

10 BAYSHORE PLACE
CLEVELAND QLD 4163

House of Representatives Standing Committee on Family and Community Affairs	
Submission No: 897	PH: [REDACTED]
Date Received: 8-8-03	05/08/2003

INQUIRY INTO CHILD CUSTODY ARRANGEMENTS IN THE EVENT OF FAMILY SEPARATION

Having utilised the services of the Family Court over the past seven years there are many examples where the Court should review existing protocols and perhaps consider investigating new protocols.

In the first instance the Court is removed and distant in that the operational times are reduced and do not afford working parents the greatest opportunity to avail themselves of services. This creates a bias to parents who do not work and have few commitments.

It would be highly beneficial if the courts provided extended hours and weekend services for parents. This is required due to the constraints of employment. Furthermore, the Court may preside over the construction of orders but fails miserably in the case management and review process of each case, to ensure orders reflect the true situation as the family unit evolves, with children aging and desiring different circumstances.

The Family Court does not have in place a system of parents being capable of quickly enforcing orders. This could be overcome by the establishment of case managers whereby each parent can utilise a log, similar to Centrelink or is afforded the opportunity to register a breach of orders.

It is apparent that human nature cannot be relied upon to adhere to the orders astutely as currently the Family Court orders are utilised for child support and Centrelink benefits.

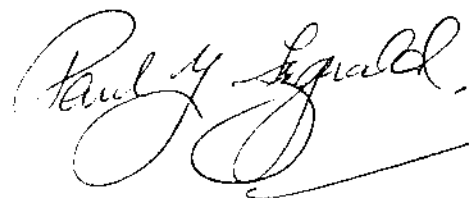
To provide a brief of my views I shall encapsulate my issues in point form which can be more easily digested and considered. I have attempted to follow the terms of reference and appreciate that some may not fit the guidelines as specified, but are very much inter-related to the processes.

1. Make the Court more accessible to working parents, by extending operational times to 9.00pm weeknights and including operations until 6.00pm Saturdays, with a 24 hour advice line, 7 days a week.
2. Establish individual case management protocols whereby parents have the residency orders reviewed each 12 months to ensure orders reflect wishes and family structures.
3. Make provision for parents to gain quick access to the Court to notify of residency breaches whereby orders have some adherence instead of personal interpretation.
4. The wording used by the Court should also be addressed. A relationship breakdown should be viewed entirely differently from a dysfunctional family where abuse exists. A relationship breakdown is not always a family breakdown but does in time create one.

5. Improved relationship classes should be mandatory in school, which should include teaching all school students the functions of the Family Court.
6. Where separation of a couple involves children, joint residency should be mandatory unless there is a history, or proof of abuse can be obtained.
7. Where a parent claims any form of abuse exists toward the children, the children should undergo immediate psychological and medical assessment, and as such supervised contact should be considered mandatory.
8. Parents should be prevented from lodging residency proceedings for at least 3 months to prevent emotion dictating the content of statement, as *statements can be and are influenced by the degree of child support obtainable relative to which parents retains custodial residency.*
9. At all times the Court should not show prejudice against working parents, fathers or mothers who may be the main breadwinner. This is very prevalent and more so because arguments are used about children getting to school or after school care. Having been in this situation, working fathers are just as competent as parents who do not work, having greater opportunity to provide for the children.
10. The Family Court should provide a Children's Help line whereby the children can state to a representative of the Court if they genuinely believe they are being denied sufficient contact with either parent. All too often, the children are ignored and stopped from being truthful due to the actions of parents.
11. The Family Court should better profile families and parents. Testing should be possible if one parent doubts the mental stability of the other parent.
12. The Family Court should be capable of enabling parents the right to request medical examinations if they believe or suspect a medical condition is grossly affecting the behaviour of one parent. This is not to place undue emphasis upon one parent but it may actually help reconcile relationships if one parent suspects a medical condition has contributed in some way to behaviour toward the other parent or child.
13. The Family Court should be required to institute a better process of assessing the costs for child support. The child support agency relies upon very outdated legal judgements which do not reflect the second family or blended family situation.
14. The Family Court should clearly benchmark minimum of support levels and include income derived from Centrelink.
15. The non-custodial parent if the only working parent is inhibited from establishing a new life if restricted by excessive claims. This needs urgent review, as such a failure by the Court to ensure fairness has and will always result in ambivalence toward the Court and government agencies.
16. Custodial parents should be required to show-cause where child support and income was spent in supporting the children. Again a review process through an auditing protocol is warranted.
17. Parents should not be allowed to move residence and not inform the non-custodial parent of the new address or contact details. This occurs regularly in an attempt to deny the non-custodial parent rightful contact.
18. Schools should be notified by the Court to advise both parents of educational matters, behaviour and ensure the parents are equally respected.
19. The Family Court should move away from the courtroom setting where matters require the childrens views to be taken into account. Many cases become a trial because the counselling is not geared to gain solutions. Current counselling sessions are often at best a sounding-off opportunity not a real problem solving forum. Better educated legal professionals, possibly registrars can be better utilised in a more informal situation.
20. The access to the Family Court is also difficult. The Court should examine decentralising administration and utilise local courthouses where a group of



- registrars could handle cases in the suburbs. This would make the court more accessible and useable.
21. The costs of proceedings can inhibit justice. The Family Court services should not be dictated by the class discrimination of the poor and the working poor. That being, you do not work, you get Legal Aid, and if you do work, you pay the going rate. The Family Court should investigate more lateral use of schemes which include improved access and user pays.
 22. It could be suggested that the Court affords individuals to seek their own legal representation, but that the costs are scheduled by the Court and repayment is made on a basis similar to the HECS scheme. We are not talking education, we are trying to gain affordable access to provide justice. The costs of legal representation inhibits justice. This should reduce the reliance upon legal aid and abuse of the legal aid system for genuine cases.
 23. Each parent must have the right to be represented. Better access and better opportunity to pay for representation must be addressed.
 24. Property settlement is a matter which creates too many vexatious claims. At the time of notification of separation, a well established case management protocol should allow for joint marital possessions to be listed and assets disclosed on a register. Property settlement should be better controlled by a trust manager of assets.
 25. Property distribution is a matter whereby in time, the children may leave the original custodial parent and later live with the other parent. Assets should be transferable but the current law is inflexible and as such personal items of the children and many household appliances should not be listed as items for disposal but as possessions for the well being of the children.
 26. Equity of property ensures the children and each parent are not disadvantaged if circumstances change. The Court must address the basic standard of living of each new family home and this must be assessed by an independent person. Why should children be denied basic living standards because the custodial parent retains all possessions for the children.
 27. Superannuation should be considered as a long term asset and as such the Court should change the means of distribution whereby following 12 months of marriage or cohabitation, couples can apply to split the superannuation contribution from that date to enable each parent to have a superannuation scheme. This would greatly assist each parent to minimise areas of dispute, but would establish greater financial independence for non-working parents if separation occurred, each parent has a superannuation scheme.
 28. Lump sum property settlements should include the consideration of placing a degree of the money in trust to ensure the childrens education and living standard is a priority. For too long, settlement is made in bulk and the money which should be used for children is often wasted and directed in the wrong way. Case management would prevent abuse and ensure the children benefit as the property settlement is not just to support the ex partner.
 29. Case management is imperative to ensure adherence to orders and to achieve outcomes that ensure the children are properly cared for. Non-custodial parents should be able to request a review if they believe child support is not being used properly.
 30. The Family Court must review the situation whereby by second marriage the custodial family is advantaged by increased household income, but the non-custodial working parent is required to pay child support which does not assist housing needs or living standards. This situation greatly disadvantages non-custodial working parents and the child support is often not used beneficially.

A handwritten signature in black ink, appearing to read "Paul J. Leggett". The signature is fluid and cursive, with a long horizontal line extending from the bottom of the last letter.

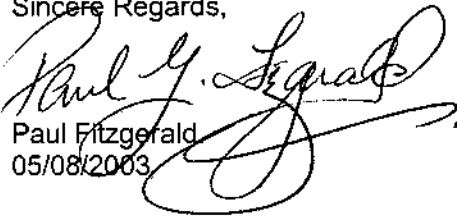
In conclusion, I strongly advocate joint residency to ensure all parties have the opportunity for good relationships. This enables parents to have improved self-esteem in relation to parenting, instead of feeling powerless.

Joint residency should also minimise the situation whereby both parents are locked into a poverty cycle which creates disputes over residency and therefore who obtains the bigger slice of Child Support and Centrelink benefits.

Joint residency is a welfare issue. The Court must remove the better parent syndrome associated with residency. this is a fallacy, induced by the perception that children prefer one parent over the other.

I strongly advocate that the Family Court improve access, operating times and payment schemes for legal services which ensure improved justice. Better case management and improved access for children to have a say and seek redress to ensure their rights are listened to are paramount.

Sincere Regards,

A handwritten signature in black ink, appearing to read 'Paul G. Fitzgerald', with a large, stylized flourish extending from the bottom right.

Paul Fitzgerald
05/08/2003