

Submission No: 551

Date Received: 7-8-03

Secretary: .....

**FAMILY LAW REFORM ASSOCIATION NSW Inc.**  
*Working for equality for all in family law matters*  
Established 5th March, 1990

4<sup>th</sup> August, 2003

Ms Beverley Forbes  
Committee Secretary  
Standing Committee on Family & Community Affairs  
Child Custody Arrangements Inquiry  
Department of the House of Representatives  
Parliament House  
CANBERRA ACT 2600

Dear Ms Forbes,

**Re: Inquiry into Child Custody Arrangements in the event of Family Separation**

Please find enclosed our association's submission into the above Inquiry.

Representatives of our association are available to appear before the committee to discuss our submission in further detail when they are in Sydney.

Yours sincerely,



*Coral Slattery (Mrs.)*  
*BSocSc ADipSocSc (Community Welfare)*  
Secretary

# - SUBMISSION -

**TO: THE COMMONWEALTH GOVERNMENT STANDING  
COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS**

## **INQUIRY INTO CHILD CUSTODY ARRANGEMENTS IN THE EVENT OF FAMILY SEPARATION**

**FROM: The Family Law Reform Association NSW Inc.**

This submission was prepared with the presumption that all recommendations within it are in the best interest of the children with due consideration being given to BOTH parents of the children.

### **SUMMARY**

**The Family Law Reform Association NSW Inc strongly supports the notion of Shared Parenting.** Our Association believes that a 50-50 Rebuttable Presumption of Shared parenting is mandated for Australia. Public opinion is strongly behind this move as seen by recent polls. We discuss the increased use of Mediation and Counselling and the formation of a Family Matters Tribunal. This submission calls for the introduction of Shared Parenting as quickly as possible, for greater regular contact with Grandparents and other close family members and for the immediate overhaul of the operation of the Child Support Agency. We express our support for many of the findings in Family Law Pathways Advisory Group out of the Maze Report (29 August 2001)

This submission discusses the appalling suicide rate among young men and the implication of the Child Support Agency and family break up as strong drivers of these unnecessary deaths. We go on to look at the idea of Shared Parenting and make recommendations for its introduction and suggest some methodologies for its practical application.

Further, this submission details recommendations for the overhaul of the Child Support Agency. It suggests ideas for merging the Child Support Agency with Centrelink. The submission suggests ideas for improving the formula used for child support assessments and for taxation relief for payers of child support. We then raise the issue of AVO's and the difficulties these bring to Shared Parenting although we note research to indicate that domestic violence reduces with fair contact with the children and child support payments.

#### **Quick Links:**

##### **Appendices**

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Appendix 2	How to Make Shared parenting Work
Appendix 3	Shared parenting Agreements
Appendix 4	Parenting Plans
Appendix 5	Shared Parenting Arrangement
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#### Introduction

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<u>Recommendation 7</u>	Reduce the use of AVO's

## **SUMMARY OF RECOMMENDATIONS IN THIS REPORT**

### **Recommendation 1: Extensive use of Counselling and Mediation Services**

Couples must attend counselling where an assessment of their situation can be made. The Counsellors report is sent to a Mediator where the couple will attend mediation in order to agree to the Shared Parenting arrangements for the children of the marriage and to agree to a suitable property settlement bearing in mind the agreed parenting arrangements. The minimum time couples must attend Mediation should be 2 X 3 hour sessions before proceeding to the Family Court.

**Should mediation not resolve these issues the couple will be directed to a Family Matters Tribunal** where the couple can put their case before the tribunal for a ruling. Solicitors should not be permitted to attend Tribunal hearings. Parents will self-represent in family matters or be allowed a 'friend' to assist them. The Tribunal should be empowered to issue Interim Contact Orders. An Interim Contact Order will be applied for immediately (within 7 days) to allow both parents to have ongoing contact with the child. The Family Matters Tribunal or a Family Court Registrar should be able to issue this Interim Order promptly as the number of cases before the Family Court will drop if these recommendations are adopted.

Solicitors should be kept out of the mediation and not involved unless matters are required to go before the Family Court of Australia. We feel this will be in a small minority of cases. **Solicitors should only be used as a LAST RESORT.**

A **Family Matters Tribunal** could be established to register all Agreements, register amendments to Agreements and to resolve breaches of Agreements. The Agreements would be filed with the Tribunal by Registered Mediators. Such a Tribunal could be funded by money saved in the Family Court and Child Support Agency.

We re-state the following:

Even the Chief Justice agrees that the adversarial system of the Family Court is not suited to Family Matters involving the parenting of children. We refer to the **FAMILY COURT REVIEW, Vol 40. No 3, July 2002** - which reproduces an address which Chief Justice Nicholson gave at the 25th conference of the family court in Sydney in July 2001. On page 287 the CJ concurs with the following:

***"The original architects of the [Family Law] act recognised that the adversarial system was an inappropriate vehicle for the resolution of family disputes in the vast majority of cases, particularly where the continued parenting of children was an issue."***

**Accredited mediators should be registered and supported by the Department of Community and Family Affairs or the Attorney General's Department and be empowered to offer guidance for contact arrangements with the children and to provide guidance for agreement to be reached on child support payments where necessary. This empowerment should include the ability to review agreements at any time. As the user will pay for this service, its use will not be abused.** A Family Matters Tribunal should be established to Register Shared Parenting Agreements and to resolve disputes without the need for the parties to engage solicitors. Appeals re Tribunal decisions could then go before the Family Court or Federal Magistrate's Court.

Mediation would commence with the following presumptions:

- Shared Parenting will be agreed to.
- Property settlement will be fair and equitable with consideration to Shared Parenting and the interests of the children.

Shared Parenting implies that the children spend 50% of the time in the care of each parent. This time may take many forms depending upon the circumstances of each parent. Some parents may live overseas or interstate, some may work shift work, and some may travel frequently as part of their employment. There are many reasons that flexibility in the Shared Parenting arrangements is needed.

Should this recommendation be adopted significant savings to the Government will result as the Child Support Agency could be wound back or its function transferred to Centrelink. We strongly are of the opinion that Shared Parenting will greatly reduce the rate of suicide in conjunction with issues regarding the Child Support Agency and family break up resulting in detachment for the non-resident parent.

### **Recommendation 2: Shared Parenting and Distance**

We recommend that the mediator gives careful consideration to each parent's circumstances when negotiating the Shared Parenting arrangements. Should parents live a significant distance away from each other, consideration must be given to more contact with one parent during holidays. It is important that the children's schooling maintains continuity. Parents should be able to arrive at suitable Shared Parenting aiming for 50-50 time over the course of the whole year. This contact arrangement should be agreed to and registered as a Contact Order by Consent with the Family Court of Australia following mediation. If through distance or work patterns 50-50 Shared parenting is not possible over the course of a year, then the best compromise possible should be sought via mediation with both parties. An adjustment for child support payments should be agreed to at this time.

Some parents will incur significant cost of contact so allowance must be made in the child support assessment. Child support assessments must be fair to both parents and allow for up to 50-50 contact with both parents. See Section 2 below.

### **Recommendation 3: Breaches of Sharing Parenting Agreement**

That the Family Court of Australia directs the Sheriff's Dept. or a new body of enforcement to assist in the enforcement of Contact Orders. We would expect the number of breaches of these Orders to reduce by a huge amount if the previous recommendations are adopted but it is vital that contact be conducted as agreed by the parents at all times. At present Contact Orders are breached often and no action is taken due to the lethargy of the bureaucratic process and the reluctance of the judiciary to impose penalties. Community Service Orders may be used as a punishment where Orders are breached to ensure that Contact Orders are enforced to facilitate the Shared Parenting process. Perhaps the children could spend time with the other parent during the carrying out of Community Service by the defaulting parent should this punishment become necessary.

Everyone is aware of the distress placed upon parents during separation and divorce. This distress is most evident among the children of separating couples. This submission makes a number of recommendations to assist in reducing the immediate and ongoing trauma to the children in such cases. If parents, either separated or together, are under stress it affects the children within that family. We need to take immediate and decisive steps to reduce the trauma placed upon our children by separation and to ensure that policies are put in place to ensure the best interest of the children is maintained until adulthood. **The Family Law Reform Association NSW Inc. (FLRA)** strongly supports the proposal by the Government to make certain changes to the current system of arrangements in the event of family break-up.

Many of the recommendations in the ***Family Law Pathways Advisory Group Out of the Maze Report (29 August 2001)*** are reiterated in this submission. We have intentionally repeated many of the findings of this report as a result of independent research from many sources including recent media coverage. Where we have reiterated findings in this report it is not by coincidence, but as a result of our research finding the same issues. This substantiates the validity of this report.

### **Recommendation 4: Visitation to Grandparents and Others**

In most circumstances where the grandparents and other close family members (Aunts, Uncles, and extended family members) of each parent live within 100km of one or other of the parents and Shared Parenting is being accommodated, these family members will see the children once in each 30 days where appropriate. Either parent may make these arrangements or they can take turn about if the parents live in the same city.

### **Recommendation 5: CSA – Responsibility, Accountability and Transparency**

The Child Support Agency (CSA) needs to act in a more impartial and less biased manner when dealing with payers. Currently CSA staff lack consistency in their responses to clients' questions on how they arrived at certain decisions. CSA's staff currently lack the ability to effectively explain the ruling or decision especially when change of assessments occurs. CSA's staff also fail in their ability

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to link their decision to the correct and applicable part of the legislation. The CSA need to learn from Centrelink's software system that works on algorithms which are knowledge and rules based. Utilising this system eliminates any personal bias of the CSA staff. The following is an extract taken from the CSA's 2003 business plan *"issues raised in feedback from our clients, in particular, our failure to follow through on promises that we make, our inability to give clients viable options and the inconsistent advice we sometimes give."*

The CSA must change the formula it uses to assess the level of child support payments. The formula should be based upon the Taxable Income of both parents and child support should only become an issue if Shared Parenting is not adopted by the parents. If both parents care for the child 50% of the time then both must contribute equally.

**Recommendation 6: Significant Cost Savings by incorporating CSA into Centrelink**

In 1999-2000, the cost of transferring money between parents was 14.3 cents per dollar transferred (compared to 13.9 cents per dollar transferred in 1998-99). In 2002 this cost has increased to \$0.15 per dollar transferred. This indicates rising costs within the CSA.

By incorporating CSA activities within Centrelink operations will enable the Government to achieve enormous cost savings and benefits not only to the Government and public but also to the relief of the disgruntle clients of the CSA. While Centrelink has long experience and knowledge in collecting money the CSA is still struggling to collect from 66000 of its defaulting clients with a budget allowance of \$27.3 million plus a further \$31 million dollars of tax payer money being spent to recover \$97 million.

**Recommendation 7: Reduce the use of AVO's**

The use of AVOs (DVO's in some states) needs be scrutinised more closely. As these are often used as a weapon by mothers to prevent or reduce contact with fathers, AVOs need to be considered carefully with sound evidence presented before the court before an AVO is issued. Should Shared Parenting become a reality, it is envisaged that AVOs could initially increase as it will be used as a tool to avoid responsibilities of Shared Parenting by mothers. Government should look into increasing penalties for false allegations.

## Introduction

The current system of determining which parent the child should live with creates a massive divide between the parents. Both are forced to 'fight' a legal battle over the prize of the hours their children will be allowed to spend with them; fathers often becoming the 'contact' parent, relegated to the status of every other weekend visitor; the mother becomes the 'residency' parent who is 'in charge' of the child for the vast majority of the time with the father paying a significant, and often grossly excessive amount of his take home pay in child support. The mother then struggles to provide the child with the care they need on a full time basis; the father endeavours to maintain a close and loving relationship with his children under the most difficult of circumstances where the closeness generated between parent and child as a result of daily contact is lost. Within two years, fifty percent of children will lose touch with the contact parent.

<http://www.timesonline.co.uk/article/0,,2092-713883,00.html>

The Sunday Times - Review 15 June 2003 Fathers fight back

Many Grandparents also miss out on any sort of regular contact with their Grandchildren.

Children have two parents - but present legal practices would have it that they lose this right when their parents separate. In fact this is the time children most need the courts to secure their rights to the parental care of both their parents. The court does the opposite and is instrumental in breaking down children's relationships with both their parents, through sole custody decisions which are based on no shred of evidence in the children's interests. Conflict is in essence encouraged by this, the court's stance, because it only requires a mother to deny the father access to their children, in order for children to suffer the consequence that they no longer see their father. The family courts are notorious for refusing to uphold contact orders in the face of maternal obstruction of contact. The extremely unfortunate result of this de facto policy of failing to enforce contact orders is to positively reinforce bad and selfish parenting, and to remove the only moderating factor, the other parent. Refer to [Recommendation 3](#).

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### **It's time some parents just learnt how to share.**

By Geoffrey Greene

"Dad, it's my turn to sit in the front", says my son on the way home from school. "No, its mine", calls my daughter in an elevated voice". "Lets just take it in turn kids", I retort, and a sharing arrangement is quickly negotiated.

Sharing is one of the first concepts we teach our children. The concept of equal time or 'taking it in turns' is a phrase that we repeat to our kids everyday - in their playtime, in the car, at the shopping centre - in practically every aspect of their lives. This is part of teaching them about fairness, respect for others rights and liberties, equity and justice.

So how could the concept of sharing their mother and father be any more alien to children than the everyday concept they understand so well?

This is what this child custody debate initiated this month by the Prime Minister is all about. How best to share the care and nurturing of our children after parental separation.

This should not be a matter that requires lawyers and courts to sort out. This should not be a matter that requires government bureaucracies to interfere and snoop into their daily lives. This is a family matter and should be treated as one - privately.

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Principal to a proposed presumption of rebuttable shared parenting: the Shared Parenting Council of Australia proposes a system of mandatory mediation to resolve family issues in dispute.

Except in that small amount of cases where shared parenting is not appropriate, parties, coming from a presumptive position of co-parents to their children, are free to resolve their issues in private mediation sessions.

And the main benefit with this type of approach is that children will no longer be held and used as weapons, or as part of strategic tactics to obtain 'status quo' positions in protracted Family Court disputes

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A study evaluated 273 families, controlling for 28 variables that influence a predisposition to agree on joint legal custody. Controlling for these factors, children in joint legal custody families had more time with their fathers and fewer adjustment and behaviour problems. M.L. Gunnoe and S.L. Braver, *The Effects of Joint Legal Custody on Family Functioning, Controlling for Factors that Predispose a joint award*, Child Development. A study compared 20 joint custody and 20 sole maternal custody families. **Children in joint physical custody were rated as better adjusted by their mothers compared with children of sole custody mothers. The children's perceptions in sole custody situations correlated with the amount of time spent with their father. The more time children from sole maternal custody spent with their fathers, the more accepting both parents were perceived to be, and the more well adjusted were the children.** D.B. Cowan, *Mother Custody versus Joint Custody: Children's Parental Relationship and Adjustment*, University of Washington. Doctoral Thesis (UMI No. 1982-18213). (THE BEST PARENT IS BOTH PARENTS Report by Parental Equality, 54 Middle Abbey Street, Dublin 2. Phone: 01-8725222. Web: [www.parentalequality.ie](http://www.parentalequality.ie))

### **Boys Do Better With Shared Parenting**

A study compared children in the ages 5 to 13 years. Boys in joint custody were significantly better adjusted than boys in sole maternal custody. Comparing boys in all groups, boys in joint custody compared very similarly to boys from happy families. E. G. Pojman, *Emotional Adjustment of Boys in Sole and Joint Custody compared with Adjustment of Boys in Happy and Unhappy Marriages*, Doctoral Thesis. California Graduate Institute (1982).

A study of boys aged 6-11, conducted 1-6 years after divorce, among 20 joint physical custody families and 20 maternal custody families revealed: **"According to rating made by parents and teachers, boys in joint custody had fewer behavioural difficulties than their maternal custody counterparts. "... fewer emotional and behavioural problems. "... classroom adjustment..."** Virginia M. Shiller, *Joint versus maternal custody for families with latency age boys: Parent characteristics with child adjustment*, *Journal of Orthopsychiatry* (July 1986).

No matter what final arrangements separating parents ultimately put into place for the care of their children, they should both be able to make their decisions from a level platform where the expectation remains firmly embedded that both will continue to equally share the joys and responsibilities of raising their children, a concept the Family Court has in the main failed to come to grips with, preferring to cling to last century's 'maternal preference' principle.

A Rebuttable Presumption of Shared and equal Parenting time, when parents separate, will provide that balance. The decision of how and when the children spend time with their parents and grandparents remains, as it should always



have done, a "family decision". No court should have the ability to remove perfectly good parents from their children's lives. Refer to Case Study 3.

Even the Chief Justice agrees that the adversarial system of the Family Court is not suited to Family Matters involving the parenting of children. We refer to the **FAMILY COURT REVIEW, Vol 40, No 3, July 2002** - which reproduces an address which Chief Justice Nicholson gave at the 25th conference of the family court in Sydney in July 2001. On page 287 the CJ concurs with the following:

**"The original architects of the [Family Law] act recognised that the adversarial system was an inappropriate vehicle for the resolution of family disputes in the vast majority of cases, particularly where the continued parenting of children was an issue."**

The Chief Justice also states in the Advertiser on 2<sup>nd</sup> July 2003 "I have long advocated a less adversarial system, as practised in a number of European countries, and the Family Court is investigating ways in which this approach may be introduced in order to reduce the conflict and tension of court appearances".

Consequently, if marriages fail the onus falls on all of us - parents, government, judiciary and other interested parties - to do whatever we can to ensure the best interests of children are met.

The Chief Justice went on to say: "In an ideal world, relationships would not collapse and couples would provide a healthy and loving environment for their children. But we do not live in an ideal world and the research is quite clear - feuding parents have a dreadful impact on the psychological and emotional health of children whether within a marriage or not".

Should 50% Shared Parenting become the starting point for raising the children from failed marriages, the financial incentives currently provided to mothers to divorce will be greatly diminished, thus moving us closer to the Chief Justice's "ideal world". There would be much less aggression resulting from separation and divorce. There would be less money to be paid in child support, more time for fathers to spend with children thus aiding the psychological and emotional health of the children as stated in the Chief Justice's concerns. As demonstrated in the American states where Shared Parenting has been introduced, the divorce rates drops by around 54% as the high financial stakes are removed. Mothers no longer have the children as the prizes of separation and divorce whilst fathers have the financial loss and emotional burden of the loss of family, home, assets and ongoing significant child support payments. A Separation Agreement could be drawn up with assistance from a Mediator.

"If the expectation of financial gain for the parent who keeps the children is removed, and an expectation that both parents will continue to fully participate in their children's future becomes the standard norm, then much of the acrimony that is present today will vanish. The relationship between the two parents and the children can be fully developed and the children can look forward to a hopeful future, albeit in separated circumstances."  
(Sue Price Dads on the Air Feb 2003)

No matter whether parents live together or not, they both are equally important to their children's future and daily life. Studies show that children survive separation much better when they are able to spend as much time as possible with each parent. The logistics can be resolved as parents are adaptable as are the children. Many children travel interstate and even overseas to spend time

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with a parent. Just visit any airport to see how many unaccompanied minors travel every weekend.

**Shared and equal parenting time gives children the best of both worlds - a life with both their mother and father.**

Recent research supports the above statement:

**This article first appeared in Newsday, 23 June 2003**

A large body of published research supports this contention, and a new study of children of divorce may help lay to rest the myth of the uncaring divorced dad.

According to this new research, adjusting for income and standard of living, divorced fathers who have been able to remain a part of their children's lives because they have joint custody voluntarily contribute even more to their children's college education than the children's mothers do. In an article recently published in Family Court Review, Arizona State University researchers William Fabricius, Sanford Braver and Kindra Deneau called legal custody arrangements (joint vs. sole maternal) a "dramatic" and largely causal factor in projecting voluntary financial support.

**The researchers noted that "fathers' contributions steadily increased with the amount of access they had to their children" and that custodial mothers' willingness to allow divorced dads to remain a part of their children's lives during their childhoods plays a crucial role in determining how much voluntary college assistance fathers will provide.**

Earlier research by Braver found that divorced dads who have jobs and who can see their kids rarely skip out on their child support obligations, and that "parental disenfranchisement" - fathers' feelings that they have been stripped of the right to act as true parents to their children - has a large and harmful effect on child support compliance.

Braver's research simply reflects common sense - parents are far more willing to work and sacrifice to support children whom they can love and be loved by than they are for kids whom they cannot see. However, family courts have been blind to the obvious, and while a massive enforcement bureaucracy pursues divorced dads for child support, courts do little to enforce these fathers' access to their children. According to the Children's Rights Council, a Washington-based advocacy group, more than five million children each year have their access to their noncustodial parents interfered with or blocked by custodial parents.

This new research powerfully suggests the need for egalitarian divorce measures such as the presumption of joint legal and physical custody of children after a divorce and the enforcement of visitation orders. Children need the love, strength and guidance that fathers give. They also need their financial support. Reforms that allow divorced dads to remain a meaningful part of their children's lives will supply both. Surely this is in the best interest of the children.

The community as a whole agrees with the concept of Shared Parenting, as can be seen from these few letters in the national press recently:

If this proposal is accepted by parliament, what a win this would be for millions of children across Australia. I know so many children who have little if any access to their dads and they suffer greatly as a consequence. It's about time we consider what is best for our children. Currently the only winners are the lawyers.

**Rosanna Harrins**  
**Sydney, NSW**

Nice to see a proposal that is common sense and in the interests of children for once. The quicker we move away from treating children like prizes of relationships to be fought and bargained over and make it clear at law that both sides have the responsibility and right to contribute to their child's development the better off our nation will be. Children and their care are not a 'lifestyle option' for parents whether separated or not and the evident failings in the current system show that laws in line with this proposal are sorely needed.

**Dave Edwards**  
**Brisbane, Qld**

Joint custody is the best approach - far better than the presumption of primary responsibility being the preserve of the mother or father. I separated from the mother of my two daughters in 1993 and have spent most of the following 10 years in a joint arrangement which, regardless of what "access" was agreed through the courts, in practice resulted in my daughters spending six nights or more per 14 days with me.

My ex-wife and I were able to establish reasonable separated arrangements free of backstabbing and denigration of each other.

My younger daughter recently turned 18 and left school after year 12. The family court regulations no longer apply. However, I will always remain a father and feel my daughters have not been seriously deprived through the process of their parents separation and ultimate divorce.

I am an avid supporter of 50:50 on separation and this proposal supports and extends the honourable concept of equality in parenting.

**D K M**  
**Melbourne, Vic**

I really feel for children today. Women have always used the children selfishly in divorce cases. Now the men want a go. We have to admit that as necessary as it was the way women's rights have been introduced has failed children and the family miserably.

**Mark Lyons**  
**Sydney, NSW**

My wife and I separated four years ago. We have been operating under a joint residence arrangement since then, with the kids rotating between each house on a weekly basis.

This arrangement is working well for us because of the following:

- \* we are amicable
- \* we chose to live close to each other (15 min away) and the kids' school - which allows kids and parents easy access to each other.

As a consequence, both parents have equal input and involvement with their children and are actively engaged in raising them. This may not be possible for everyone, but speaking for myself it sure beats the scenario where a lot of men who want to be fathers are forced into a situation where they become strangers in their kids' lives.

Single parenting is no substitute for active parenting.

**S B**

**Perth, WA**

I welcome the Prime Minister's support on this issue. We need to move towards a framework which encourages parents to work together and not have children placed in a situation that is used as a power struggle. I agree that this may not work in all situations but after witnessing a variety of arrangements for children that I know personally and my experience is that the happiest children are ones who have equal or free access to both parents and where parents work together to provide happy homes for their children.

**Lisa-Maree Bear**  
**Sydney, NSW**

I've been separated two years, and for the first six months, we used shared care arrangements to care for our two young children. This worked extremely well - my ex and I treated each other with respect, and made a deliberate pact not to denigrate each other in front of the children. It meant the kids saw both of us regularly, we lived five minutes apart so they could stay at the same school, and we both got a break from single parenting.

However, 18 months ago I moved interstate for work (couldn't find anything in the old city), taking the kids with me. Now they spend maybe a couple of weeks every second school holidays with their father, and I have no respite from caring for them, which I need.

Having done it both ways, my vote is firmly for shared care, but ONLY if the parents have an amicable relationship. It can be extremely destructive for the kids if the parents are constantly criticising each other.

**L G C**  
**Canberra, ACT**

I have been waiting for 18 months for a decision from the court about a financial distribution which is essentially a no brainer and today was told that bankruptcy proceedings have commenced against me over a debt in my name for assets my ex still enjoys the use of.

You've got to wonder why it is the court feels it is unnecessary to prevent these types of circumstances.

#### **A Child Support Payer**

#### **Unknown quote:**

You lose your wife

You lose your children

You lose your home

You lose your car

You lose your savings

You lose 50% of your  
Superannuation

*Then you spend up to 18 years paying for it!*

From **The Courier Mail** Brisbane Friday July 4<sup>th</sup> 2003

From: Jeff Threlfall

Comments: In reference to Jennifer Smith." I totally support the

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concept of Shared Parenting. It is what most children want if the Courts were to ask them.

Children need the positive influence of a father and no matter what stats people use to refute it, the majority of fathers who don't go through with the Court process are convinced by their solicitor that to push for anything more than normal Contact will cost them \$10,000 plus and that their fervent attempts will be met with claims from the other side of harassment etc and the father will invariably get minimal or no Contact ordered with their child. In these cases the father usually agrees to Consent Orders which, if he is lucky, will allow for Contact every second weekend. Frequently, the mother then denies Contact or impedes it but jumps up and down if the father were to then be late paying Child Support. Anyway, back to the point - children need both parents.

From: Steve

**Comment: Jennifer Smith** Feedback, week ending July 5 Jennifer in regards to your quote that 2 out of 3 child killers were fathers you may actually want to look at your research material in regards to this issue again. This is a direct quote from the Australian Bureau of Statistics Year Book Australia 2002 Crime and Justice Centenary Article - Crime in the twentieth century written by Dr Adam Graycar which you can find on the following website  
<http://www.abs.gov.au/ausstats/abs@.nsf/0/4524A092E30E4486CA2569DE00256331?Open>

Approximately 9% of all homicide victims were aged under 15, and this proportion has remained quite stable each year since 1989. **Biological parents, usually the mother, were responsible for a majority of child killings in Australia.** Very rarely are children killed by a stranger.

Whilst I won't bore the readers with long rather repetitive information, confirmed by the statistics, it simply serves the purpose of illustrating that much of what one believes can be read either way into the argument, of what is best and what will work. Might I suggest that because of the failure of many current custody situations, and not forgetting the welfare and safety of the children (including their moral salvation), that we need to turn away from solutions that have spawned the current state of custody battles, AVO's, maintenance squabbles and the like. Instead of treating the children as property, and assuming all men who separate from their wife, as unstable, and unsuitable role models for the upbringing of children, I suggest that we attempt to curb the ever growing trend of "sole custody" in favour of equality for all.

**The Daily Telegraph, Edition 1 - State SAT 12 JUL 2003, Page 025**

## **Dads cry out for help**

By: TORY MAGUIRE

There are thousands of them: 'angry men' pushing for Family Court reform to fathers' rights. TORY MAGUIRE reports

Gary got home from a work trip eight years ago to find his house empty, his wife gone and his five-year-old son gone with her.

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"My mum said, 'Something horrible has happened, your wife has left you'," Gary says.

"My house was stripped and she had taken everything."

It was the start of eight years that have seen the Central Coast father "bawl his eyes out" every week as he tries to maintain a relationship with a son now going through puberty three hours' drive away. He has considered killing himself. Four of his friends have already done it in despair of the stone walls they have come up against in the Family Court.

"One gassed himself, the other couple of guys hung themselves because they were refused contact," Gary says. "It is going to save a lot of blokes' lives because there is light at the end of the tunnel."

That light is the dim hope the Federal Government will consider reforming the Family Court, starting with making "rebuttable joint custody" the starting point for the judges and magistrates who decide the fate of a growing number of Australian children.

As The Daily Telegraph reported this week, fathers have just a 2.5 per cent chance of winning joint custody and almost one in three children have no contact with their father after their parents split up.

Since Prime Minister John Howard flagged his interest in exploring reform and ordered a parliamentary inquiry to report back on the matter by the end of the year, desperate fathers have flooded this newspaper with their stories.

Inside Edition spent two days on the phone with some of these fathers and found their problems with the system ranged from a lack of legal representation, to gratuitous use of Apprehended Violence Orders, and the inability of the Family Court to force their ex-wives or partners to abide by its orders. Each and every conversation drains the emotions.

Aaron convinced the court to allow him access to his two children every second weekend and half the school holidays. Every visit the children face a three-hour drive to the pick-up point then a two-hour drive to Aaron's place, so he has agreed to make it every third weekend.

He says he can't fight for more access because child support payments mean he can't afford a lawyer and any spare cash has been used to set himself up again after the break-up. "One solicitor said, 'Aaron, just walk away, the system isn't for you, it is against you!'"

Aaron swears he has never threatened his ex-wife or his children but a string of AVOs and even an allegation he sexually abused his son have been thrown in the path to a more active part in his children's lives.

The allegation of sex abuse was investigated by the Department of Community Services and the police, who found there was no evidence to support the allegation.

"I would like to see fair actions for fathers, a change in child support law to allow for legal costs, to take into account that fathers have to spend money when they have the kids," Aaron says.

Steve hasn't seen his sons since 1998 when his former wife moved interstate and he didn't know where to find her.

He says he lost access rights to his two boys when he accidentally filed a document with the Family Court twice and was held in contempt of the

court. A couple of weeks ago he tracked down his ex-wife and is about to start the long, slow process again.

"I have just filed papers to see a judge ex parte to ask him permission to file papers asking to see my children," Steve says.

"I don't have the money to pay for a private solicitor. I always have this fear in the back of my head that I am going to get shafted again because I fill in a document wrong.

"There should be somebody in that courtroom that you can walk up to and say, 'I want to get access to my children', and they fill in the paper work for you."

Adrian is bit by bit getting more and more access to his children, against all odds, representing himself in the Family Court effectively. He has so far won access for Thursday and Friday nights one week then Thursday to Sunday nights the next, but is about to try for sole custody.

"My four-year-old is that attached to me that he just doesn't want to live with his mother," Adrian says.

"Teachers say he doesn't want to do what he is told, but when he is with me he is perfect. He has been threatening to hurt himself and commit suicide to get away from his mother."

Adrian says custody of their children is a privilege that people should be given from the start.

"The way the system should be from the word go, is as soon as a couple separate, whether they are de facto or married, if you can prove they are your biological children you should get half custody," he says.

"If you renege on that, then you should get less. You shouldn't get zero from the start and have to fight, scratch and kick to get some access."

Mark's situation is entirely different. When he and his wife split up in 1995 he was awarded residency of the three children.

The eldest went to live with his ex-wife two years ago, 900km away.

Mark says the problem is getting someone to enforce the court orders on his ex-wife.

"When we send the other two children down there she doesn't return them so we have to go to court to get them back."

This can take months and Mark and his new partner have been through it seven times in the past seven years.

"I can go to court and get a contravention of the court orders ... why would I spend a couple of thousand dollars on a piece of paper that says she has broken the court orders," he says.

"If she has got legal aid and the court doesn't punish her in any way it doesn't cost her to break the orders."

Mark says while his situation is different to that of other fathers, he sympathises with them. "If this is what the court has done to them why hasn't it taken the same action against my ex-wife."

One of the few fathers who Inside Edition spoke to who had moved on from the pain of Family Court proceedings was Sydney man John Partridge. He and his wife split up eight years ago when his daughters were six, eight and 10 and he is now writing a book, called *Burnt*, about men's

experiences in the Family Court.

In the process, he has met many fathers fighting a losing battle to have a constructive relationship with their children and says the whole system needs to be reformed.

"There are some very horrible guys in the system, it goes both ways, but what I would like to see is the breakdown of that sexual discrimination. It is only fair that men have equal access to their children, as long as you haven't got a history of a psychiatric disorder, or a history of abuse."

Many of Partridge's subjects have been burned because of their own ignorance of the law and their rights. "They are also having to deal with their own depression caused by the separation," he says.

"They are behind the eight ball before they start because they don't have the confidence or strength.

"They don't understand the difference between a criminal situation and a civil situation."

The parliamentary inquiry investigating custody issues should broaden its horizons beyond the interest groups and find out from these men what needs to be done.

Wives fear children will be put at risk

Fathers are distraught over their inability to be heard in the Family Court, but there are also women who are terrified the Government might bring in rebuttable joint custody.

Mary left her abusive husband a year ago and took her children with her. She says that if the proposed changes to the system were in place back then, she would have had to risk her life and stay with her husband.

The alternative, possibly allowing her children to be alone with their father, would have been an impossible risk.

"I would put myself in danger to protect my children," Mary says.

"And there are lots of people suffering domestic violence."

Deb e-mailed to say some fathers used the Family Court to control their ex-partners.

## **Case Study 1**

Well my result is mixed the Registrar read the file over three trolleys worth and considered that since the court had given the matter 4 days last hearing that it would take something shattering to change existing contact orders.

Never one to be deterred as they are always negative but I mount arguments.

I had a report from a Psychologist the ex took my kids in breach of existing orders and this report was very good for me recommending increased contact holiday time and NO supervision, Interestingly and as predicted she identified parental alienation but at the second stage, this is when the child who is under influence to be alienated actually turns and rejects the alienating parent.

However, the other side just went on and on about the fact the report says the wife is being alienated even though it was suggested it was her obstruction and keeping the children from me that brought about the children rejecting her.



Well lawyers twist and lie and they relied on reports her side obtained 18 months ago who saw me and my boys for 1 hour as more informed than the reporter who has seen them over ten hours in a therapeutic session .

So they increased my contact because the ex still confronts and denigrates at changeovers to the court appointed supervisor, so instead of sanctioning her they allow the children to be collected from school and taken back to school which is wonderful as I have an extra night with my kids.  
The child rep who I've already indicated to this group is a farce and fraud she didn't have any view on increased contact at the hearing but insisted on supervision due to the previous reports all based on lies most of which have had findings made against her .

OK what have I learnt the Parental Alienation Syndrome PAS thing can be turned against you be very careful.

Child reps are bullshit the wife's side even applied for costs for the child rep against me but of course they aren't in co-hoots.

I told the lawyer he came under gunned and that brief affidavits don't disclose whets going on he said its simple stay simple and we got over whelmed with voluminous materials.  
Do not accept outcomes your lawyer suggests, instruct him and bind him to the arguments and the new barrister was a breath of fresh air he told me wait till trial you will get you kids back and if not in the mean time she has turned them against herself and you'll get them anyway.

My hearing has been struck from the list awaiting criminal charges against her and she takes everything to the nth degree so it would be at least July next year for any hope of getting on the list.  
I was told in no uncertain terms any further application would be an abuse of process.

## **Case Study 2**

My child is happy healthy and has two parents who love him but do not get on with each other.

### **The Background**

I met my ex partner in NSW where I used to live. After a 3 month relationship she left me the day she told me she was pregnant. She did not want any phone calls and refused to see me through the pregnancy. Basically she wanted a baby of her own.

The baby was born in Lithgow and my ex then moved to Victoria to live with her mother. I rang to ask whether I could see her and the baby and she consented. After a few months of trying to revive the relationship it ended.

I asked whether I could see my son on a regular basis and she allowed me 2 hours per month. This continued for 3 months until I had to take legal action in order to gain access. I asked for 3 two hour periods on every second weekend bearing in mind I was traveling interstate and the baby required breastfeeding and regular daytime naps and I had no accommodation near the baby.

I was made redundant and moved to Victoria in the next suburb to where my son lives. I asked for more contact with my son but was refused. I have sought further legal action to gain additional access however, this process has been going for 3 months and I still have to wait another 6-8 weeks for case counselling and court hearing in the Family Court. My son is now 20 months old.

Throughout I have paid all CSA payments. I have incurred legal costs of \$8000 to date and ongoing. I have paid over \$16000 in travel and accommodation to enable access to my son etc etc. My ex is a very good mother and the child is healthy. He and I share a very good relationship and he is happy and healthy in my care. My parents have only seen him for a total of 6 hours. Two of my sisters have flown to Melbourne to see him on separate occasions for 6 hours also (i.e. the duration of my fortnightly contact. None of my brothers or their children has ever seen him. I have attended courses at the Child and Family Health service including toilet training, eating, sleeping and developmental, and eight week course through Relationships Australia and completed a St John Ambulance course Caring for Kids.

### **The Issues**

1. Why do I have to incur legal costs to see my son which should be my automatic right as a father?
2. Why can a mother refuse me access and my only recourse is legal action?
3. I have incurred CSA payments for time which my son should have been in my care.
4. There is non legal recourse at no cost to the mother through CSA if I do not pay child support but there is only legal recourse at great cost to me to seek access.
5. There is no certainty to court outcomes. I am going to great expense but have no firm idea what the outcome will be and my lawyers are pessimistic. Why?
6. If not 50/50 access at least a sliding scale for access allocation to children of very young ages.

e.g.

- 0-9 months - supervised access of 2 hours every second day until weaned
- until weaned or 9/12-15 months - day access every second weekend and one week day per week
- after 15 months - 50/50 or agreement on access

I stress the above is a bare minimum and flexible to allow family circumstances to accommodate the child.

1. There should be access to counselling for both parents where this can be worked out and court action only recourse if the child's life is in danger.
2. To stop frivolous claims of child danger there should be enforceable penalties of lost access to either party should the claims be proven false.
3. I have since found out my ex may have been abused by her father. There should be counselling available to her but there will be no compulsion for her to attend.

I will gain access to my son after court action is complete but at a cost in dollars, lost time with my son, no certainty of court outcomes and a lot of

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stress.

WHY? Because there are no laws allowing for shared parenting without legal action.

### **Case Study 3**

**Daily Mail (Britain)**  
**2 July 2003, Pages 28-29**

This man faced court 133 times and even went to prison twice. His only crime? To be a loving father to his three daughters.

Last week, after a ten-year battle involving 133 court appearances, two terms of Imprisonment and a hunger strike, Mark Harris was finally allowed full access to his three daughters, now aged 16,14 and 12.

A judge ruled that it should be up to his daughters which parent they spend time with. His battle has become a cause celebre for hundreds of fathers separated from their children by the courts.

Here, 44-year-old Mark, a driving Instructor from the West Country, tells RACHEL HALLIWELL the moving story of his fight for his daughters, who, for legal, reasons, cannot be named.

When I found myself in the back of a prison van on my way to Exeter Prison in a pair of handcuffs chafing against my wrists I realised I had hit rock bottom.

And my crime?

I had dared to wave to my three daughters from a street corner as they passed in their mother's car on the way to school.

It was the only way I could think of to let them know that I still wanted to be a part of their lives. And yet in doing so I was breaching a court injunction taken out against me by their mother to keep me away from her. Apparently, my waving at them like that was making her 'uncomfortable'.

But however low I felt that afternoon in November 1997, my desperate fight to maintain the right to be a father to my Children was to get even more bitter.

In fact, in the end it was to take a total of ten years, 133 court appearances before 33 different judges, two prison sentences and a hunger strike before I was finally given permission to be a father to my own children.

How could it come to this? How could the courts have let my wife get away with such cruelty? Even now, with my eldest daughter living with me and her sisters regular guests, I still often wake in a cold sweat in the early hours after re-living my ordeal yet again in my sleep.

I could never have imagined any of this when, that magical day in 1987, I held my eldest daughter in my arms for the first time. As I handed her back to her mother, I knew that I had never loved my wife more than I did - at that moment, and that I would devote myself to her and our daughter for the rest of my life.

It was three and a half years since we'd met. She'd been my pupil - I'm a driving instructor - and I had fallen for her by the end of her first lesson. Within months we were blissfully married.

Having a child together seemed the icing on the cake. And I was luckier than most men in that my work was entirely flexible, so I, could structure my hours entirely around my young family.

I adored looking after my daughter getting up for her night feeds, baths her, and' taking her out for walks in her pram. Bringing up our child together, my wife and I were closer than, ever, and we were thrilled when in 1989 our second daughter was born.

A third daughter followed in 1991, but by now our once solid marriage was suffering. The main cause of friction was my wife's mother and her overbearing behaviour.

We rowed about it endlessly, but even so there had been no hint of what my wife planned the day I left our four-bedroom detached house in the West Country in November 1993 to go to a football match.

I returned home to find the house in darkness and my worried father waiting for me in the drive. My wife had called to tell him what she had done.

When we went inside, it was as though burglars had ransacked the place. Almost all the furniture and ornaments had gone. I called the police and told them what had happened. I said that I was concerned for the safety of my children, and they agreed to investigate.

Later that night a policewoman came round to tell me that the girls were safe, and she gave me the address of a rented house four miles away. There was nothing more she could do and she suggested I wait until morning before going round.

When I went to see them, MY wife calmly explained that she no longer loved me, but she said I could see the children whenever I wanted. At that moment I hated her almost as much as I had previously loved her. She seemed so cold and aloof.

I took the children home - with me for a few hours and they spent the time crying, wanting to know when they could have their lives back. All I could do was comfort them and promise that we would find a way to be happy again.

As far as I know, there was no one else involved, but I knew then that I would never forgive my wife for what she had done. I didn't even pretend to them that we would ever be able to live as a family - again. But I swore to them all that I would always-be there for them.

It was that promise that gave me the strength to keep fighting during the terrible years that followed.

For the next month, I dropped the girls off at school most mornings and collected them in the afternoons, as I had always done. My relationship with my wife was nothing more than a cursory Hello and Goodbye when I collected or returned the girls. .

But then one day she asked to see me. She told me that she deeply regretted what she had done, and asked if I would take her back. She wanted us to move away and start again.

I refused and so, bitterly embarrassed, my wife set about punishing me. The following day she changed her telephone number, and from then on she refused even to answer the door to me, let alone let the children see me.

I immediately got a solicitor and launched legal proceedings. I was thrilled when, within three months, I was granted unrestricted access to the children. That should have been the end of it but, in fact, it was only the beginning.

At first my wife grudgingly let me see the children as the courts dictated, but all the time was instructing her solicitor to apply for my time with them to be reduced. Over three years, I went from almost limitless access to not being allowed to see them at all.

After being so involved in their lives, I hated having to ask anyone's permission to see them. And when I did get to see them, I felt wretched having to cram a relationship with them into a few hours.

We went swimming, cycling, played football in the park. If the girls were naughty, I was loath to tell them off in case it spoiled what precious little time we had together.

I never spoke to my ex-wife the kids came out to the car. In court, we didn't look at each other - it was easier to pretend she didn't exist. The girls never mentioned their life with her to me I suppose, that was easier for us all.

But still I knew things could not go on as they were, and I was desperate to be a proper father.

And so in early 1996 I applied to the court to ask if the girls, who were desperate to move out of their mother's home because they didn't get on with her new partner, could come and live with me.

My wife retaliated by insisting that it was seeing me that was unsettling them. On her word, the judge duly severed all my rights of access.

Once this judgment was passed, I was expected to leave quietly and not bother any of them again.

But I was devastated by the ruling. I could not possibly turn my back on the children I had loved and nurtured from their very first breath.

Being a father was simply what defined me and no court order was going to change that.

So, while I waited for another court date to argue against this judgment, I vowed to make sure that my girls knew I still cared about them.

It was a simple enough gesture: I began waving to them most mornings as their mother drove them to school. Pitiably as I must sound, I cherished the smiles and waves I got back from them in return. Yet, incredibly, my ex-wife successfully argued this was harassment and took out an injunction to stop me.

Call me stubborn, or even reckless, but that still wasn't enough to keep me away from my children, so I carried on waving. Naively, I assumed the whole ridiculous business would be cleared up at the next court hearing, which was the following month, in November 1997.

Indeed, knowing that the girls had spoken at length to court welfare officers about how desperate they were to see me, I had no doubt it would be cleared up.

But this time I left in handcuffs, jailed for four months. The judge, Sir Justice Wilson, said my waving at the children had made my wife feel as though she was being stalked. That night, I shared my cell with a man accused of murder.

The next 45 days blurred into one long nightmare. I barely slept, had to force myself to eat, and spent every waking hour pining for my girls.

When I was released, I knew I had to pull myself together, so I went back to work as normal - but still I refused to give up on my children.

However, it was to take another year for me to convince the courts that I should be allowed to see the girls at all. During that time, life was one endless round of court hearings and meetings with my solicitor.

Every day I felt only half alive - constantly aware that something vital was missing. It was a wretched existence.

Finally, in November 1998, I was granted permission for the girls to visit me at my house - under the supervision of two social workers.

Only the two youngest girls turned up. My eldest found the prospect of seeing me after so long too much. It hurt, but I understood. The girls were eight and ten now and seemed so grown up - even their voices were changing.

It was hard not to allow my joy at seeing them to be tainted by the physical proof before me that I had missed out on so much time with them. Feeling a little apprehensive, I took hold of them both, one in each arm, and pulled them to me. They giggled nervously, looking from me to one another and back to me again.

After that I was allowed to see them once a month at my house, though my eldest daughter continued to stay away. It hardly seemed enough.

I went back to court to apply to spend more time with them. Instead, my access was reduced to a laughable six visits a year after my ex-wife insisted that the meetings were disruptive to their family life.

(She was still with the same partner - they married in 2001 and separated two years later.)

Six visits a year just wasn't enough contact to hold the interest of such young children, and inevitably they stopped coming. My heart ached when I posted yet another birthday card or wrapped up a Christmas parcel for them.

By now I was acutely aware that I was just one of many fathers being battered by a system monstrously weighted against us. And a small army of us had had enough.

I got together a band of equally passionately determined dads. We'd been communicating through various fathers' groups, and a dozen of us started picketing the homes of the judges who had denied us contact with our children.

I know it was extreme behaviour - but by then I honestly felt I had nothing to lose.

Then, in January 2001, I attended a hearing designed to build up the number of visits. My barrister warned me to expect a fine and a telling off for the protests.

In fact, I was fined £500 and sentenced to ten months in Pentonville Prison for contempt of court. This was because I'd breached a limited contact order by driving past the girls' house to try to catch a glimpse of them between the six unsupervised visits I had been granted a year.

This time, I wasn't seared or bewildered or confused. I was absolutely furious.

I decided to go on hunger strike. For two weeks I refused food and water. My eyesight became blurred through dehydration, and physically I felt incredibly weak.

I only stopped the hunger strike after I realised how much support I was receiving from outside, particularly from the protest group Fathers for Justice, a support group for men like me.

My employer, AA Driving School, kept my job open for me, a builder from Liverpool who had read about me in the paper put me on his payroll so I wouldn't lose my home, and a whip-round among angry dads raised more than £1,000.

I was released after 84 days and used the money to employ a court psychologist. I'd been told this was my only hope. He interviewed the girls and suggested I should at least be allowed supervised access.

All this was still being processed when, on March 22, I got a call from my eldest daughter, who is now 16. She told me that she and my youngest daughter had packed their bags and were waiting at a bus stop for me to collect them.

They were sick of being told by the courts and their mother that they could not see me and had decided to take matters into their own hands. In breach of all court orders, I got straight in the car and brought them home.

Seeing my eldest daughter again for the first time in six years was incredible. I didn't know how to speak to her, or even how look at her. In the end, we just fell into one another's arms and sobbed.

But however overwhelmed I was, I knew that I was facing another prison sentence if I didn't get help to resolve the situation, so I called a High Court emergency hotline.

I managed to speak to a decent, and very humane, judge. I told him everything and he granted me a temporary order. In court, the following week, he gave me a three month trial period of residency, which became permanent just a week ago.

He also cleared every previous court order and injunction that had been passed in the past ten years relating to our case. In effect, he put the children in control of how much time they wanted to spend with each of their parents.

My wife, who is now in the middle of her second divorce, looked depressed when she left court. I've not heard from or spoken to her since.

Today, my eldest daughter lives with me, the youngest moves between myself and her mother, and the middle girl visits a couple of times a week.

It makes me angry that I am having to get to know my daughters again, and I will never forgive their mother for keeping my children away from me for so long.

But I feel more anger towards the courts than I do to my ex. Hostile ex-wives do things they shouldn't, but courts should be above facilitating it.

I am only thankful that I have finally been vindicated - both as a man and a father. I know only too well that not all fathers in my situation have been so lucky.

This is a tragic story and one which could equally apply here in Australia. It is vital that we move now to ensure that stories such as this do not become common in this country. The FLRA most strongly supports the concept of Shared Parenting in order that stories such as these few Case Studies cease to be a part of our Australian way of life. Our children deserve better than these stories portray. Shared Parenting will, we hope, make for much happy lives for our children and for the parents. Sharing is the key word. Parents CAN work together to make this concept work for our children.

#### **1. FACTORS TO CONSIDER IN THE AMOUNT OF TIME CHILDREN SHOULD SPEND WITH EACH PARENT FOLLOWING SEPARATION.**

In an interview on June 18<sup>th</sup> 2003, with the ABC, Matilda Bawden, President of the Shared Parenting Council of ,stated the following.

*"The biggest difference will be to take litigation out of the family break-down picture to the greatest extent possible and encouraging parents, wherever that is*

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*possible, to work it out themselves. Get the lawyers, get the judges, the psychologists and social workers out of the picture and families might stand a chance of working things out."*

The FLRA agrees that a system based upon the presumption of Shared Parenting should be the starting point for arrangements following separation of parents within a family. It is agreed that something like 90% of Contact Orders for children to have contact with the non-resident parent, are signed as Consent Orders. The problem is that these orders are usually signed under duress with pressure from solicitors, family and friends. The present system discourages more than 109 nights contact for the non-resident parent due to the prize of child support payments being reduced for the resident parent. The non-resident parent usually is not in a financial position to fight these Orders through the Family Court and simply signs in order to be able to see the children, even for the limited time offered. Many of these Orders are not by Consent at all.

Mr. Geoffrey Greene, Federal Director of the Shared Parenting Council of Australia said *"Only by recognising and upholding the fundamental rights of children to maintain an equal relationship and opportunity with both their mother and father will society reduce the impact of family breakdown on children of divorce."*

"By clarifying that divorced fathers are 'by law' still fathers, parents' negotiations about fathers' participation in child rearing after divorce may shift from trying to resolve *whether* fathers will be involved in child rearing to the matter of *how* fathers will be involved." (emphases in original). J. Seltzer, *Father by Law: Effects of Joint Legal Custody on Nonresidential Fathers Involvement with Children*, University of Wisconsin- Madison. NSFH Paper No. 75 (February 1997).

Appendix 1 contains reference material relating to Shared Parenting, Shared Parenting Plans, Shared Parenting Agreements and other material of relevance.

The rate of suicides, particularly amongst Australian men is of great concern. We have the highest rate of suicide caused by relationship breakdown in the world according to a recent study. See Appendix 3. It has been suggested that three fathers suicide every day in Australia. This is both a national disgrace and a tragedy for so many children.

### **Tens of thousands of parents have committed suicide over the past 30 years.**

Father's groups attribute at least half of these deaths to the brutal mistreatment of fathers and their children at the hands of our family law and child support systems. The government has acknowledged there is no documentary evidence to contradict this claim.

2028 adult men aged 20 years and over committed suicide in 1998.

Professor Pierre Baume estimates 70 percent of these are due to relationship breakdown. That is 27 per week. A national disgrace! We first attempted to raise this issue at the Men's Forum in Canberra 1998, but it has taken the suicide of a federal politician Greg Wilton before any response was noted. Then it became the subject of 'depressive illness', not a depressed reaction to an entirely curable set of circumstances that could be alleviated, if a father's role in his children's lives was acknowledged and facilitated as soon as separation takes place.

When you take away children from their fathers or severely restrict their contact, you take away a father's reason for living!

(DADS on the Air 24 Feb 2003 Sue Price)

This national disgrace requires **URGENT GOVERNMENT ACTION.**

**Recommendation 1: Extensive use of Counselling and Mediation Services**

Couples must attend counselling where an assessment of their situation can be made. The Counsellors report is sent to a Mediator where the couple will attend mediation in order to agree to the Shared Parenting arrangements for the children of the marriage and to agree to a suitable property settlement bearing in mind the agreed parenting arrangements. The minimum time couples must attend Mediation should be 2 X 3 hour sessions before proceeding to the Family Court.

**Should mediation not resolve these issues the couple will be directed to a Family Matters Tribunal** where the couple can put their case before the tribunal for a ruling. Solicitors should not be permitted to attend Tribunal hearings. Parents will self-represent themselves in family matters or be allowed a 'friend' to assist them. The Tribunal should be empowered to issue Interim Contact Orders. An Interim Contact Order will be applied for immediately (within 7 days) to allow both parents to have ongoing contact with the child. The Family Matters Tribunal or a Family Court Registrar should be able to issue this Interim Order promptly as the number of cases before the Family Court will drop if these recommendations are adopted.

Solicitors should be kept out of the mediation and not involved unless matters are required to go before the Family Court of Australia. We feel this will be in a small minority of cases. **Solicitors should only be used as a LAST RESORT.**

A **Family Matters Tribunal** could be established to register all Agreements, register amendments to Agreements and to resolve breaches of Agreements. The Agreements would be filed with the Tribunal by Registered Mediators. Such a Tribunal could be funded by money saved in the Family Court and Child Support Agency.

We re-state the following:

Even the Chief Justice agrees that the adversarial system of the Family Court is not suited to Family Matters involving the parenting of children. We refer to the **FAMILY COURT REVIEW, Vol 40, No 3, July 2002** - which reproduces an address which Chief Justice Nicholson gave at the 25th conference of the family court in Sydney in July 2001. On page 287 the CJ concurs with the following:

*"The original architects of the [Family Law] act recognised that the adversarial system was an inappropriate vehicle for the resolution of family disputes in the vast majority of cases, particularly where the continued parenting of children was an issue."*

**Accredited mediators should be registered and supported by the Department of Community and Family Affairs or the Attorney General's Department and be empowered to offer guidance for contact arrangements with the children and to provide guidance for agreement to be reached on child support payments where necessary. This empowerment should include the ability to review agreements at any time. As the user will pay for this service, its use will not be abused. A**

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Family Matters Tribunal should be established to Register Shared Parenting Agreements and to resolve disputes without the need for the parties to engage solicitors. Appeals re Tribunal decisions could then go before the Family Court or Federal Magistrate's Court.

Mediation would commence with the following presumptions:

- Shared Parenting will be agreed to.
- Property settlement will be fair and equitable with consideration to Shared Parenting and the interests of the children.

Shared Parenting implies that the children spent 50% of the time in the care of each parent. This time may take many forms depending upon the circumstances of each parent. Some parents may live overseas or interstate, some may work shift work, and some may travel frequently as part of their employment. There are many reasons that flexibility in the Shared Parenting arrangements is needed.

Should this recommendation be adopted significant savings to the Government will result as the Child Support Agency could be wound back or its function transferred to Centrelink. We strongly are of the opinion that Shared Parenting will greatly reduce the rate of suicide in conjunction with issues regarding the Child Support Agency and family break up resulting in detachment for the non-resident parent.

### **Recommendation 2: Shared Parenting and Distance**

We recommend that the mediator gives careful consideration to each parent's circumstances when negotiating the Shared Parenting arrangements. Should parents live a significant distance away from each other, consideration must be given to more contact with one parent during holidays. It is important that the children's schooling maintains continuity. Parents should be able to arrive at suitable Shared Parenting aiming for 50-50 time over the course of the whole year. This contact arrangement should be agreed to and registered as a Contact Order by Consent with the Family Court of Australia following mediation. If through distance or work patterns 50-50 Shared parenting is not possible over the course of a year, then the best compromise possible should be sought via mediation with both parties. An adjustment for child support payments should be agreed to at this time.

Some parents will incur significant cost of contact so allowance must be made in the child support assessment. Child support assessments must be fair to both parents and allow for up to 50-50 contact with both parents. See Section 2 below.

### **Recommendation 3: Breaches of Sharing Parenting Agreement**

That the Family Court of Australia directs the Sheriff's Dept. or a new body of enforcement to assist in the enforcement of Contact Orders. We would expect the number of breaches of these Orders to reduce by a huge amount if the previous recommendations are adopted but it is vital that contact be conducted as agreed by the parents at all times. At present Contact Orders are breached often and no action is taken due to the lethargy of the bureaucratic process and the reluctance of the judiciary to impose penalties. Community Service Orders may be used as a punishment where Orders are breached to ensure that Contact Orders are enforced to facilitate the Shared Parenting process. Perhaps the children could spend time with the other parent during the carrying out of Community Service by the defaulting parent should this punishment become necessary.

**2. IN WHAT CIRCUMSTANCES A COURT SHOULD ORDER THAT CHILDREN OF SEPARATED PARENTS HAVE CONTACT WITH OTHER PERSONS, INCLUDING THEIR GRANDPARENTS?**

**Recommendation 4: Visitation to Grandparents and Others**

In most circumstances where the grandparents and other close family members (Aunts, Uncles, and extended family members) of each parent live within 100km of one or other of the parents and Shared Parenting is being accommodated, these family members will see the children once in each 30 days where appropriate. Either parent may make these arrangements or they can take turn about if the parents live in the same city.

We consider it very important for the child to keep in touch with grandparents as this contact assists the child in feeling secure. Security is most important for developing children. During separation children lose a huge amount of their security and feel very vulnerable and lost. **Grandparents have the right to have contact with their grandchildren as do other close family members.** It is vital that each parent agree to regular visitation by the children where appropriate.

**3. FACTORS TO CONSIDER IN THE AMOUNT OF CHILD SUPPORT WHICH SHOULD BE PAID BY ONE PARENT TO THE OTHER**

Up to the present time, Shared Parenting has been not occurring in Australia to any significant extent, we have seen the non-resident parent paying excessive amounts of child support to the resident parent. The reason for this is due to the fact that the current child support system creates payers and payees where the payer is left shouldering the major financial responsibility in providing for the child/children.

**Research shows and CSA's experience proves that improved relationships with ex-partners and greater contact with the children improves voluntary compliance in the payment of child support.** (CSA web site)

“We found that the groups differed significantly in terms of how much financial child support was paid: when sole custody was that arrangement despite the fathers' wishes, 80% was paid (according to what the father reported; the figure was 64% by mothers' report), while when joint custody was awarded despite the mothers' preference, it zoomed to almost perfect compliance (97% by fathers' report; 94% by mothers' report)”. (THE BEST PARENT IS BOTH PARENTS Report by Parental Equality, 54 Middle Abbey Street, Dublin 2. Phone: 01-8725222. Web: www.parentalequality.ie)

At present little consideration is given to non-custodial parents within subsequent marriages or de facto relationships. “Second Families” often have children who are not catered for under the current heavy handed CSA formula. **Children in second families can suffer due to financial burdens placed upon the payer**

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by the CSA. This is clearly NOT in the best interest of children. Second families are suffering hardship at present. **Should the concept of Shared Parenting be adopted then the amount of money being transferred between parents should reduce thus assisting second families.**

### **Recommendation 5: CSA – Responsibility, Accountability and Transparency**

The Child Support Agency (CSA) needs to act in a more impartial and less biased manner when dealing with payers. Currently CSA staff lack consistency in their responses to clients' questions on how they arrived at certain decisions. CSA's staff currently lack the ability to effectively explain the ruling or decision especially when change of assessments occurs. CSA's staff also fail in their ability to link their decision to the correct and applicable part of the legislation. The CSA need to learn from Centrelink's software system that works on algorithms which are knowledge and rules based. Utilising this system eliminates any personal bias of the CSA staff. The following is an extract taken from the CSA's 2003 business plan *"issues raised in feedback from our clients, in particular, our failure to follow through on promises that we make, our inability to give clients viable options and the inconsistent advice we sometimes give."*

The CSA must change the formula it uses to assess the level of child support payments. The formula should be based upon the Taxable Income of both parents and child support should only become an issue if Shared Parenting is not adopted by the parents. If both parents care for the child 50% of the time then both must contribute equally.

The ATO could have a role here. Currently payers pay their child support from their net salary (take home pay). This can be quite different from their income package as structured by employers upon which their CSA Assessment is calculated. **Why is there not some tax relief for payers?** To pay the CSA \$1000 per month one needs to earn \$1800 of which about \$800 is then paid in income tax and Medicare Levy. The payee receives this money TAX FREE. Why does the non-resident parent have such a huge tax burden to bear on top of other financial pressures? If we are talking about SHARING, why not offer say a Tax Rebate of 32c in the dollar for payers of child support and levy the payee 32c in the dollar as income tax? This would be zero cost to the Government but assist child support payees enormously by lowering the tax they have to currently pay on child support.

In the Shared Parenting situation where Taxable Incomes vary greatly between the parents, then an allowance can be made. Such an allowance must take into account the following:

- That a Mediated Financial Agreement be arrived at by the parents. This agreement may be filed with the CSA, CentreLink or Family Court. Defaulters may be dealt with by the CSA, CentreLink and the Court.
- Taxable Income of both parents must be considered.
- The infrastructure costs associated with housing the child as applies to BOTH parents. Eg. Bedroom, personal items, transport, phone calls, clothing, toys etc.
- The financial position of the second family must be considered especially in the light of children within that family.
- The actual cost of raising the child must be taken into account. A maximum recommended amount payable should be set (based upon BSU

- figures \$140 per week from any one parent plus special circumstances which must be proven or mediated agreement as decided by the parents.)
- That 50% of support payments in excess of \$100 per week received by a parent be accountable and subject to audit by the CSA or CentreLink.
  - A cap is set at \$70000 annual Gross Income above which is assessment free.
  - Sliding scale reductions to be used in line with the ATO income tax scales where people on higher income pay more tax and therefore have less disposable income.
  - Consideration be given to tax Rebates for payers of child support.
  - DAYS (including hours) of contact (not nights) to be used in calculating contact times for the purposes of calculating child support assessments. This will align with the ATO's FTB calculations.
  - Where a parent re-marries, Family Tax Benefit to be paid as a pro-rata share to both parents regardless of a new spouse's income as the FTB is for a child from a previous marriage. This should be means tested.
  - Whether the parents have other family responsibilities (new family to support)

If parenting is based upon 50% equal time with the children then the need for one parent to pay the other for child support is greatly diminished. This will reduce the cost of operating the Child Support Agency greatly and possibly to the point where Centrelink can fulfil the function...

Only some adjustments may be needed where there is a disparity in the wealth between the two parties and where the parties agree to some payments for the children's upbringing. If these arrangements can be agreed by MEDIATION then much of the emotion will be removed from the process of living as separate parents bringing up the children of the marriage. Domestic violence relating to family issues should greatly reduce and both parties should find their dealing with each other far more sanctimonious as most issues should then revolve around caring for the children. This is a major issue which is a causal factor in male suicides in Australia.

CSA or Centrelink only need be set up to chase defaulting clients. There should be no need for CSA to be involved with Payers who have shown a good record in meeting their child support obligations. **There is potential here for millions of dollars in saving for the Government.**

#### **Recommendation 6: Significant Cost Savings by incorporating CSA into Centrelink**

In 1999-2000, the cost of transferring money between parents was 14.3 cents per dollar transferred (compared to 13.9 cents per dollar transferred in 1998-99). In 2002 this cost has increased to \$0.15 per dollar transferred. This indicates rising costs within the CSA.

By incorporating CSA activities within Centrelink operations will enable the Government to achieve enormous cost savings and benefits not only to the Government and public but also to the relief of the disgruntle clients of the CSA. While Centrelink has long experience and knowledge in collecting money the CSA is still struggling to collect from 66000 of its defaulting clients with a budget allowance of \$27.3 million plus a further \$31 million dollars of tax payer money being spent to recover \$97 million.

Centrelink currently have 200 offices in NSW alone whereas CSA have only 6 agency offices. In NSW alone Centrelink have 2700 staff manning the 200 offices whereas the CSA have approximately 500 staff in the 6 agencies. Centrelink has its own call centre with dedicated call centre staff. CSA has an elaborate phone system with the CSA staff rostered on to take calls and then continue on with their normal duties. It also has been noted that Centrelink have set up call centre in high unemployment regional areas and training people in the call centres with high success rate.

#### **Centrelink Facts and Figures:**

Centrelink is in the top one hundred of Australian companies in terms of size and turnover. Its recurrent budget is \$1.6 billion and it distributes \$44 billion in social security payments on behalf of the Department of Family and Community Services. Centrelink:

- has 6.3 million customers;
- pays 9.3 million individual entitlements each year;
- has 24 356 staff;
- has more than 1 000 service delivery points ranging from large Customer Service Centres to small visiting services;
- sends more than 97 million letters to customers each year;
- conducts 98 700 field officer reviews each year;
- has more than 650 000 booked office appointments each month;
- handles 5.2 million new claims each year;
- receives more than 22 million telephone calls each year;
- receives 9 million website page views each year;
- makes some 700 000 decisions weekly.

#### **Child Support Agency**

##### **Business arrangements**

Centrelink provides electronic registration of applications for child support for the CSA. In working with the CSA, Centrelink contributes to FaCS Outcome 1.

- Outcome 1: Stronger Families. Families, young people and students have access to financial assistance including assistance with child care costs and family support and child care services:
  - Output Group 1.3 Child Support.

Centrelink and the CSA have continued to work together in 2000-01 offering a whole-of- government approach to servicing our mutual customers. Twenty-one Regional Service Centres (co-located in regional Centrelink CSCs) provide child support customers with access to face-to-face services that are typically only available in metropolitan areas.

##### **Performance**

Significant improvements were made in the processing of applications and timeliness of the electronic transfer of applications to CSA. However, there are opportunities for even greater improvement. A review of the customer registration process for child support is proposed to identify these opportunities.

The review will seek to improve the processes in both Centrelink and CSA that contribute to the overall timeliness, completeness, simplicity and reliability of the information exchange.

**Major Initiatives During 2000–01 Centrelink:**

- undertook a number of pilots to facilitate customer access to community services through Centrelink Social Workers;
- continued to review registration practices and participated in a joint phone registration pilot with the CSA; and
- continued to review visiting services arrangements throughout the Centrelink network.

Centrelink Social Work Services undertook a training pilot for CSA staff in the Australian Capital Territory, with a focus on handling customer interactions over the telephone where customers have complex family issues. Following this pilot, the Social Work team won a tender to provide training for CSA staff across Australia on domestic and family violence issues.

There is an outstanding issue concerning non-payment by the CSA for services delivered by Centrelink in 2000-01. Centrelink did not receive payment for services performed for CSA on the basis of a perceived under-performance in the area of customer registrations. The issue relates to a lack of alignment in business processes between the two agencies. While some of this has been addressed, the review of the registration process planned for 2001-02 should fully resolve this issue.

Centrelink and the CSA are committed to working together over the following year to provide better customer service to our mutual customer base. It is hoped that this will be achieved through enhancements to customer registration arrangements and refinements to computer processing. Perhaps a move to a single system would have significant cost savings.

Helping staff to deliver quality outcomes for clients will also be achieved through building alternative client service delivery channels. This will include electronic service delivery to support emerging client expectations and demand. We recognise that the delivery of quality client service is the best way to influence the public

If the CSA and Centrelink were to merge then there will be no need to claw back on Part A of FTB as Centrelink will have the records of the payer and payee at the time of assessment instead of reconciliation at the time of tax return. Reduction of establishment cost as Centrelink and CSA need the same data and information to set up the customer file.

The CSA needs to operate at a more visible level therefore situating CSA staff in Centrelink offices would help in reducing CSA's poor image with its clients.

Centrelink currently have social workers on site at each of the branches, which would be very useful especially with clients in crisis and threatening to self harm or harm others.

**Recommendation 7: Reduce the use of AVO's**

The use of AVOs (DVO's in some states) needs be scrutinised more closely. As these are often used as a weapon by mothers to prevent or reduce contact with

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fathers, AVOs need to be considered carefully with sound evidence presented before the court before an AVO is issued. Should Shared Parenting become a reality, it is envisaged that AVOs could initially increase as it will be used as a tool to avoid responsibilities of Shared Parenting by mothers. Government should look into increasing penalties for false allegations.

Sue Price says she mentions domestic violence early in the piece because, although it is a state legislative issue, it is the tool that is often used to dictate the carriage of a family law matter. An easily gained domestic violence order against a father gives an undoubted advantage by removing him from the home, thereby establishing sole parenting, which usually results in a financially beneficial settlement of the family assets.

There is serious speculation from the legal profession that only 5 to 10 percent of applications are genuine.

We feel the figure is a little greater than this.

*(Dads on The Air 24 Feb 2003)*

**We would anticipate a sharp decline in Domestic Violence incidents and AVO applications if the principle of Shared Parenting is adopted.** If both parents are able to mediate an agreement covering the care and well being of the children including any child support payments, then logically as both have signed this agreement neither party should feel aggrieved. Parents with their focus on their children are far more desirable than parents set up in battle by solicitors and by the Child Support Agency.

"Also, there were significant benefits for the Mothers and Fathers who were involved in a joint custody arrangement and that **diminished hostilities between the parents was another fringe benefit.**"

Susan Steinman, Director of the Joint Custody Project and Director of the Centre for the Family in Transition for the Jewish Family and Children's Services, *Joint Custody: What We Know, What We Have Yet To Learn, and the Judicial and Legislative Implications*, University of California. Rev. 739, 747 (1983).

No doubt a number of mothers will use the allegations of "violence" in an attempt to prevent a move toward Shared Parenting. The definition used for this "violence" is very broad. A person only has to express that they "fear" the other person and an AVO can be issued. As this is most likely the primary reason mothers will use for refusing shared parenting, we assume many will use this as an excuse. Somehow the Courts and the Police will need to be more certain of, and require solid evidence of such "violence" before issuing AVO's or DVO's. **This matter will require assistance from the Federal Government as AVOs are issued under State jurisdiction.**

# **APPENDICES**

## **Appendix 1**

### **SHARED PARENTING GUIDELINES & PRINCIPLES**

#### **PARENTING PLANS / SEPARATION AGREEMENTS**

Shared Parenting (Joint Parenting or Co-Parenting)

**What is shared parenting?**

**Shared parenting is the concept that, following divorce or separation, mothers and fathers should retain a strong positive parenting role in their children's lives, with the children actually spending substantial amounts of time living with each parent.**

**There are a wide variety of parenting arrangements to suit a range of situations and these provide for time-splits from 30/70 to 50/50.**

**Why shared parenting?**

Many children decline to 'choose' which parent to live with after family breakdown, and express dissatisfaction with the artificiality of traditional contact arrangements which often relegate one parent to the role of a distant and infrequent visitor.

Shared parenting offers the children the opportunity to build up and maintain meaningful relationships with both their parents.

**What are the advantages of shared parenting?**

**1. It ensures continuation of family life for the child, with the advantage of nurture and meaningful and lasting relationships with both parents rather than just one.**

**2. It reassures children that they have two parents, and although they live in separate places, the children definitely have a home with each of them.**

**3. It ensures that one parent is not unfairly burdened with the responsibility of discipline whilst the other becomes merely the fun or contact parent.**

**4. It dispels the notion that only one parent is "caring" and that the other is "errant" or "absent".**

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The following advantages of shared parenting have been accepted in UK Courts:

1. It ensures continuation of family life for the child, with the advantage of nurture from both parents rather than just one.

2. It reassures the child that he has two parents, and although they live in separate places, he definitely has a home with both of them.

3. It dispels the notion that only one parent is "caring" and that the other is "errant" or "absent".

4. It ensures that one parent is not unfairly burdened with the responsibility of discipline whilst the other is relegated to (or marginalised as) the fun or contact parent.
5. It provides the opportunity for children and parents to develop meaningful and lasting relationships - in place of the artificiality and frustrations of contact.
6. It affirms the parents in their belief that they both have an ongoing role in their child's life.
7. It places both parents on an equal footing with schools, doctors and the world at large - who might otherwise only want to deal with the residential parent.
8. It confirms that no matter what, each parent wants to, and is able to provide a home for their child.
9. It reassures the child that in the event of one parent dying he still has a home to go to.
10. Without such an order, if one parent dies, the child would not automatically go to live with the other parent, but would be left with whoever they were living with at the time or handed over to a guardian - a poor substitute for a natural parent.
11. It enables both parents to claim the additional personal tax allowance (and possibly one parent benefit, family credit and additional child benefit), thus increasing the income available to the children (only applicable for two or more children). [More about Tax & Benefit advantages]

Note: Section 11(4) of the UK Children Act 1989 recognises that a child may live in more than one home and permits an order for shared residence.

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#### **Joint Parenting - Questions & Answers (USA)** [See References at end of document.]

This list of FAQs was prepared by Rick Kuhn to assist in lobbying for divorce reform in Maryland USA in 1996 and to answer the objections raised by the opposition. Although intended for USA readers, the points raised have world-wide generality.

New data on joint custody and shared parenting is available at:

Children's Rights Council of Maryland

What is joint custody?

There are two kinds of joint custody, legal and physical. Joint legal custody gives the non-residential parent the right to participate in major decisions about the children's upbringing and to view various records. In the traditional sole custody arrangement, the non-custodial parent has a right to a limited amount of contact with the child, and the requirement to pay child support, but is in many ways legally equivalent to a stranger. For example, a non-custodial parent cannot access his or her own child's medical records without the custodial parent's permission. Joint legal custody does not affect the child's living arrangements. Often it is granted with the traditional residence arrangement, in which the child lives with one parent but is permitted to visit the other parent four days per month.

With joint physical custody (also called shared parenting), the child lives with both parents, often on an alternating week basis. Joint physical custody is usually defined as a schedule where the child has at least a 30/70 time share between parents, although 50/50 arrangements are common (Ricci, 1981). Joint physical custody is almost always accompanied by joint legal custody.

Who has joint custody?

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Joint legal custody is very common, but no published statistics are available. In some states, courts routinely grant joint legal custody unless one parent is clearly unfit.

Probably about one out of seven divorced families had joint physical custody in the early 1990s, but the number appears to be increasing gradually. One large random-dial telephone survey found 13% of families using 50/50 joint physical custody while a survey the previous year had found 12% (Donnelly and Finkelhor, 1993). The National Center for Health Statistics compiled data on child custody awards in 1989 and 1990 from 19 states, finding 15.7% of the custody awards for 1990 specified joint physical custody, defined as at least 30% time share (Clarke, 1995). However, there was wide variation among states, from a low of 4% in Nebraska to 44% in Kansas. Among states reporting for both 1989 and 1990, there was a 2 point increase from 1989 to 1990 (Clarke, 1995). Note that the 13% figure from the telephone survey reflects all years prior to 1992 while the NCHS figure of 15.7% is for new custody awards in 1990 only. Joint physical custody is more common among college-educated parents (Maccoby and Mnookin, 1992).

How does joint custody affect children?

By a wide margin, the available research has found joint physical custody to be better for children than sole custody on a variety of measures (e.g. Buchanan, Maccoby & Dornbush, 1991; Burnett, 1991; Ilfeld, 1989; Lerman, 1989; Noonan, 1984; Rockwell-Evans, 1991), while the rest shows no difference between the two (e.g. Kaufmann, 1984; Mann, 1984; Trevisano, 1982). The critical factor appears to be conflict between parents. When there is a high degree of conflict between parents, joint custody and sole custody produce similar outcomes for children. With relatively little conflict between parents, joint custody is associated with better outcomes for children, i.e., on average they have fewer emotional problems, less delinquency, and do better in school than children in sole custody.

Does joint custody increase conflict between parents?

No. Conflict is either reduced or is the same with joint custody (Albiston et al., 1990; Arditti, 1992; Buchannan et al., 1991; Burnett, 1991; Greiff, 1979; Kline et al., 1989; Luepnitz, 1986; Maccoby et al., 1990). By definition, custody fights are conflicts over who will raise the child, so the reduction in conflict with joint custody may result from the continued participation of both parents in raising the child. Also, joint custody appears to result in less re-litigation between parents (Dudley, 1991; Emery and Wyer, 1987; Emery, Matthews, and Wyer, 1991; Luepnitz, 1986).

How does joint custody affect child support?

Joint legal custody has no effect on financial child support calculations if one parent has sole physical custody. With joint physical custody there is still a payment of child support from the higher income parent to the lower income parent, usually determined by a sliding scale based on time with each parent. State guidelines are normally constructed so that the financial support going to the child is the same for joint physical custody as for sole physical custody. Because both parents provide for the child directly with joint physical custody, the payment between parents may be less, but the material needs of the child are provided for as well or better with joint custody as compared with sole custody (Arditti, 1992; Emery and Wyer, 1987; Emery, Matthews, and Wyer, 1991; Luepnitz, 1986; Shrier, Simring and Shapiro, 1991).

Is joint custody a new phenomenon?

No, although it was rare in the past. Divorced families in times past sometimes worked out arrangements that were equivalent to modern joint custody (Ricci, 1981). For example, the Maryland Court of Appeals considered a case in 1934 in which the division of time between parents was equivalent to joint physical custody (*McCann v. McCann*), although the term joint custody had not yet been invented. As maternal preference laws were found to violate the

14th Amendment guarantee of equal protection under the law in the 1960s and 1970s (Roth, 1976), joint custody began to increase.

How do courts determine when to award joint custody?

There is a great degree of variation among states. Joint legal custody is routine in some states, but joint physical custody is not, and the factors considered by the court for joint physical custody vary significantly among states. Anyone considering joint custody should contact a local attorney regarding this question. About 90% of divorce cases are settled out of court, though, and most joint custody is established this way. Judges will rarely change an arrangement that has been established by the parents.

The legal status of joint custody may eventually change. Supreme Court decisions have found that "the interest of parents in their relationship with their children is sufficiently fundamental to come within the finite class of liberty interests protected by the Fourteenth Amendment. (Santosky, 455 U. S., at 774) "(Quoted in M.L.B. v. S.L.J, decided December 16, 1996). Because a fundamental right cannot be denied without a compelling state interest that cannot be achieved by any less restrictive means, some legal scholars believe that, in the absence of abuse or neglect, parents have a right to both legal and physical joint custody (Canackos, 1981; Robinson, 1985). This theory has not been tested in court.

What states have a preference for joint custody?

Preferences or presumptions for joint custody take a variety of forms. In many cases, the wording of statutes is vague and imprecise, not clearly specifying whether joint physical or legal custody is intended. The categorization of statutory preferences and presumptions for joint custody is derived from 1996 research by the Department of Legislative Services, Virginia General Assembly (courtesy of Murray Steinberg, Family Resolution Council, Richmond).

Preferences by case law: Georgia and Kentucky. The opinion of the Georgia Court of Appeals is noteworthy. In a unanimous opinion, presiding judge Dorothy T. Beasley stated:

"Although the dispute is symbolized by a 'versus' which signifies two adverse parties at opposite poles of a line, there is in fact a third party whose interests and rights make of the line a triangle. That person, the child who is not an official party to the lawsuit but whose well-being is in the eye of the controversy, has a right to shared parenting when both are equally suited to provide it. Inherent in the express public policy is a recognition of the child's right to equal access and opportunity with both parents, the right to be guided and nurtured by both parents, the right to have major decisions made by the application of both parents' wisdom, judgment and experience. The child does not forfeit these rights when the parents divorce."

["In the interest of A.R.B., a child", Georgia Court of Appeals, Case No. A93A0698, July 2, 1993. Subsequently heard by the Supreme Court of Georgia, which upheld the Court of Appeals finding that, according to public policy of Georgia, joint custody was in the best interests of children when both parents are fit.]

Presumption: Florida, Idaho, Iowa, Minnesota, Montana, New Hampshire, New Mexico, Texas, Washington, D.C.

Preference: Kansas, Louisiana.

Best interests (presumed when it is found to be in the best interests of the child):  
Massachusetts, New Jersey.

By agreement (presumed when it is agreed to by both parties): California, Connecticut, Maine, Michigan, Mississippi, and Nevada.

Legal conclusions (presumed when legal conclusions indicate): Delaware.

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### **Co-Parenting Guidelines**

Children have a right to a frequent, meaningful and continuing relationship with both parents. When there is more than one child, having some individual time with each child may be important.

The following age-defined guidelines are general "rules of thumb" for the co-parenting family:

**INFANTS, BABIES (Birth to 18 months):** The younger the child, the shorter but more frequent the sharing; refrain from frequent environmental changes and try not to leave the infant with unfamiliar caretakers; maintain consistency in physical caretaking - scheduling of naps, feeding time, type of formula, etc.; overnight is appropriate for the actively involved parent.

**TODDLERS (18 months to 3 years):** Maintain continuity - eating routines, toilet training methods, usual bedtime hour; overnights and weekday access are appropriate for the actively involved parent.

**PRESCHOOLERS (3 to 5 years):** Predictability is very important; weekday sharing overnights, weekends, and one week blocks of time in summer and during school vacation are fine for most children. In order to prevent separation anxiety, the child needs frequent assurance as to when he/she will see the other parent.

**SCHOOL-AGE (6 to 12 years):** Overnights during school week are fine as long as reasonable bed time, homework time, and a sense of responsibility is maintained; extended time during summer/school breaks while maintaining contact with the other parent. Children benefit from having both recreational as well as responsible (carpooling, homework, etc.) time with each parent. Allow sufficient time for child to unwind and prepare for the next school day.

**ADOLESCENCE (13 to 17 years):** Parents may want to consider reduction in sharing time and encourage teenager's input to respect teenager's activities and need to socialize and become independent.

**PARENTS ARE FOREVER**

**REMEMBER FAMILIES DON'T END -- MARRIAGES DO**

### **Appendix 2**

#### **How to Make Shared Parenting Work**

Making shared parental responsibility work for you is really NOT difficult. The less detailed your Shared Parenting Agreement, the more contact you will need with each other. This cooperation will allow each of you to more effectively meet the needs of your children AS PARENTS while maintaining your individuality.

Each family is unique in the way it functions. Below are a few common concerns with possible solutions:

WE DO NOT AGREE ON DISCIPLINE. What can we do?

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There should not be a "right way" or "wrong way" issue. One possible solution: Each parent shall maintain her/his own rules of discipline while the children are with him/her. Neither parent shall undermine the other parent's rules and discipline.

**WHO IS RESPONSIBLE FOR INFORMATION REGARDING REPORT CARDS, PROGRESS REPORTS, SCHOOL ACTIVITIES, EXTRA CURRICULAR ACTIVITIES?**

YOU BOTH decide. Possible solution: One parent shall provide the other parent with a copy of the children's report cards, etc. Or both parents, individually, shall be responsible for obtaining a copy of the children's report cards, etc.

**DO I HAVE TO LET THE OTHER PARENT KNOW EVERY TIME THE CHILDREN ARE ILL?**

As parents, YOU decide the information you each want; this will vary according to the ages of the children. Possible solution: Each parent shall keep the other advised of any illness requiring medical attention. Each parent shall have access to the child in the event of hospitalization or prolonged illness at home.

**WE DO NOT AGREE ON THE CHILDREN'S ACTIVITIES. Can one parent enroll the child in an activity without consulting the other parent?**

Children benefit most from activities when they know that both parents are supportive; therefore, consulting with each other is important. Questions you need to ask yourself:

- What does my child enjoy?
- When is the activity available?
- How will my child get there?
- Are there any other options? When?

Possible solution: One parent may make the decision regarding the children's activities during the school year; the other parent may make the decision for summertime activities.

**MARRIAGES MAY END BUT PARENTS ARE FOREVER**

It is difficult to separate your role as a former spouse from your role as a parent. But with a shared parenting agreement, you can meet the needs of your children AS PARENTS while maintaining your individually as former spouses.

A carefully planned agreement allows family members to decide for themselves what will be best for the special needs of their children. It is important that the spirit of cooperation and flexibility between parents remain the center of attention, rather than the rules of a written agreement.

**THE MORE DECISIONS YOU MAKE REGARDING YOUR CHILDREN THE BETTER IT IS FOR YOUR CHILDREN**

In the event you are not able to mutually agree on a co-parenting plan, you might want to consider consulting a family counselor/mediator.

## Appendix 3

### **THE SHARED PARENTING AGREEMENT**

Making shared parenting (co-parenting) work for you is really not difficult.

Each family is unique in the way it functions. Since each parent is also unique in the way he/she functions, it is important to write down some rules that will best suit the needs of your particular situation. The less detailed your agreement, the more contact you will need with each other. This cooperation will allow each of you to more effectively meet the needs of your children AS PARENTS while maintaining your individuality.

A SHARED PARENTING AGREEMENT can be a useful tool in creating a plan for the co-parenting family situation. A carefully planned agreement allows family members to decide for themselves what will be best for their special needs. An effective plan clearly states the agreement of the parties about:

- Where the child lives
- When the child lives with each parent
- Contact and access with the child for the other parent
- Daily decision-making
- Emergency decision-making
- Financial contribution
- Health care
- Decisions about education, moral-values formation, medical and dental care, social, recreation, legal responsibilities, religious training, travel and transportation, removal of the child from the state, communication, the method to clear up family problems that arise, and other concerns that a particular family may need to agree upon.

It is important that the spirit of cooperation and flexibility between parents remain the center of attention, rather than the rules of the written agreement. However, the agreement defines the basic areas of responsibility and acts as a safety net if communication breaks down between parents.

### **THE MORE DECISIONS YOU MAKE REGARDING YOUR CHILDREN THE BETTER IT IS FOR YOUR CHILDREN**

Parents who allow appropriate flexibility in schedules help their children develop a sense of control over their lives and a sense of being important.

In the event you are not able to mutually agree on a co-parenting plan, you might want to consider consulting a family counselor/mediator.

### **MOST FREQUENTLY ASKED QUESTIONS REGARDING SHARED PARENTAL RESPONSIBILITY**

The aim of the Shared Custody Law is to allow BOTH parents to continue making decisions about their children even after the marriage is over. These decisions include: education, religion, medical and dental, safety, social and moral development, transportation, vacations and holidays. The concept of shared parenting provides a framework for effective co-parenting.

Florida law defines shared parenting as a relationship in which BOTH parents retain FULL parental rights and responsibilities with respect to their child/children, and in which BOTH parents confer with each other, so that major decisions affecting the welfare of their child/children will be determined JOINTLY.



1. Does shared parental responsibility mean the children will divide their time equally with each parent?

NO, not necessarily. Living arrangements, time with each parent, and the responsibility each parent will have at a particular time are all separate issues to be determined by the parents (or this important decision concerning your children is transferred to the courts for a JUDGE to determine what is best for YOUR CHILDREN).

2. Does shared parental responsibility mean we will be in constant contact with each other?

NO. If the rules are established ahead of time, there is no need for constant contact.

3. Does shared parental responsibility mean we have to agree on everything?

NO. Even in the best of marriages, parents do not agree on everything. It is possible, however, to set down the rules in your agreement as to WHAT decisions will be jointly made and the process you will use in making these decisions.

4. Does shared parental responsibility mean "he/she is my child - just as much mine as yours; therefore, I can do what I want?"

NO. Again, even in marriages, parents seldom "just do what they want to" regarding the children. Most have devised a system of communication that lets each other know of plans, problems, etc.

5. Is shared parental responsibility for everyone?

NO. Shared parenting is for most parents. However, there are some parents who are unable or unwilling to recognize the needs of their children and who use this as a means to continue the marital battles.

"Sole parental responsibility" which the court may order means that responsibility for a minor child is given to one parent by the court, with or without rights of visitation for the other parent. A court may award sole parental responsibility for a minor child only if it finds that shared parental responsibility would be detrimental to the child.

Parents who allow appropriate flexibility in schedules help their children develop a sense of control over their lives and a sense of being important.

A Shared Parenting Agreement can be a useful tool in creating a plan for the co-parenting family situation. A carefully planned agreement allows family members to decide for themselves what will be best for their special needs.

In the event you are not able to mutually agree on a co-parenting plan, you might want to consider consulting a family counselor/mediator.

Source: Children and Divorce - Parent Handbook  
Broward Community College

For further information, contact:

Coordinator, Children and Divorce Program  
Broward Community College  
1515 W. Commercial Boulevard, Room 125  
Fort Lauderdale, Florida 33309  
Telephone: (954) 492-4004

Divorce Information Providers - [divorce@bc.seflin.org](mailto:divorce@bc.seflin.org)

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## Appendix 4

### **PARENTING PLANS**

<http://www.spig.clara.net/p-plans/plans.htm>

A Parenting Plan is a formal statement of how the needs of children are going to be met after divorce.

Most fully implemented in the US state of Washington, these plans are attracting increasing attention in many parts of the world as more jurisdictions move from emphasising parental rights to encouraging parental responsibilities.

Typically parenting plans cover important areas such as:

1. Residential and child care arrangements
2. Time spent with each parent and the wider family
3. Financial arrangements
4. Recreation and holiday arrangements
5. Resolution of conflict
6. Education and religion

#### Aims

Colorado State lists the aims of a parenting plan as:

To promote the amicable settlement of disputes between the parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for the maintenance of either of them, the disposition of any property owned by either of them, and the custody, support, and parenting time of their children. [14-10-112]

Washington State aims are:

To make residential provisions for each child which encourage each parent to maintain a loving, stable, and nurturing relationship with the child, consistent with the child's developmental level and the family's social and economic circumstances. [28-09-187]

#### Objectives

Washington State lists the objectives of a parenting plan as being to:

1. Provide for the child's physical care;
2. Maintain the child's emotional stability;
3. Provide for the child's changing needs as the child grows and matures, in a way that minimises the need for future modifications to the permanent parenting plan;

4. Set forth the authority and responsibilities of each parent with respect to the child;
5. Minimise the child's exposure to harmful parental conflict;
6. Encourage the parents to meet their responsibilities to their minor children through agreements in the permanent parenting plan, rather than by relying on judicial intervention; and
7. To otherwise protect the best interests of the child. [28-09-184]

Things to consider when devising a plan

The Association of Family and Conciliation Courts (AFCC) has produced a number of helpful leaflets for divorcing parents. They emphasise that shared parenting may not work for everyone, and on this site you will find the following extracts:

10 guidelines to help you determine if shared parenting is suitable for your family.

## **Appendix 5**

### **Shared Parenting Arrangement - guidelines for parents**

(Adapted from the leaflet 'Joint Custody' published by the Association of Family and Conciliation Courts)

Parents need to reflect carefully on the respective needs of their children and their own parenting resources, as Shared Parenting may not work for everyone.

The following guidelines can be used to determine whether or not Shared Parenting is suitable for your family.

Divorce often involves hurt and angry feelings. Sometimes these feelings can make it difficult to work together as parents. Professional counseling may be necessary to assist you in resolving these feelings. Hopefully the hurts and angers of the divorce will not last for ever and the two of you will be able to find a new way of working together and a 'new way of being related'.

1. The family does not end with a divorce, and its functions, such as parenting, continue. Shared Parenting allows for the responsibility of parenting to be shared.
2. The end of marriage does not mean the end of the parental relationship. An unworkable marriage does not necessarily result in an unworkable parenting relationship.
3. The best interests of children are met when parents can work together in carrying out their responsibilities of raising the children together.
4. Children need a relationship with both parents. Shared Parenting sets the stage for the parents to be involved in the lives of their children.
5. Raising children is a full time responsibility. Shared Parenting allows for that responsibility to be shared without over burdening one parent, as often happens in sole custody, or by not giving enough responsibility, as may occur with the visiting parent.
6. Parents have different assets that are important to their children. Shared Parenting can allow parents to combine their child rearing skills and more completely meet the needs of their children.

7. Shared Parenting requires a plan for day to day care that fosters stability. Some children can handle equal times with each parent; other children need a more central residence.

8. Both parents have a right and a responsibility to make decisions affecting their children. Parenthood is a privilege that involves responsibility. It is that sense of responsibility that strengthens the ongoing attachment between parents and children.

9. Shared Parenting is not for parents who are enmeshed in marital battles and who are unable to find a reasonable way of working together. Counseling may be necessary to develop a co-operative relationship.

10. Shared Parenting is not workable when parents are using it to meet their own needs and are unwilling to consider the children's needs.

## **Appendix 6**

### **Shared Parenting Arrangement - things to consider**

(Adapted from the leaflet 'Joint Custody' published by the Association of Family and Conciliation Courts)

A written Shared Parenting agreement may be helpful in setting the stage for a successful co-parenting relationship.

The following items are matters you should consider in planning your agreement. Because individuals' lives and children's developmental needs continually change, an agreement must be flexible and allow room for adjustment.

#### **1. A definition of Shared Parenting**

It is the intention of parents who agree to Shared Parenting that each of them shall continue to have a full and active role in providing a sound social, economic, educational and moral environment for their children. Parents need to consult with one another on substantial questions relating to educational programs, religious upbringing, significant changes in social environment, and health care. Parents need to exert their best efforts to work co-operatively in making plans consistent with the best interests of the children and in amicably resolving disputes as they arise.

#### **2. Residential considerations**

Specific periods of time with a given parent may need to be defined. Shared Parenting, in and of itself, does not determine the amount of time a child spends with either parent, but does imply that a child has access to each parent for enough time to allow the relationship to be meaningful and not superficial. Some children alternate between parents' homes on an equal time basis. Other families have a more traditional arrangement where children spend the week with one parent and weekends with the other parent. Children's ages and school situations, as well as parents' employment and availability must be considered in planning an appropriate physical custody arrangement.

#### **3. Parental responsibility**

When the children are in the actual physical custody of a parent, that parent shall have the responsibility for seeing that the minor children are fed and cared for properly and taken to school. That parent shall take responsibility for meeting medical and dental emergencies.

#### 4. Financial arrangements

Parents will need to arrange for the financial support of the children. Some parents agree to share this equally while others may pay the costs as they arise and pro-rata more substantial costs such as medical, school and clothing, according to income. Parents may agree to contribute money on a pro-rata basis into an account which is used to provide this support for the children. Other Shared Parenting families provide regular support payments to each other according to the amount of time a child spends with them and in proportion to their income.

#### 5. Tax deductions

Parents may choose to split the tax deductions between them if there is more than one child, alternate the deductions on a yearly basis, or grant the tax deduction to the parent having the children for the greater amount of time. Your lawyer can provide information about these tax consequences.

#### 6. School year provision

Parents may wish to agree that the children remain in the same school for that school year, to allow for continuity, or that they will negotiate the residence of the child before the up-coming school year.

#### 7. Vacations

Parents may provide for taking the children on vacations or for the children to be with the other parent when one parent is on vacation.

#### 8. Insurance

Parents may share insurance costs or designate a parent who will provide comprehensive health and medical insurance and name the children as beneficiaries of life insurance.

#### 9. Medical needs

The parent having actual physical custody of the children at any point in time shall take responsibility for meeting medical and dental emergencies.

Both parents need to discuss the general health care needs of the children and to advise each other of illnesses and treatment requirements.

#### 10. Relocation of residence

If either parent desires to move out of the area, the parents should discuss this in advance and adjust the Shared Parenting agreement accordingly.

Geographic separation does not preclude Shared Parenting, but it does necessitate changes in how the children spend time with each parent, and day-to-day decision making.

#### 11. Conflict resolution

Conflict is natural and normal. It occurs in families that live together and it is going to occur in divorced families.

It is helpful to provide a method for resolving conflict before it occurs. Parents may wish to agree on an individual or an agency that will assist them in resolving disputes rather than in turning to the courts or abandoning the Shared Parenting arrangement.

Should an issue need to be resolved by a judge, it is helpful to have designated the location of the court having jurisdiction.

## 12. Adjusting the agreement

A Shared Parenting agreement should be flexible, to allow for the changing needs of both children and parents. Parents may wish to include a provision that the Shared Parenting agreement be reviewed on a periodic basis and that the agreement can be changed with the consent of both parents.

It is worth noting that although parenting plans may be stand alone documents, they are best in conjunction with or incorporated in a separation agreement.

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- Parenting Plan (WPF DR 01.0400); Washington State Courts - Court Forms and Instructions
- Domestic Relations Forms (Forms in Word for Windows)
- Parenting Plan; Kids need both parents
- Separation agreement; Colorado State Uniform Child Custody Jurisdiction Act, Article 13, section 14-10-112.
  - Tompkins, Robert; Parenting plans - a concept whose time has come; Family and Conciliation Courts Review; (1995) 33(3) p 286-297

## Appendix 7

### Separation Agreements

Couples who are separating or divorcing can avoid a great deal of animosity by reaching agreement about their responsibilities to each other and to their children with the aid of a **mediation service** rather than going to court.

The outcome of such discussions is often a voluntary agreement which can be subsequently be formalised into a Deed of Separation, thus allowing the couple to lead independent lives. This is particularly useful if there is no immediate wish to divorce.

Separation Agreements, like Parenting Plans are growing in popularity, and Colorado State Law refers to them as follows:

To promote the amicable settlement of disputes between the parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for the maintenance of either of them, the

disposition of any property owned by either of them, and the custody, support, and parenting time of their children. [Colorado: 14-10-112 (1)]

#### Main features

The main features of an agreement are:

1. Identification of the parties - the names and addresses of the adults, and the names and dates of birth of the children
2. Confirmation of legal advice - confirming that the parties have had independent legal advice in the drawing up of this agreement
3. Acknowledgement - that the marriage/relationship has irretrievably broken down but avoiding any statement of blame
4. A clause of forgiveness - this is of particular importance, as it states that the husband and wife absolutely forgive and release any matrimonial offence or cause of complaint - thus placing a bar on further reference to past actions. Essentially it is a commitment to make the deed of separation work.
5. A residence plan - the residential arrangements - who will live where (and when)
6. A contact\* plan - defining exactly what contact each child will have, and with whom throughout the year. It should also contain arrangements for making up any contact lost by illness or other reasons.
7. An education plan - involving both parents, agreeing that each will receive regular reports about the children's progress and copies of items sent to all parents, and that no objection will be raised to either parent attending school functions
8. A non-relocation clause - a statement that in the interests of the children, neither adult will move away without the consent of the other, and that the adult who moves away shall bear all the costs of future contact.
9. Details of the financial settlement - details of any lump sums and transfer of possessions.
10. Covenants - by each party and agreements that they will support and maintain themselves and maintain the child when the child is living with them
11. Sundry agreements - covering inheritance etc

Note: \* contact = visitation / access

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## Appendix 8

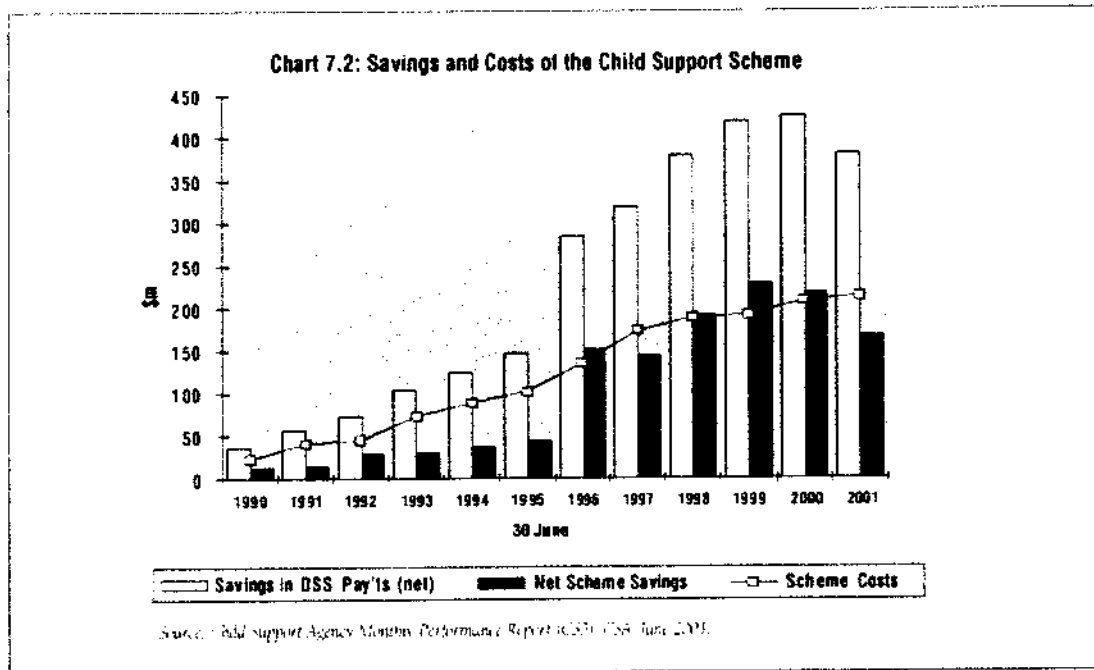
### CSA Statistics

Private Arrangements mean less defaulting on payments.

	CSA Collect	% CSA Collect	Private Collect	% Private Collect	Total	% Total Cases
<b>Male</b>	289,089	91.1	258,742	89.4	547,831	90.3
<b>Female</b>	27,890	8.8	30,477	10.5	58,367	9.6
<b>Total<sup>1</sup></b>	<b>317,291</b>		<b>289,465</b>		<b>606,756</b>	

Source: Child Support System, NSW, June 2001.  
 Notes: <sup>1</sup>Percentage includes 418,465 cases with no gender information recorded in the Child Support System. 312,152 of these are CSA Collect.  
 Percentages may not add due to rounding.

Cost of Operating the CSA are rising.



**It costs the CSA \$1.05 to collect \$7.00.**

At the end of June 2001 there was 2,695 FTE staff in the CSA. Of that number 1,927 were females (71.5 per cent) and 768 were males (28.5 per cent). At levels ASO 1-6 (and equivalents) 73 per cent of all officers were female but at the Senior Officer levels males accounted for 43 per cent of CSA staff.

**Total amount of child support transferred between parents**

The total amount of child support transferred between parents continues to increase with \$1 386 million transferred in 1999-2000 (compared to \$1 324 million in 1998-99). This includes child support assessed by the Child Support Agency and transferred directly between the parents and child support assessed and collected by the Child Support Agency.

**Child support collection rate (Child Support Agency and private collections as a proportion of liabilities raised)**

The overall collection rate since the Child Support Agency's inception now exceeds 90 per cent; for Child Support Agency-collect clients, the rate is 86.3 per cent (compared to 85.2 per cent in 1998-99). Net Child Support (Maintenance) debt per Child Support Agency-collect case increased from \$1 543 in 1998-99 to \$1 761 in 1999-2000. This was due to at least three factors. First, the Child Support Agency's caseload and debt increased with no significant concurrent increase in the total amount of money collected. Second, 'write-off' debt decreased, meaning that more debt remained on the books. Third, debt arising from unpaid \$260 liabilities also contributed to the growth in Child Support Agency debt.

**Percentage of parents transferring child support privately**

of parents registered with the Child Support Agency, 45.2 per cent chose to transfer child support privately, compared with 44 per cent in 1998-99. The increasing trend shows that strategies to support parents in meeting their child support responsibilities with minimal Government intervention, are working.

**Net clawback - reductions in Family Allowance outlays as a result of child support obligations being met**

The net clawback arising from reductions in Family Allowance under the maintenance income test was \$594.4 million in 1999-2000. This compared with \$419.2 million in 1998-99 and \$378.3 million in 1997-98.

### **Number of items to Ministers**

During 1999-2000, Group 1.3 prepared 134 ministerial submissions and other written advice and briefings, and completed 1 358 pieces of ministerial correspondence on child support matters. These figures also include work done by the Child Support Agency and other FaCS branches on child support policy and associated issues.

Cost: **\$1 043 000**

### **Major pieces of research and evaluation completed-5**

Two policy research papers relating to work done in previous financial years were released.

- ***Estimates of the Costs of Children in Australian Families, 1993-1994 (Policy Research Paper No. 3)***: this paper was prepared for FaCS by the National Centre for Social and Economic Modelling at the University of Canberra. The study estimated the costs of children in Australian two-parent families, based on parental expenditures on children aged up to 17 years. The costs presented were average estimates based on reported expenditure by parents, and did not in any way seek to prescribe levels of expenditure.
- ***The Behaviour and Expenditures of Non-resident Parents during Contact Visits (Policy Research Paper No. 75)***: this paper reported on the results of a survey of 252 child support cases conducted by Murray Woods and Associates for the (former) Department of Social Security. The main findings were:
  - non-resident parents typically provide an infrastructure for contact visits, consisting of accommodation with a separate bedroom and various household and personal items
  - this infrastructure is provided regardless of the non-resident parent's income
  - the main reported constraint on the amount of contact exercised by non-resident parents is geographical distance from their children.
  -
- ***Minimum Liability Evaluation***: in 1994, the Joint Select Committee on Certain Family Law Issues recommended introducing a minimum child support assessment of \$260 per year. The Government responded by introducing a minimum payment of \$260 per year to take effect from 1 July 1999. The only exception is where a payer has no income at all. The Child Support Agency conducted an evaluation of the impact of implementation of the minimum assessment. The results will be used by the Government to help determine whether any fine tuning of the policy is necessary.
- ***Parental Choice Research***: a parental choice research project was established to determine why payees who, while under no obligation to register with the Child Support Agency, did so and stayed with the agency. The research also sought to ascertain the characteristics and needs of parents who managed their arrangements with little Child Support Agency intervention. Information gathered used two research components, a pilot survey and focus groups.

The combined results showed most parents want objective advice and the security of the Government either collecting or backing them up should they need it. Some parents (predominantly Child Support Agency collect payers) are reluctant to use alternatives when the relationship with the ex-partner is poor. Other parents, however, whose relationship with the ex-partner is better, would consider greater independence in their child support arrangements, if better support and information were available.

Based on the important findings of this research, the Child Support Agency has begun to implement a number of tools which will make it easier for parents to establish and manage their child support arrangements.

### Cost per case

In 1999-2000, the cost per Child Support Agency case was \$366.

- It has transferred 93% of all child support since 1988.
- About 50% of parents now transfer their child support privately.
- In fact, most Australian parents do the right thing and pay their child support.
- However, despite all CSA's efforts, there are some parents who have been wilfully non-compliant over a considerable period.
- These parents have the capacity to pay, but won't pay.
- The Government will provide \$31 million over 4 years.
- CSA will be able to concentrate on over 66,000 debt cases with a wide range of income levels and sources.
- CSA's approach will be to:
  - Discuss the debt with parents;
  - Verify its accuracy; and
  - Negotiate an affordable payment arrangement.
- Where this approach fails, appropriate enforcement action will be taken.

Our role in assisting parents to take responsibility for the financial support of their children has resulted in significant benefits for separated parents and their children.

- **over \$1.45 billion child support was transferred for the benefit of children in 2001-2002 and a collection rate of 87.7 per cent was reached;**
- **since the inception of the scheme 92 per cent of child support liabilities have been paid;**

This is interesting in that the majority of this money has been paid to mothers by fathers. This equates to some \$1400 per year per child being paid by payers.

Many payers pay closer to \$800- \$1000 **per month** in child support.

- 70 per cent of parents pay regularly. (CSA web site)

On these figures we see:

- 92% of liabilities have been paid so why the **extra \$31 million** to be spent on chasing 8% of non-payers? (96000 out of 1.2 million parents) Is the lack of contact with the children an issue here?

### **CSA Financial Plan 2002–2003**

	\$	%
<b>1. Client Service Delivery</b>	127,121,747	56.7%
New Clients	24,495,173	10.9%
Collection Support	59,008,148	26.3%
Debt Management	23,706,617	10.6%
Regional Service Centres	5,881,671	2.6%
Regional Support (includes Client Matters and Objections)	14,030,138	6.3%
	127,121,747	56.7%
<b>2. National Support</b>	13,662,744	6.1%
<b>3. Corporate infrastructure</b>	83,266,695	37.2%
	<b>\$224,051,186</b>	<b>100%</b>

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July 2003**

(CSA web site)  
Current (2002) cost per dollar transferred = \$0.15  
Or \$1.05 to collect \$7.00.

In 1999-2000, the cost of transferring money between parents was 14.3 cents per dollar transferred (compared to 13.9 cents per dollar transferred in 1998-99). The costs are rising each year.

Current CSA Contracts, 2003 financial year, over \$100 000 show that the Redevelopment Program contracts amount to some \$10 million dollars.

Refer to the CSA website at: <http://www.csa.gov.au/agency/plans/list.htm>

## **Appendix 9**

### **Australia differs in suicide findings**

July 4 2003  
By David Wroe  
Canberra

Financial woes rank as the second-most-common cause of suicidal behaviour among Australians after relationship breakdowns, in stark contrast to other countries, a Queensland study has found.

A continuing World Health Organisation study of 15,000 people ranked relationship breakdown as the number one cause of attempted suicide, followed by money problems, trouble with parents, trouble with children and mental illness.

But the prominence of money as a factor concerned study leader Diego De Leo from the Australian Institute for Research and Prevention of Suicide at Griffith University (Qld.).

The study found also that Australians aged between 25 and 44 are more likely to contemplate suicide and that such thoughts are far more common in men.

## **Appendix 10**

The following paper is an excellent reference source. It was presented at the Family Strengths Conference at the University of Newcastle on 22 November 1999:

[http://www.facs.gov.au/internet/facsinternet.nsf/98daf4abb8d56103ca2568910004f7af/acff41f57da34afca2568920076c5a4/\\$FILE/sharing the care.rtf](http://www.facs.gov.au/internet/facsinternet.nsf/98daf4abb8d56103ca2568910004f7af/acff41f57da34afca2568920076c5a4/$FILE/sharing%20the%20care.rtf)

## **Appendix 11**

[http://www.dailytelegraph.news.com.au/common/story\\_page/0,5936,6719648%255Ei2409,00.html](http://www.dailytelegraph.news.com.au/common/story_page/0,5936,6719648%255Ei2409,00.html)



