

Submission No: 705

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Secretary: .....

My name is Tony Gee and this is a private submission.

I am a Psychologist. I work as a Family and Child Mediator in a community organisation. I also am a Reg. 8 Counsellor and do Family Reports for the Family Court and the Federal Magistrates Court. Prior to this I worked as a Court Counsellor and Mediator with the Family Court for about 10 years.

For the past 5 years I have run an 8 week support/education group for separated fathers, the "Men, Separation and Parenting Program", which, for the past 3 years, has been funded by through the Men and Family Relationships program. As an adjunct to the group, I also see a number of fathers in counselling.

As such, I believe I have much experience in working with separated families, including mothers and children, with a special focus on separated fathers.

The emphasis in my work with fathers remains strengths based and 'family focussed'. Father's making constructive choices assist not only themselves, but also their children. And reasonable, or at least non destructive parent relationships are fundamental to children's well being.

While there is so much to be said, in terms of this submission, due to time constraints and a wish for brevity, I will focus on only several brief aspects. I also assume the committee will be inundated with information and statistics, much of which has been explored in the Andrews Report (To Have and To Hold) and therefore do not need reiteration here.

1. It is my understanding that rebuttable joint custody has been the case in a number of States in the U.S. and I would assume the committee will carefully examine the experience there. It is also my understanding (but I have been unable to research such and therefore have no certainty) that some states had rebuttable joint custody but withdrew the legislation as problematic. Again, I hope the committee will be able to research this in detail and use the data to inform this debate.

2. While I think it is of worth to have the current debate, I believe the real issue lies untouched. The most problematic aspect of family law is the *adversarial system* in which it is embedded. While rebuttable joint custody may rearrange the deck chairs, the ship is still sinking.

If the child's best interest is the paramount consideration, and the research is unequivocal in the claim that ongoing conflict between parents is damaging to children, and the research is also clear that an adversarial system escalates and entrenches conflict; how can that system then operate in a child's best interest?

In my opinion, the adversarial system contradicts and undermines the very principle it is supposed to hold paramount! And I am yet to be convinced in any regard, that parent vs parent, at a cost of thousands of dollars each, can possibly benefit a child. There are many children I have seen who could have easily been educated at a private school with the money spent – rather than end up close to poverty. And this is a system we support!

While rebuttable joint custody may change the emphasis of disputes, dispute will continue and the underlying “sinking ship” continue to drag families down.

3. Following from the above, I believe a tribunal system, with a Judge, and professional panel, operating in an inquisitorial way would be more suitable to separating families. This would be closer to the ‘helping Court’ first envisaged. This would be cost effective and more ‘protective’ of children. I understand these ideas are not new and have been explored before. I implore the committee to be open to examining this further.

4. In terms of rebuttable joint custody, I think this is a simplistic answer to a complex and difficult issue. Joint custody (shared residence) is currently available by agreement. The ABS suggest 3% of separated families have shared residence, but in my experience this figure seems very low (or I happen to see most of them!). The problem that underlies many fathers is that joint custody is rarely ordered if the matter goes to Court. So many fathers who have good relationships with their children and *are* good fathers, end up weekend parents if the mother is not open to a more involved plan. For me, herein lies the crux of the issue. It seems to me rather than change the law, a different emphasis is required which places more responsibility on the resident parent (the mother) to encourage a positive and meaningful relationship with the other parent. This is like a “please explain” if the contact is problematic... and the please explain needs to relate to both parents but the resident parent cannot simply abdicate responsibility if they so wish. Such is not in the child's interest.

4. It is clear from the research that while there are guidelines and general themes in terms of children and the impact of separation and different parenting arrangements, the role of individual differences is great. This simply means that

there are no absolute rules. Different arrangements will work for different children in different families. I believe this is grossly understated, especially if the matter ends up in Court. So often I hear clients talking about “the usual” in terms of children’s plans.. this they have heard from their respective lawyers. “The usual” may suit some children in some families, but as a prescription can be disastrous. I believe our current system lacks scope to adequately inquire into specific families and their specific needs. A change in the emphasis of the law will be meaningless without great change in how it is practiced.

5. I also believe there is a danger of polarising debate around the important issues of children and parenting after separation. The fathers rights groups vs single mothers. This mirrors the same dynamic as parents fighting in an adversarial manner in a custody battle! And the child can get lost somewhere in the middle. In my opinion, the ‘battle’ needs to be for *both*. Children need both parents and a non hostile environment. Surely this is what the outcome of this enquiry should attempt to mirror – constructive change in a cooperative manner, rather than through imposed change.

6. It is clear that there are some fathers who are violent and abusive and whose contact with their children needs supervision and should be limited. In my experience, there are also many fathers who are committed and dedicated parents, who become marginalised in their children’s lives in the face of a hostile mother. I do not believe a change in the legislation will necessarily alter this dynamic. Children need reasonable cooperation and support between their parents. Cooperation *cannot* be enforced. A change in the law may bring about more cooperation but in my view the emphasis needs to be on how cooperation can be sustained.. and it is a parents responsibility to work towards such. Resources into parenting groups (mandatory) education and so forth would seem a better focus to me.

7. In this manner a responsibility to maintain relationships with grandparents should also be included. In some families the grandparents are the most stable persons in a child’s life and a huge emotional and psychological resource. They can be the source of intense attachment for children. Once more, in my opinion, a residence (and non resident) parent should have a responsibility to maintain a child’s contact with grandparents. Where there was dispute, an overall plan could be submitted to the Court. However, in my opinion, where the plan may break down, it is sometimes impossible (enormous cost as well as time) for the other parent or grandparent to bring it back to court. Some sort of review or ,as stated earlier, ‘please explain’ process is needed. Courts and court orders are

static entities, children and families, especially post separation, are often in rapidly changing circumstances.

8. In terms of Child Support, once again I have not adequately researched what I would have wished. However, from fathers perspectives, it appears that the high income and the low income payers have little problem in terms of the impact on life style. However, the middle bracket earners (especially PAYE) will often struggle. I ran a group not long ago where *every* father was living back with their parents. Why? Because they could not afford rent. How do you parent children adequately if you cannot afford suitable accommodation. Yes, the mother and child may be relatively ok, but at the expense of the father and the father-child relationship. For many fathers this can create a vicious cycle as they gradually disappear from their child's life. I do not believe adequate recognition has been given to this concern and welcome the committee's investigation. Again, I believe there is difficulty with blanket decision making (even though the CS formula has given clear guidelines) and believe there should be discretion in certain circumstances that could be brought to a tribunal, with more emphasis on parenting as a resource, rather than only finances as a resource. I also find the connection between nights and CS amounts abhorrent. I have witnessed many disputes stalemate over one night because of the impact on child support. I do not however, have an answer!

The above represents some of my thoughts which have been hastily pulled together for the enquiry. I would be happy to be involved in further discussion at some point in the future. I attach a brief paper recently published which echoes some of these thoughts.

Yours,

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