying detail.
- 5) On the whole, as a social experiment, the single parent preferred concept of the family court has failed disastrously. If the shared parenting model were introduced tomorrow, the effects on the children already in this situation would be statistically obvious for at least another decade. The effects on the past victims are now clear but they have grown into early adulthood and will be around for at least 50 more years. The true costs in financial and human terms are unknowable but will remain with the community long after all of us are dead.

- 6) Beyond this, the present models used to decide residency have had a pernicious effect upon our community's respect for the administration of law. Specifically, our present model of a court based adversarial approach to questions of residency usually leaves one party feeling seriously aggrieved and disorientated, as this is often a person's first contact with the legal system. Should a party use the criminal courts to enhance their family court prospects, the wrongly accused party is now convinced that the system will not protect them and as a result they are in part, lost to the civil society. That a society should allow a system where one class of people is seen as being advantaged at the expense of another is bad enough. That it should carry the imprimatur of legal sanction, is an insult to the centuries of struggle against such practices.
- 7) Of great concern is the family court's apparent confusion about its role. It appears that parliament is viewed by the court as an advisory body, to be acknowledged at its whim. For example, since 1995, when parliament attempted to address family law matters, the court could not be accused of embracing the will of the peoples' representatives. We noted with interest the court's arrogance with regard to parliament when it decided to take a foray into immigration policy. Via its Magellan project, the court it seems has decided to attempt to usurp the role of the states with regard to certain child protection issues. One wonders what, if any, are the family court's ambitions for power. Still we should not be surprised when we have a court whose actions are protected from public scrutiny, if it should feel confident to "experiment and explore".
- 8) But the court does not have to pay the costs for this, we do. For politicians to have to face the rapidly rising costs of this is bad enough. That they should not be in a position to explain to the voters the true reasons for their expenditure is disenfranchising to the voters and most unfair to the

politicians. The commonwealth as the administrator of family law must also owe some duty to the states for their actions. The costs of single parent regimes flow back to the states as well. A family court order often leaves them with responsibilities for rent assistance, travel concessions, justice costs etc. All attempts by us to put a "final cost" to this has fallen prey to the "stone in the water problem" - the ripples just keep heading ever outwards! We would strongly recommend that urgent and adequate funding be provided to further study of this problem, with more resources than we have been able to muster. Such a study would be vital to a long-term understanding of the social costs we shall face as the family court's disasters move slowly down the years. As a result, expenditure in other areas may have to be deferred or cancelled to pay for these disasters. It is important to reiterate the need to enhance the court's transparency in the interest of informed public debate.

- 9) As an organisation we are increasingly coming into contact with children and young adults who have been subjected to court residency decisions. They are now expressing grief and sometimes rage that their futures were decided in such a detached fashion, with so little reference to their own stated wishes with regard to what type of relationships they had with each parent. How this will effect their future attitudes to family relationships can only be guessed at. The prognosis, from our experience, is that children can often be convinced to displace their feelings of betrayal toward the "guilty" parent to the institutional processes that decided their fate. Subsequently, they often want to at least talk to the "guilty" party to better clarify matters, and therein lies the hope of future family reconciliation. We find that the young ones expect acknowledgment from the 'guilty' party that they did not act in their child's best interest as a necessary part of the closure process. We recommend that parliament consider ways in which

reconciliation may be implemented in family law, as the longer that these estrangements go on, the harder it will be to resolve them and ever more families are finally atomised, usually after many years of poisonous acrimony. In short, we have a problem that will stretch across the decades and the earlier we address this issue, the better.

10) We have been involved in assisting many persons to prepare for court hearings and in this capacity we always, where age permits, speak to the children. Almost, without fail, the same theme repeats itself. Firstly, the children want their family back, while their second choice is to see both parents separately. We take great care to ensure that the child appreciates the potential complications with regard to friends, sporting events, family events etc. Usually, the child's view is that the problems are worth the gains and they would like both parents to embrace the idea that they are equally important in their children's lives. It should be noted at this point, that as a matter of policy, we will not assist a parent to prepare to contest a shared parenting application if the child is opposed to the idea. We do not subscribe to the policy of "listening to the children" only when they agree with our beliefs.

11) The history of how we arrived at this sad state is worthy of consideration, if only to ensure that we do not repeat it. Essentially, governments of all persuasions have allowed this emotive area to be dominated by one side of an argument and we would probably not be having this inquiry had a wider spectrum of views been evaluated by past advisory councils. And many social policies would never have been implemented if they had been subjected to (ironically) an adversarial debate inside the councils. We recommend that appropriate appointments be made to statutory, advisory bodies and departments as a matter of the utmost urgency, in the interest of a broader and more balanced debate. We should not be

afraid to move away from what is currently "Holy Writ" for that is indeed the essence of who we are. If we had not had this ability to adapt, we would still be keeping slaves, burning heretics, practicing eugenics, state and church would be one and ultimate power would be "the divine right of kings." The doctrine of "one parent is better than two parents" will no doubt be seen by future generations as one of the late 20th century's great follies.

- 12) As politicians you face a challenge - a failure to address this problem will manifest itself as parenting and families become an ever bigger issue at elections. The ascendancy of the 'Family First' party in SA should serve as a warning, for at the same election, a candidate ran representing the minority position but was crushed. 21 times as many people voted family ahead of the minority view because they were given a clear choice. It remains for history to judge how this political feeling will express itself in the future, if dramatic change to family policy is not implemented as a high priority.
- 13) Our research suggests that changes to the family law act itself are unlikely to produce balanced and equitable results without two additional factors being considered. The court is merely the final act in strongly contested cases and the parties have often had dealings with the local "child protection" and "justice" systems. One party may see the use of false allegations as being of value in their quest for residency of children or to influence a future property settlement. Much of the dramatic increase in allegations of both domestic violence and child abuse may be laid squarely at the door of the family court. The acceptance of questionable allegations was a major factor responsible for the failure of parliament's last attempt to reform family law in 1995. The state / territory authorities show no desire to address the abuses of their own courts and it therefore

behoves the commonwealth to take a lead in these areas. The problem can be greatly reduced if two factors are vectored into the equation.

- 14) Firstly a "statutory duty of care" should be imposed upon the authorities charged with "child protection." If, as is so often quoted, "the best interest of the child" is indeed the paramount concern, then any authority which becomes involved in the process must be held to a very high standard of accountability. The commonwealth has a clear interest in the actions of states / territories, often for many years after the initial failures took place. The number of people being forced to rely on income support payments in the aftermath of family break up are high and these costs are of course borne by the federal treasury. And states / territories may experiment with 'social engineering' without fear of one day having to foot the bills. The concept that one may have power without responsibility, is not one that is in any community's interests to endorse. We recommend that the enactment of a statutory institutional duty of care parallel the reform of the family court.
- 15) Secondly, we believe that the question of the use of false allegations must receive special attention. If there is any single event that pollutes an examination of "the best interests of the child" it is the use of unfounded allegations. A failure to boldly address this issue will doom any attempt at reform. We believe that little short of "zero tolerance of false statements" will suffice to markedly reduce this problem. The implications of tolerating false testimony are frightening - our final arbiters are the courts. Should they allow questionable testimony to pass unchallenged, they cease to be defenders and become the oppressors. I ask the committee to dwell a moment upon that awful thought. If any single practice has led to the contempt with which the family court is now widely viewed, it is due to its tolerance of false testimony. It does amaze me that the chief justice of the

family court can demand more resources from government, while tolerating practices that block up his own court.

16) It seems to have escaped him that as the government has had to fund the aftermath of so many disastrous court outcomes, this fact might have had an impact on the potential pool of funds available to his court. The committee will I am sure, receive an avalanche of submissions detailing individual cases of abuses of this type and they will make heartbreaking reading. You will note how often false testimony is referred to! If we have a single recommendation to make above all others, it is this one: that in "the best interests of the child" the government legislate for "zero tolerance of false statements." In conclusion, we do not envy your task. A generation has passed since the introduction of the family law act and the abuses have piled up. However unfair it maybe, the community now looks to you as their best hope of reform and we believe that only forceful action from the national parliament can address the problem. However, be assured that you will be inundated by hysterical claims of the "end of the universe as we know it" etc if the family law act is in any way altered. You will be presented with a mass of "statistics" from all sides. In the reporting time that you have available, you could not possibly examine the bonafides of all these claims. Therefore, you must fall back upon those skills that got you elected in the first place, those for which we gave you your job, your ability to accurately interpret the community's beliefs.

17) One recent detail that may be of interest to you, is the community's response to the announcement of your inquiry. We have noted in our monitoring of the media over recent weeks, that after a short burst of outrage, the defenders of the currently dominant system have fallen largely silent. The tide of public opinion, it seems, influences even them. Therefore, we submit that you do not give undue weight to claims that are

not deemed sound enough to be submitted to full and critical public scrutiny. To condense so complex a human issue as family law reform to a few pages has not been easy. Should the committee hold hearings on this matter we request an opportunity to appear and expand upon this submission.

We thank you for taking the time to consider our views and we will watch your deliberations and final report with great interest.