[redacted]

August 3, 2003

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

Re: Submission

Dear Sirs/Madams,

I am writing to the Committee today to describe my experiences of last year when I attempted to get a fair and equitable shared-residency Order for my two children through the Family Court/Federal Magistrates Service. The following will document my experiences, highlighting two main biases currently in operation under the present system - that of a pronounced Gender bias (in favor of the mother) and also a pronounced Representation bias (in favor of represented as vs. self-representing). The conclusion is that, currently, the system acts against the best interests of the child, working instead in favor of biases that do not support the optimal development of any child. A more equitable (child- and parent-focused, rather than [legal] process-focussed) way of implementing current Family Law needs to be enforced. Please note that this is a personal submission.

Brief Relationship History:

[redacted] and I meet in 1998. She was enrolled in a course at University where I was tutoring. We began seeing each other early December 1998, after the final results had been posted. I moved in with her and her 4 year old daughter in February 1999. On January 12, 2000, I moved out, however [redacted] & I reunited on March 08, 2000. [redacted] was born January 02, 2001, an event that will remain forever amazing for me. I "caught" him as he was born, and cut his umbilical cord. Never have I felt more connected with a person than I was with my child that evening.

On April 23, 2001, [redacted] unilaterally commenced [redacted] in day-care (2 days a week; @ 3 hours per day), even though in prior discussions we had agreed that [redacted] would no attend day-care until at least 2 years of age as I would willingly stay at home to look after the children. I was told of [redacted] commencing day-care after the fact. [redacted] unilaterally increased this to at least three days a week a few months later, again informing me after the fact.

Following a long-term deterioration in our relationship, [redacted] and myself agreed to discuss current difficulties and future possibilities on June 29, 2001. I left work early to do so, phoning [redacted] in advance. I passed her going the other way a block away from our home - she had left, with the children [redacted]), for her sisters'. She applied for sole-parent benefit earlier that day. [redacted] & myself meet on June 30 and came to an "Agreement" and [redacted] and the children returned to our residence on July 01, 2001. Part of this agreement was that we would cohabitate with two residences (a part-trial separation; although in retrospect this most likely was a maneuver to have me exit the "family home" - [redacted] had already been in contact with Legal Aid). I moved into a rented house on July 23, 2001.

Between then and October 05, 2001, [redacted] and myself overnighted at the same residence on 50 of 76 nights, mostly at [redacted]'s residence, with three of the not overnighted nights being due to my leaving [redacted] residence after the children had gone to sleep on nights I was supposedly sleeping over, and 2 occasions where [redacted]

was away from [redacted] with the children. Essentially, however, I was still seeing the children on a daily basis.

On October 01, 2001, [redacted] told me she was pregnant ([redacted]). On October 05, 2001, [redacted] told me that our relationship was over. Between Oct 05 and Oct 24 I only had contact with [redacted] on 4 days, including a period when [redacted] took the children from [redacted], under advise from Legal Aid, to prevent me exercising contact as previously arranged. However, between Oct 25 and Nov 08, 2001, [redacted] and myself had daily contact. From Nov 08, however, [redacted] and myself had decreased contact due to [redacted] asking for less than daily contact as she was finding it difficult seeing me daily. Between Nov 08 and Nov 30, however, [redacted] and myself had contact on 18 of 23 days, including 4 overnights at my place. Between Dec 01, 2001, and January 2002, [redacted] and myself had daily contact, except 5 days when [redacted] and children went to [redacted] This period included 16 overnights with [redacted] and children where I slept on the couch in the living room or in [redacted]'s room when we looked after another's place, and 3 nights alone with [redacted] at my place.

However, [redacted] and I argued, again, on Jan 03, 2002, with [redacted] threatening (as she had done frequently since [redacted] was born) that unless I do as she demands, I will not have contact with my child. I respond "No", and left. [redacted] called the next day to apologize, and I was able to negotiate taking [redacted] with me to my brother's place on the [redacted] for the following weekend. However, when I returned [redacted] on Jan 07, 2002, [redacted] refused to allow me to say goodbye to [redacted] ([redacted]), taking them into the furthest room from the front door, with a friend. Being aware of the Legal Aid contact, I stayed at the front door.

Please not that, with the exception of loud arguments at times, there was never any form or threat of violence between us.

The "Legal" Process:

Two days later I filed my original Application and Affidavit re Contact and Residency. Later, that same day, I received a letter from her solicitor (under Legal Aid). Their conditions of proposed Contact were minimal, in no way reflected the contact I had had with [redacted] (and I was, without doubt, the Primary Attachment Figure – that was never to be disputed in the Court Appearances following – only discounted – by the Court itself!). I rejected the "offer" and continued with the Court process – there was no other avenue open to me. SS had tried to intercede between Jan 07 and Jan 09, but to avail – [redacted] bottom line was the "Proposed Orders" (minimal) as per her solicitor's letter; mine was joint residency/contact.

Between Jan 09, 2002 and Feb 13, 2002 (The Interim Hearing) I only got to see [redacted] on 10 occasions (including 4 overnights). Two arranged contacts were withdrawn, once by [redacted] (in response to my responding to a demand that I sign an agreement to limited contact or have no contact prior to the Interim Hearing that this was illegal), and once by [redacted] in response to reading my amended affidavit and finding something in it she did not like! It was due to this response - withdrawing, or threatening, contact between [redacted] and myself - that I filed in the first place!).

On Feb 13 we "appeared" before [redacted]. I only received [redacted]s (or more appropriately, [redacted]s - [redacted] told me after the Final Hearing that she had had very little to do with the writing of "her" affidavits; that she had had only a half hour interview with each of [redacted] and [redacted] based upon which they wrote everything. She only had to sign them! As such, she takes no responsibility for the content of them or the effect they had on myself, or my children) "response" when I arrived at Court that morning - no consequence to this obvious disregard of process protocol was mentioned by the court (although I made point of raising it), let alone actioned upon - the first of two occasions - I was self-representing, what did I know!.

The Interim Hearing was held with utter disregard for my lack of knowledge of the "process" [redacted] - being a single female, with 2 children in her "care", and another on the way and no employment, had automatic access to Legal Aid - despite the fact that she called this situation into being! I, having just come out of this relationship, and having paid CSA since July 2001 - and more between then and Jan 2002 - could not afford legal representation, and could not gain finance to afford such). As I have said before, I received her "response" on the morning of the hearing - a "response" full of lies and deliberate misrepresentations of truth as to misled the Court (which appeared to be accepted "pima facie", despite my protestations to the contrary, mainly because [redacted] was represented, and I was self-representing). The end result was very limited Contact with [redacted] - alternate Fridays from 11am until Sat 9am; alternate Sat 9am until Sun 4pm - nothing like the Contact I had had with NR before the Court contact. This "Ordered" contact was to be facilitated through JS's parents ([redacted] & [redacted]) who lived beneath [redacted]

[redacted], in justifying his decision, frequently referred to "the enmeshment between the two households", a judgment I do not believe him qualified to make. Further, aside from the obvious difficulties that may arise with further arguing, a close working together regarding the children between the parents/households is, by Family Law, to be supported and encouraged - not forbidden!

Despite multiple requests for additional contact between then and the Final Hearing, none was permitted. From the end of April, 2002, I went on half-time at work to allow me to be more available to see the children.

On March 26, 2002, we had a "counseling" session at Court, which [redacted], although presenting, refused to take any part in. The Counselor allowed this (I guess he had no choice) and made recommendation that the matter be settled through Court. He, unfortunately, didn't make a recommendation for a Family Report as I hadn't asked him to (I had been previously advised by the Court that in our circumstances a Family Report was part of the process). When I spoke with the counselor the day after, he advised that as his report had already been furnished, he could no longer make recommendation for one, however I should ask FMB at the Directions Hearing.

On April 15, 2002, we appeared before FMB for a Directions Hearing. [redacted] began the proceedings by making a personal comment to FMB (they have both served on the board of Legal Aid!). FMB refused my application for a Family Report (and then, when handing down his final decision, FMB noted that there was no family report available. He, however, had had the advantage of seeing each of us give evidence, conduct ourselves in the process of cross-examination and consider the tenor of our evidence. Based upon his observations he found me to be intense and he found [redacted] as relaxed and in control. Not surprising considering I was self-representing and [redacted] was being represented by one of the barristers in the city – in such circumstances between any two people I would think such an observation reasonably expected. However, based on his observation of me, FMB concluded that I was "... quite fixed and rigid in my views ... and would not easily accommodate the views of others." To come to such a conclusion is most questionable and smacks of "another excuse to hand-down the Orders that were decided upon quite some time ago).

He refused to even consider my application for Amendment to Interim Orders (allowable under Order 9; Division 2 (4) (a) - Family Law Rules, 1984, p. 67 – throughout this process I have done my research, read the law, and been aware of what "should" happen ... even though it seldom worked out that way!) due to my being on half-time at work which allowed me to take advantage of a mid-week contact "offered" by [redacted] at Interim Hearing and due to Fri 11am pickup interfering with [redacted]s sleeping pattern.

Further, FMB also refused one of my proposed witnesses (a psychologist I had been seeing to deal with the stress and etc resulting from my relationship with [redacted] and these Court proceedings; [redacted] Interim affidavit had attempted to seriously question my mental health) and questioned the suitability of my other two proposed witnesses (my Team Leader and my Brother).

FMB then ended the proceedings by "warning" me not to use the Final Hearing to get back at [redacted]. Notably [redacted] (and [redacted]) were not given the same warning, and FMB had absolutely no precedent upon which to justify making such to myself. The impression I gained by the end of that Hearing was that my situation was hopeless. As a self-representing male I didn't stand a chance. However, I was still determined to do the best I could, and so continued.

[redacted] was born on Friday, May 24, 2002. I was permitted to see him at the hospital on the Saturday and Sunday (thankfully had Ordered contact with NR that weekend). The day after, [redacted] and [redacted] were discharged. [redacted] said that she was thinking of a couple of hours contact between [redacted] and myself every second day, or so, however would have to check with her solicitor first (!).

After a delay while [redacted] played lawyer games, I eventually received an "offer" of one half hour with [redacted] either side of contact with [redacted]. I had spoken with the Team Leader of Child Health (a very well respected and knowledgeable child health nurse and mid-wife with many years experience) about what was considered minimal sufficient contact with a new-born to facilitate an adequate bond for a non-resident parent, and she had responded in line with [redacted]'s original thoughts. When this was put to [redacted] he increased offered contact to one hour either side of [redacted]'s contact - utterly inappropriate and insufficient, however there would be no further negotiation. This was a take it or not have any contact with [redacted] until Ordered such at the Final Hearing in August offer! I accepted it (what choice did I have) and saw [redacted] (asleep more often than not) in his grandparent's residence for an hour before and after contact with [redacted]. On only three occasions, despite my protestations that joint contact was necessary to ease the adjustment difficulties [redacted] may experience when joint contact did occur, was NR present when I was having my "hour" with [redacted].

This was continued until the weekend before the Final Hearing when, due to [redacted] parents being out of town (despite writing in [redacted] [/[redacted]] affidavit that they couldn't take holidays under the current Contact conditions as [redacted] needed them there), [redacted] asked me to help with the children when I dropped [redacted] back after a Fri-Sat Contact and I was there for the entire morning. This was the first time I had been able to feed [redacted] (who had already transited to formula), change him, put him to sleep, and be there to pick him up when he awoke. (Simple things that I had been able to do with [redacted] for most of his first year - [redacted] and I shared primary care responsibilities with [redacted] being primary care-giver when I was at work, and myself being primary care-giver evenings, weekends, RDO's, holidays, etc. This, however, was not accepted as such by FMB at the Final Hearing!)

The Directions Hearing Ordered "that each party file and serve by July 26, 2002: a) one affidavit setting out any further evidence-in-chief; b) one affidavit of any witness to be relied upon at trial." I did so on July 24, 2002. [redacted] and [redacted], however, filed [redacted] (witness for [redacted] affidavit on July 30, 2002, and [redacted]s not until August 02, 2002. This gave them an unfair advantage over myself in that they had been able to prepare their affidavits having already read mine. I spoke with the FMS about this (FMB's Associate) and was told that a Compliance Hearing would begin the Final Hearing. This did not happen. Again, the Court supported the "Legal professionals' " disregard of the law, to the detriment of a self-representer.

In the weeks preceding the Final Hearing I "haunted" the local Community Legal Service, having my affidavits, detailed "Orders Sought" for both [redacted] and [redacted] (on different transitions to joint residency due to their ages - these were also cleared with the Team Leader at Child Health to ensure that they were developmentally appropriate; notably the Legal Service asked to keep copies of these to assist other self-representers), Propositions of Law (detailed summary of recent decisions by the FMS across the country - including one by FMB ... which he contradicted in coming to his decision in our case!), and etc. I was as prepared as any self-representer could be, and the opinion at the Community Legal Service was that I had the best chance of a self-representer at gaining Joint Residency Orders that they had seen, until they found out who the Barrister was ([redacted] is one of, if not the, leading Barristers in Brisbane).

The Final Hearing occurred on August 15, 2002. [redacted] was represented by [redacted] and I self-represented. Also in Court were [redacted] and [redacted]s parents ([redacted]&[redacted] - with whom I have managed to always maintain a good relationship). I was cross-examined by [redacted] first and then I cross-examined [redacted] [redacted]s cross appeared to center on out-dated psychological opinion (an American text written in the early 1980's - in the political climate of such - well before the (Australian) Family Law Reform Act was passed) even though he later referred to my profession (Psychologist) as "psycho-babble", and [redacted] and my disagreements regarding discipline of [redacted] and my withdrawing from [redacted] in preparation for the inevitable separation between JS and myself. FMB, himself, rejected any advise from the Child Health Team Leader, despite Child Health's very long term and excellent reputation within this State, as not-recognizable (shouldn't that have been an argument to be put forward by [redacted]).

During my cross-examination of Judy, she admitted that her Interim Affidavit (on which they were still relying) was full of lies and misleading exaggerations of truth; she admitted that the Orders she was seeking were inadequate (essentially continuing the current arrangements, along with her being "responsible for the [children's] long term care, welfare and development", until each child reached

school age when Contact would become alternate fortnightly and half school holidays with some, minimal, provision for "special" days, and a minimal graduation to [redacted]s contact for [redacted] over the next two years); she admitted that I was an excellent father; she was permitted to "wax lyrical" in her responses introducing new evidence as she did so; she was also permitted to refuse to answer reasonable questions (e.g., once she had admitted that the Orders she was seeking were unreasonable, she then refused to speculate on what may be reasonable without consulting her solicitor and barrister – FMB allowed this!); she admitted that "her" decisions re contact (both with [redacted] and with [redacted]) had been her solicitors decisions – i.e., that the children's best interests were secondary to her solicitor's interests for what is best for a trial!; and she admitted that, despite her solicitor's best efforts to demonstrate otherwise, her and my communication over the past few weeks had been good and was steadily improving – we could easily work together regarding the children. There were a number of other admissions, however the above are the most important ones.

Much to [redacted] and [redacted]s consternation, [redacted] and myself sat together chatting following lunch while waiting for FMB to dispose of other matters before [redacted] and myself were to put our submissions forward. [redacted] congratulated me on the way I handled my cross-examination of her. At the conclusion of Submissions, FMB also commended me on the way I conducted myself throughout this trial.

On August 23, 2002, FMB handed down his decision. [redacted] and myself were present. Essentially [redacted] got the Orders she [redacted] requested, with two exceptions. I was Ordered an additional weekly mid-week contact of 3 hours with [redacted] (FMB did not see it necessary that [redacted] also be in attendance) until [redacted] turned one year of age (when he would be joining [redacted] and myself for the day only one day a week of [redacted]s Contact), and that we were both responsible for the long term care, welfare, and development of both children. There was no mention of [redacted] admission of lies and gross misrepresentations. There was no concession to any of the valid points I'd put in my submissions (both written and verbal), or had been conceded to by [redacted] under cross. There was no provision made for Christmas, Birthdays (the boys or my own), other special days until each boy turned "school age" (and even then, I was only Ordered 2 hours contact on my Birthday and no provision at all for contact on their Birthdays). There was little recognition of the detailed relevant Propositions of Law I had prepared - they were, essentially, ignored, including (as I've said before) one from FMB himself. As far as The Family Law Reform Act is concerned, FMB's "decision" was in direct conflict of it's principals. This, Committee members, is what appears to pass as "justice" in today's Courts!

However, from that date, until October 26, 2002, Contact with both boys was substantially more than Ordered. Even though Orders allowed contact with [redacted]

only at [redacted]'s residence until he was 6 months of age, from September 01 (Father's Day) I was able to take him and his brother away from [redacted]'s residence. From early September I was able to have both boys at my place (boy, did [redacted] react badly to that, initially – he was used to "our" time being exclusive – while I fed [redacted] destroyed an Azalea plant – in plain sight, perfectly aware that I couldn't stop him without disturbing [redacted] from his first feed at "Daddy's" place). These joint visits at my place increased in time and frequency, and also included JGS on occasion. [redacted] quickly adjusted to this. However, [redacted] still had the "power and control" over when I could see the boys additional to Orders, and, as had been the case in the past, she would withdraw additional contact whenever she would get angry at/upset with me – our "relationship" was still somewhat ambiguous – with "offers" made and retracted.

Early October, I remember a mutual friend of [redacted] and myself asking how the bond between [redacted] and myself was developing now that we were getting good contact. I remember replying that it was improving substantially, but would never be the bond that [redacted] and myself have.

On the morning of October 26, 2002, (JS's 31st birthday) she awoke to find [redacted] dead beside her (aged 5 months and 2 days). [redacted] was with me ([redacted] had called me the afternoon prior to ask me to take [redacted] the Friday night instead of the Saturday morning as she wanted to have some drinks with a friend – [redacted] and myself were supposed to go over on the Saturday morning to make a birthday breakfast for JS and then I'd have both boys at my place for the day) and [redacted] was with her father.

Due to [redacted] having been drinking and that [redacted] slept in her bed (which was usual), the Medical Examiner found the cause of death to be "undetermined, most likely a sleeping accident". Both [redacted] and myself have written the Coroner expressing our disagreement with this finding (no medical history was taken, or considered; the initial investigating police were "hostile" at the post-mortem examination; even though I talked with the Medical Examiner (face-to-face) giving him the relevant medical histories and etc, as did the family GP (over the phone), he refused to reconsider his "finding"). Currently, the Coroner has sent the evidence to a specialist Forensic Pathologist in Sydney for his comment and interpretation. I have to admit that my letter is for [redacted], [redacted] and [redacted]'s benefits, more than anything else.

Following [redacted]'s death, the extent of the Court's decision in a practical (disaster) situation became very apparent, causing further grief and loss than would normally be experienced under such experiences. I could not sign the burial arrangements, [redacted] had to. I wanted to place a head stone on [redacted]'s grave (which [redacted] agreed to – although, to my knowledge she hasn't been there – I have taken her

Mother ([redacted] there twice) however, I had to get signed permission from [redacted] to do so (I was his father, however, due to the Court's decision, I had no authority to even mark my son's resting place). All additional contact with [redacted] was ceased by [redacted] To hell with [redacted]s needs to continue the good contact he'd been having with his primary attachment figure, to hell with my needs having lost one child to have good contact with my other son - [redacted] "needed" him and so everyone else's needs were ignored - thanks to the Court. Since then, the only "additional" (to Orders) contact I've had with [redacted] has been when I've specifically requested such due to special (non-[redacted]) occasions, and/or when [redacted] has wanted it because it suits her convenience (NB: If my specific requests do not suit her convenience, then my requests have been denied).

Christmas, 2002, (although not a Contact day) I was able to pick up [redacted] at about 4pm. [redacted] had previously promised that Christmas would be 50/50 - it wasn't. My brother came up from the Gold Coast especially to be with his only nephew, but we had to wait for [redacted]'s convenience. [redacted] was very tired by the time I got to pick him up. Christmas just wasn't Christmas without my son to be there to enjoy it (rather than get through it until he feel asleep after opening his presents). [redacted]'s [redacted] Birthday ([redacted]) was even worse - I had him for 2 hours (from pick-up to drop-off). I got him late afternoon, and he hadn't had his usual afternoon sleep. When we arrived at my place, he asked to go to bed (until he saw more presents!) and was utterly exhausted. He was dressed in a pair of nappies only (what if I'd had people over to help celebrate his birthday?). I do have clothes here for him (just in case), but that isn't the point. As the non-resident parent I have to accept whatever conditions are placed upon us by the Resident parent - that is utterly unfair on both child and non-resident parent.

When I rang CSA to advise them of [redacted]'s death, I was responded to with a very rude and totally unfeeling response. I had to "prove" that [redacted] had died! Even then (I sent in a copy of his "Service") they got it wrong, and put [redacted] as the deceased! Since then I have received letters from the Immunization Board telling me that [redacted] has not received his current shots - there appears to be no coordinated response in this country! Each little contact is just another blast of grief for the parent who is trying to deal with it (essentially alone - as the Court has seen fit, without justifiable reason, to take my other child from me except for brief Contact). When every step you take is so full of pain, every obstacle put in front of you becomes an insult and a further reminder that you are not the parent you wanted/deserve to be. The current system is full of such obstacles. The current system, by my experience, in no way allows for the best interests of either the child or the parent(s) to be served.

As a clinical psychologist working with children and youth, I daily see parents who it would be better if they were not (both fathers and mothers). When you have two individual parents who can serve the best interests of their child/ren equally well, but one is hampered (totally) due to the current systems and biases, that is not justice. That, in fact, is negligent injustice. That is what my children and myself have experienced, and my surviving child and myself continue to experience.

I ask that the Committee endorses a basis of "Joint Residency" as the rule, with exceptions to be proved from there, rather than the current "status quo" where (typically) the mother has full residency and (typically) the father must fight with everything they have, or are likely to have (i.e., through huge debt to pay for lawyers, or have to appear in there own representation uselessly fighting against the biases inherent in the current "system"), to attain a bare minimum of proper contact with their child/ren.

If the Committee would like to discuss my experiences further, I would be happy to appear before you. I am including the "Orders Sought" as I wrote them, my consideration of the 68F(2) factors, and "The Propositions of Law" I relied upon in the Final Hearing (See "Case Outline" document attached - please treat this document as confidential). If the Committee would like to review any other material, I would be happy to furnish such. If the Committee requires my permission to access transcripts of the "hearings", please accept this submission as such authority.

I write this submission with the full knowledge that the Committee is not in a position to alter the Orders that have been laid down by FMB (or RD) - although a recommendation by yourselves that all recent cases where one parent has sought shared-residency, especially self-representing, and been denied it should be automatically reviewed would be useful. I write so that the Committee may gain an understanding into what disenfranchised parents may experience under the current operation of the Family Court/Federal Magistrates Service, especially when they are self-represented (as are, at least - by Family Court statistics - 1/3rd of current litigants). The current system is set up to promote litigation and conflict, not to assist in making the end results of parental separation in the best interests of children to that partnership. This needs to change, and quickly, if Australia is to have a generation of "separated" children who can still work within multiple family environments to make useful future lives. Both in my public (CYMHS) and private practice as a psychologist I frequently have to address the stress resulting from the perceived "abandonment"/"estrangement" of one parent from their child/ren (and vice-versa) imposed by the Courts. As a private citizen I have, and continue to, experienced this personally.

I have witnessed the effect this has had on my son [redacted] where, especially earlier on (he is a very resilient child and has adapted to changing times well) [redacted] would become very upset at "drop-off" times. He still does though expresses it now differently, but also appears to have accepted the "fact" that "daddy" is only available 3 days a fortnight - due to the Court ordering such. This is quite unfair (to everyone involved) and in no way promotes a "proper" parent-child relationship. [redacted] and myself are essentially estranged the majority of our days, for no other reason than the Court decided so - due, I feel, to the gender bias (which was a major argument of [redacted], and the bias against self-representers.

For a 2 ½ year old to "learn" and know that "daddy" is only available 3 days a fortnight must be a terrible thing, especially when "daddy" would be more than willing (and is very able) to be available every day of that child's life - how do you tell a child so young that? What lessons about life is a child so young learning? Is this the way we want our future leaders to be growing up knowing? We need a system that promotes equality of parenting, except where circumstances obviously argue against specific individuals as being suitable to parent their children. In our case, such mitigating circumstances did/do not exist. My child, and myself, are being "punished" daily because of the current system with it's biases. This is not justice, this is not right. This is a crime against all decent human beings. This is the current state of Family Law in Australia - it needs to be changed, and quickly.

Yours Faithfully

[redacted]