

NON-CUSTODIAL PARENTS PARTY (EQUAL PARENTING)

John Flanagan,
Deputy Registered Officer,
Non-Custodial Parents Party (Equal Parenting),

29 April 2009.

Committee Secretary,
Senate Standing Committee on Legal and Constitutional Affairs,
Department of the Senate,
PO Box 6100,
Parliament House.
CANBERRA. ACT 2600.
Australia.

Dear Sir

Re. Submission to the Inquiry into Australia's Judicial System and the Role of the Judges.

We wish to make a submission to the Senate Standing Committee's *Inquiry into Australia's Judicial System and the Role of the Judges*.

This is with particular reference to

Item (d). The Judicial Complaints Handling System.

Our concerns are primarily related to the Family Court system in Australia.

The Australian Constitution's Chapter III Section 71 vests judicial power in the High Court and in other federal courts that the Parliament creates. One of these federal courts is the Family Court of Australia*.

One of the areas of concern is judicial activism of Family Court judges acting outside of the Australian Constitution. We believe that there is a need to restore the activities of these judges back to within the judicial boundaries of the Australian Constitution.

In a series of articles in the Quarterly Essay (Issue 18, 2005), two (2) former Chief Justices of the Family Court and the current Chief Justice of the Family Court all come to the conclusion that it was not necessary that "*the law should recognise the legal right of a parent to see his or her children, unless likely to do them harm*" (e.g. refer page 81, QE 18 2005).

One former Chief Justice also stated that the "*the right to contact is one of the child and not of the parent. That happens to be the law as stated in the Family Act*" (page 88, QE 18 2005).

However Chapter I of the Australian Constitution states at section 51(xxii) that Parliament shall have the power to make laws with respect to: - “*Divorce and matrimonial causes; and in relation thereto, parental rights, and the custody and guardianship of infants*”.

The Family Court needs to consider both the child and the parents together, each with their interests and needs. Family Court judges have always held the unconstitutional view that parents have no rights, as soon as family separation occurs. Judges consider that both parents lose that the presumptive right to see their children. This is despite section 51(xxii) of the Australian Constitution.

The Australian Constitution provides that judges shall not be removed except “on the ground of proved misbehaviour or incapacity” (Chapter III of the Constitution at section 72). We would urge the Senate’s Legal and Constitutional Affairs Committee recommend the adoption of a periodic review of “good behaviour and capacity” of judges, particularly Family Court judges. We also urge that this review be based on the decisions of these judges and that the review to be held every five (5) years. Should it be found that the behaviour not come up to the standard befitting a judge, then that judge’s appointment should be terminated by the Governor-General.

Yours faithfully

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<http://www.ncpp.xisle.info>

Note:

- * When we refer to the *Family Court of Australia*, we also generally refer to the *Federal Magistrates Court of Australia (Family Law)*, to the *Family Court of Western Australia* and to the various State *local and municipal courts (family law matters)*. These courts also have the same jurisdictional authority with respect to family law and child support matters.
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