Submission to the Senate Legal and Constitutional Affairs Committee: Inquiry into Australia's Judicial System, the Role of Judges and Access to Justice

I make this submission as a Father forced to self-represent in the Family Court. It is my surprising and unfortunate experience to discover that the Family Court is only a pseudo court of law. There is no justice or even pretence of justice only the best interests of the child. The court is therefore subject to inherent judicial prejudice/abuse without proper recourse for injustice since the decision is always discretionary

The problem of judicial misconduct is exacerbated because it remains hidden by the obstructive practices to appeal in the Family Court. The transcript is not provided, whereas all other courts provide this, the costs are made prohibitive by a loser pays policy, with these costs payed in advance as security, and the effluxion of time for a hearing, publication of reasons and retrial unfairly establishes an unchangeable status quo that renders the appeal process mute. The aggrieved party is better off to accept the decision, right or wrong, and make a new application after 12 months. Judicial discretion or otherwise is unscrutinised and thereby encouraged.

The Family law amendments promised a new direction and renewed hope to fix a tragic system that stole children from loving father's supposedly in their own best interests and created generationally bankrupt families physically, financially and emotionally. The intent and purpose of the amendments is obvious however the problem remains that old ways and preconceptions of entrenched judiciary, unfettered by appeal scrutiny, resists, obstructs and even create precedents to circumvent or even subvert the new laws. Absolute discretion cannot otherwise become corrupted knowingly or not.

I would like to think the court gets it right most of the time. I hope the amendments result in more equitable results and therefore fewer appeals. However, I am concerned that some judges are unable to admit or accept self-error to the extent that they will pervert the course of justice and seem to be protected in these actions by their peers in the appellate court.

I refer to my attached complaint of judicial misconduct to the chief justice. My application as a self-represented litigant for a stay of orders pending appeal was summarily dismissed without oral hearing or explanation of process. The trial judge forced me to disclose income in open court, made a costs order knowing that I couldn't pay and the opposition promptly filed again for $30K security of costs to stifle the appeal. They had improperly sought this from the trial judge, who **fabricated** that this was transferred to another hearing. The Full court believed the judge of course, since the internal file was not available to me, and made the security of costs order in full knowledge, admitted by me at the hearing, that this would stop my appeal.

The appeal has public importance in that it would submit evidence that the trial judge predetermined to create caselaw to circumvent the family law amendments. Her Honour, actively sought the ICL counsel ex-parte before trial to tender anti-shared parenting research, which at that stage had not been tendered, before finding that the family reporter "effectively" back flipped on three equal shared care reports under cross examination of this research by the ICL.

The reasons for judgment resurrect the old law standards of entrenched conflict as high conflict; inability to communicate despite the interim orders preventing direct contact or communication and protects status quo regardless of how this was achieved – abduction, strategic adjournments to prolong proceedings and escalate costs, false allegations of mental illness, personality disorder, drug abuse, family violence, supervised contact and false denials of shared parenting agreements – everything the amendments were designed to discourage to protect the child from such practices.

Most significant is that the trial judge ordered no-contact or communication in a substantial shared care arrangement. This is inconsistent and contradictory to her owns findings but still resists the preferred option in such contrived circumstances of equal time in a parallel parenting order. It is available in the amendments, is embraced as the deterrent to contrived conflict in enlightened countries, but remains

seemingly anathema in Australia. The shared parenting amendments are reduced to shared parental responsibility without this alternative route to equal time and real parenting.

Significantly the trial judge was presented with this ground alleging exparte communication before trial at subsequent hearing. This was in regard to an application by the Mother that our child be relocated to a different school 5 weeks after starting school. The trial judge refused to disqualify herself strangely citing the High Court judgment that prohibited a family court judge for less overt exparte communication. I then informed the trial judge of my misconduct complaint against her to the Chief Justice but she still refused to stand-aside. There is little hope of a fair hearing for the unrepresented. I was told that I could either consent to the Mother's application to change school or her Honour would make the order. This consent was to prevent reasons for judgement, and therefore accountability, being published. The trial judge nevertheless published reasons for not disqualifying herself in which she took opportunity to protect her trial judgement to claim the dispute proved the parents could not communicate. Her honour omitted the fact that her orders prevented communication.

This omission of crucial facts is a recurring feature of my judgements. The reasons are bent and distorted to fit the law rather than the law creating the reasons. Without transcript in appeal this strategy remains legitimate

I must further comment on the practice of cost orders to stifle self-represented litigants in the Family Court. The fundamental principle in Family law proceedings is that litigants pay their own costs. In 5 self-represented hearings I have incurred 4 costs orders from 4 different judges whether the opposition sought it or not. I am forced to self-represent after incurring costs in excess of $120K over 3 years of strategically prolonged litigation. I have no choice. The Mother has legal aid and tries to impose supervised contact. She has actually profited from litigation, has a government-subsidised house better than mine and has more income from government assistance than she did working.

It seems that part of the family court process is to avoid having to make a judicial decision for as long as possible such that the decision is made by this delay. Further delay prevents appeal such that the non-decision without scrutiny is confirmed. This process invites abuse which the family law amendments redress. The judiciary must

be made to comply with the will of the people as mandated by the laws of Parliament, not run their own show.

I perceive the intent of the family law reforms is under threat. Shared responsibility is a meaningless consolation prize for equal time. The cracks in the shared parenting amendments are apparent, fathers are taking matters into their own hands, the public is becoming aware. This purpose of the amendments need to be encouraged or otherwise enforced by accountability and replaceability of judges. I suggest the judges become elected officers of the court. Those that fail to move with times will be moved from the bench to the bar.

I apologise for the personal nature of this submission. I was not informed of the inquiry until two days before the closing date but wanted to contribute. I hope my experience might provide some insight into the machinations of the family court.

Yours faithfully

Enc: Chief Justice letter 110109

Chief Justice,
Family Court of Australia
PO Box 9991
MELBOURNE

Re: Appeal No. of 2008

10/01/2009

Dear Chief Justice:

I am writing to complain about an abuse of process that will either stifle or unfairly prolong my even appeal being before heard 2010. These delays in hearing, judgements publication and retrial effectively render the appeal moot.

Specifically, the opposition solicitor filed a "new" application for security of costs on 3 September 2008, which is one week after this same application was relied on as their response to an application heard on 26 August 2008. The new costs affidavit is simply cut and pasted from paragraphs 16-27 of the Response affidavit (Attachments "A1-4"). Further this application was filed out of time without providing any reasons for the delay. The amount of $30K as security for their Legal Aid, which has since been revoked, costs makes obvious their intent.

I point out that I my legal costs exceed $120K that reduced me to legal aid for the trial. A Health care card waived fees for a self-represented appeal. This appeal caused by the opposition recklessly tendering an undisclosed, unfiled adversarial child expert witness report into a traditional trial.

Unfortunately abuse of process is systemic in this case adjourned through 3 jurisdictions. The matter has already been strategically prolonged for more than 2½ years, which places unfair burden on my now 5-year-old child.

i) On the FMC trial was adjourned on the day to the Family Court despite the respondent solicitor's written agreement to keep the matter in the FMC. The solicitor approved legal aid merit to seek occasional supervised contact against 2 equal shared care family reports.

ii) After a delay of 17 months, a month before Family Court trial, this solicitor filed a contravention without notice for 6 hours that risked

forfeiture of the Family Court reserve trial date. refused to list it.

iii) At trial this solicitor relied on an undisclosed, unfiled adversarial child expert witness report that compromised three Family Reports thereby guaranteeing an appeal.

iv) Further this solicitor relied on exclusively my self-drafted affidavit withdrawn by consent **before** an interim hearing 15 months earlier.

v) On appeal this solicitor filed twice an out of time application for $30K legal aid costs, when legal aid has been revoked, to delay the appeal into financial and emotional submission.

vi) Along the way the mother admits this solicitor

(a) assisted her to abscond with our 2 year-old child to another city allegedly into a domestic violence refuge. There was no history of violence in the 2 year relationship or in the preceding 10 years of my first marriage.

(b) The solicitor refused to admit my first wife's affidavit unless she attended the trial in person from the USA.

(c) Agreed to represent both parties and called me at home.

(d) advised the mother to involve SOCA for an alleged deflated tire of a third party's car.

(e) obstructed and instructed the court-ordered counselling.

(f) Approved merit for an extension of legal aid to seek sole parental responsibility against 3 equal shared care family reports. misappropriated this extension to instruct at trial.

(g) still refuses to disclose my child's address after 2½ years.

I have previously complained to the in pages 2-3 of my letter of (Attachment "B") without a response. The security for costs application has been scheduled for hearing by the full court at the March

2009 sittings. My appeal filed in July 2008 with Appeals books filed in December 2008 should be over at these sittings rather than still waiting to begin.

I refer to a recent judgement of the Full Court on the matter of security of costs. In Halsbury & Halsbury [2008] FamCAFC 170 – 18/11/2008 Justices Finn, Boland and Murphy dismissed an application for $15K based on the applicant's limited financial means **with emphasis** on the fundamental rule in Family Law Act 1975 (Cth) s 117(1) that each party pays their own costs. The Judgement notes pointedly that the appeal could have been heard at this sitting and further states that in similar cases time and resources spent in arguing and opposing applications for security for costs may be better spent in determining the appeal itself.

I highlight the remarkable timing similarities of this case. The Halsbury Appeal Books were filed on , the security application heard and judgment delivered on The appeal is delayed at least 1½ years without recourse to significant costs for the self-represented litigant.

I urge the Chief Justice intervene in an obvious abuse of process. I respectfully request that judicial discretion be exercised to summarily dismiss the respondent out-of-time application for security of costs that has already been heard and which fails the change of circumstance threshold or that the issue of costs be deferred to the hearing of the Appeal itself.

I further respectfully request the Chief Justice exercise judicial discretion to expedite the Appeal process. The court appointed doctorate psychologist identified the mother's significant health problems in 3 family reports. The trial judge further notes in her reasons that the mother seems psychologically damaged. The mother continues to live in hiding "for her and the child's survival" as recorded on page 12 of the subpoenaed notes of counselling psychologist I remain concerned about our child in this situation and also for the mother. Our child remains unenrolled to start school in 2009. There is no hope of compromise or a settlement with the matter being delayed for another year. For these reasons I submit that it is a matter of urgency for the Appeal be heard at the **March 2009** Full Court sittings.

Unfortunately I must also make a complaint about the conduct of the trial judge, , who seemingly encouraged this application for security of costs.

In my stay application failed to explain procedure or provide procedural fairness according the guidelines for self-represented litigants. The application was dismissed without any oral submissions.

Further the trial judge made a costs order against me that had not been sought by the opposition and was in fact denied as being sought until pointed out that their response, unfiled and handed up on the day, included "Such further and/or other orders as this Honourable Court deems appropriate". Attachment "A1"

then made a $1500 costs order and pressured me to accept three monthly payment deadlines. The opposition promptly filed a security of costs application for $30,000 - thus ensuring the appeal was stifled or at least delayed for 12 months.

I regretfully submit this might be seen as a contrivance by the trial judge to suppress the appeal.

1) was in receipt of my reply (Attachment "A4" contains true copy of paragraphs 15-18) that repeated my trial affidavit statement that as a legal aid funded litigant at trial who could not afford a previous costs order for $1500 made in May 2007 that those costs be set aside.

2) These costs were incurred after my self-represented application that my child's location be disclosed was dismissed as breaching Rice & Asplund (who?).

3) I cited that I had paid for three psychiatric reports and two family reports and all the court ordered counselling for 12 months.

4) Further the opposition's strategic adjournments and late filings caused two trials and hearings that would otherwise have been unnecessary that had escalated my costs beyond $120K.

5) was provided with the CSA Notice of Assessment (Attachments "C"&"D") that showed low income for both parents within $3400.

After imposing this costs order advised me to seek legal aid. I respectfully submit that it would have been more appropriate to reserve costs to the Appeal.

I enclose the amended grounds of Appeal in attachment "E". On told me in open court that the grounds could be amended without notice up until the filing of the Appeal Books. Unfortunately I accepted this without checking the Rules. I requested chambers or ex parte decision with regard to the new 2009 Rule amendments that allow changes without notice up until filing of the Statement of Argument. This accidental out of time amendment has also been referred to a Full Court sitting in March 2009.

I refer Kirby J in the High Court decision WJD v TEK (1998) 72 ALJR 1323; [1998] 9 Leg Rep SL4a where he relevantly observed (at [8]):

> Rules of Court are the servants and not the master of the attainment of justice in our courts, as has been often said. [Clune v Watson [1882] Tarl 75; Bay Marine v Clayton Country Property (1986) 8 NSWLR 104 at 108].

In all circumstances I humbly request the Chief Justice intervene and expedite this matter.

Yours faithfully