

**SUBMISSION  
(EXTRACT)**

House of Representatives Standing Committee on Family and Community Affairs	
Supp.	Submission No: <u>1312</u>
	Date Received: <u>19-9-03</u>
	Secretary: .....

The Standing Committee on Family and Community Affairs  
Child Custody Arrangements Inquiry  
Department of the House of Representatives  
Parliament House  
CANBERRA ACT

By:

Name Withheld Ref 1276  
17th September 2003

The following extract may be published.

## SUBMISSION

*"There are many things wrong with the English legal system. A large proportion of them can be explained by our reverence for the doctrine of precedent. We do things not for any rational reason but because they have been previously been done that way"*

- David Pannick QC,

quoted in **"The Cartel, Lawyers and Their Nine Magic Tricks"** by Evan Witton<sup>1</sup>.

### 1.1 Submission Summary

The Family Law Act(Cth) and the administration of it is fatally flawed.

The Act is fundamentally flawed and the current administration of it involves systemic flaws.

It is submitted that the Act should not be amended to include provisions such as "a presumption that children will spend equal time with each parent" unless both these flaws are remedied.

Such a provision as this would enrage litigants and lead to more contentious and vexatious litigation and unnecessary financial hardship at least and at worst more suicide attempts, more child and parent murders, more kidnappings and more abuse not less<sup>2</sup>.

Every time Parliament makes a change to civil legislation, it takes a generation of legal professionals and community groups through the appeal and other high courts to remedy its flaws, to provide instances of its failings to provide "common sense" justice.

No legislator should try to enact change unless they can bring their personal experiences to bear otherwise our flawed adversarial legal system will provide an unbalanced version of the facts to parliament by those private individuals and groups with the money to put their case.

*Community matters should not be dealt with by an adversarial legal system, but an inquisitional-like one with broad powers of the courts, supported by fully funded field workers, to fill in the legislative blank and black spots which seems to be the hapless occupation today of most parliamentary sittings and committees.*

***This submission provides detailed recommendations to substantially remedy these flaws and provides a personal case history into why family law litigants are being denied guidance and justice in these matters.***

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<sup>1</sup> Herwick Press 1998

<sup>2</sup> See Exhibit - "What's Going on in Family Court"

## 1.2. Detailed Recommendations

**[II]** That no further changes be made to the Act until:

- (i) Parliament fully funds the administration of existing provisions including reasonable access for non-metropolitan litigants and for transcript services and the provision of free-call phone contact with registries - other government departments have this service.
- (ii) Parliament endorses in full the recommendations of the Chief Justice for additional judges and the abolition of the Federal Magistrates Court which His Honour vehemently opposed and the creation of which removed limited resources from the Family Court
- (iii) the Court ensures that all judiciary officers and court appointees, including Child Representatives, have recognised and relevant psychology qualifications
- (iv) the Court replaces single trial judges with a Coram of two judges of opposite gender or provides lay court assistants of complementing gender and to implement this, the government make the position of Chief Justice a joint position of two judges of opposite gender.
- (v) Parliament establishes a separate Federal Legal Aid Commission for family law matters in each state.
- (vi) The powers of local magistrates to make orders for custody without contact orders be expressly prohibited.

**[III]** The Act be revised to replace the provision "that the best interests of the child are the paramount consideration" to a provision consistent with that under which the Child Support Agency operates - "the best interests of the child and is fair to the child, his family and the community".

**[III]** That the Act be amended to provide:

- (i) for contact between non-custodian parents and children on "**child significant days and events**" (i.e. days or events which are considered significant by the court for the child to have for his/her development), such times to be included in all final orders for the foreseeable future, and include but not be limited to:
  - (a) the child's birthday
  - (b) the primary religious annual day in the child's or family's life such as Christmas Day
  - (c) parenting days such as Father's/Mother's Day and
  - (d) parent/grandparent birthdays and special anniversaries such as 50th/60th birthdays and wedding anniversaries.
- (ii) a definition in the preamble of the Act of "**supervised contact**" and proscribe differentiated types of such contact - line of sight, within hearing etc, and clearly designate responsibility for such - the parent or a key supervisor.

**[IV]** That Parliament provide a monthly "Family Matters" journal for unrepresented litigants providing information about changes to legislation, reviews of recent appellate cases, with contributions by recognised social scientists on issues which are relevant to family law matters such as the effects of drug and alcohol abuse, battered wife syndrome, false memories, court relevance of criminal records or type of employment (eg prostitution), religious beliefs, etc so that the community has a better idea of the issues the courts consider relevant.

**[V]** That the Family Court and Parliament implement other recommendations as noted in this submission covering other issues.

1.3.

Recommendation. The Court order court report writers to be provided with and to read all relevant documents such as existing orders and their judgments prior to interviews. Where there is a Child Representative, a briefing document is to be provided to the writer and all parties.

Recommendation. The Court ensure that where joint interviews are concerned, accurate facts are noted by providing both parties to have access to all material and conversations with the interviewer, through intercom services, audiotape records etc.

Recommendation: A simple process would be to collect the Post Code details from each filed document to analyse where the need for family court services is.

Recommendation: That a permanent family court mediator be appointed to the [REDACTED] Local Court.

Recommendation. That the court ensure that all report writers include in their reports a chronology of contact between the non-custodian parent and the child, 12 months prior to the report and include the reasons given by both parents for no such contact on child significant days and events.

Recommendation: That contact centres be opened on the NSW coast on Sundays, or at least parenting days (see above).

Recommendation: That each Parliament order all estimated court duration times removed from the Law Handbook.

Recommendation. That a date for the Final Hearing be advised to the parties at the time of the Interim Hearing or no later than within fourteen(14) days.

Recommendation. That the Appeals Bench of the Family Court, where appropriate, sit in regional areas.

# 'Nothing ever happens like this here': neighbour

By PAUL KENT

THE backdrop was noise and dust, and against this, and against the confusion and pain and now the uncertainty, the rider pulled up his horse.

And he said, without any irony, "Nothing ever happens like this down this road."

And the thing is, it never does — until it does. Justin Cornelius lives in Burdekin Rd and was taking his 12-year-old horse, Flo, out for exercise yesterday.

He reflected on the shocking event in his street as police tape had secured the house in front of

him, keeping back the news crews standing on the road.

There were no other onlookers. "I didn't really know them," Mr Cornelius said.

"I just knew them as neighbours. Called the coppers on him a few times."

Then, as if he needed to explain it, he said: "For noise."

Mr Cornelius was speaking less than 24 hours after police had driven home a woman who claimed her husband had raped her, only to find her 30-year-old husband in the process of stabbing one of their three children.

The police ordered the man to

stop, shot him when he didn't, and then found his 60-year-old father-in-law bleeding to death on the driveway and another of his children inside, dead from stab wounds.

The second child also died, and the man died later in hospital not from gunshot but from stab wounds, believed to be self-inflicted.

Next door to the property three workmen from Intertech Drilling Services were sending down a drill, and as it hummed, a long pipe at the back of their truck spat dust into the air.

The three workmen had been

drilling the previous day when police drove down the driveway of the house and saw the man stabbing one of his children.

Nobody knows what sort of fight took place between the man and the grandfather.

The three workmen heard the shots over their drilling but, as witnesses, were told by police not to talk about it further.

Mr Cornelius wasn't home when the killings happened, but was the first neighbour home after they did.

"I got home just after the road got closed," Mr Cornelius said.

"Most of the neighbours weren't home at the time. I was the first out of the neighbours.

"He was a bit noisy, the bloke. He liked playing with his cars early in the morning. I'm talking like two o'clock.

"I think he was sort of a mechanic. I don't know if it was his customers' cars or his own.

According to the NSW Electoral Commission seven people had lived at the house.

He didn't know much more, he said, and he headed off.

Against the dust and noise, the uncertainty, he headed down a lonely road.

# One man's rage led to stabbings

From Page 1

AVO reveal what was going on in Kongson's tormented mind. Ms Poulson reveals her growing concerns for her family and herself as her estranged partner grew more unstable and in increasingly violent.

The AVO, which was granted and uncontested by Mr Kongson, prevented him from seeing his children and partner for two years or approaching the Wilberforce home where the stabbing occurred.

The allegations are revealed in an application made on August 4 and finalised on August 7 at Windsor Local Court.

It was put in place less than three weeks before Mr Kongson killed his family, stabbing him self in the chest before he was shot by police on Monday.

While police yesterday continued to deny there was any indication of the savagery sim-

ilar to Bob Waites said, while the man had spoken about killing himself, police did not believe he would be a threat to others.

"There were certainly threats in the past, but they have been about him taking his own life, not directed at his family," he said.

Assistant Commissioner Waites said, while he again threatened to kill himself the night before murdering his family, Kongson did not threaten the children.

"The tragedy is the death of almost an entire family, there were no logical signs and they were innocent victims of this situation," he said.

"The woman who lost her family is with her mother, still undergoing treatment and talking to our investigators."

More information about the events leading up to the killing were also revealed, with Kongson arriving before midnight on Sunday to speak to his wife

about getting back together. With her father, who also lived on the property on Burdekin Rd, unaware of what was happening, Ms Poulson was assaulted and bound before Mr Kongson left. She managed to free herself, calling police at 8am and arranging for her father to look after her children.

Her father had not been told of the assault and as police returned Ms Poulson to her home they stumbled upon Kongson stabbing the children.

Kongson, from Thialand, worked as a postal deliveryman and, according to his neighbours at a small rental property where he has lived for the last three months in Windsor, he appeared to be a cheerful quiet man known to them as Ng.

Neighbour Toni said they occasionally spoke, and there was no indication of any anger or family problems.

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**Australian Government**  
**Australian Quarantine and Inspection Service**

## AQIS NSW Regional Office is Moving

The AQIS NSW Regional Office in Sydney is moving to new premises.

From Monday 22 September 2003 we will operate at our new location for:

- Import entry processing
- Fresh produce inspections
- Nursery stock inspections
- Live animal import/export processing
- Export documentation
- General enquiries and
- Deliveries (business hours from 7.30am to 4.00pm)

Our new street address will be:

1 Crewe Place, Kogarah  
(Cnr Rothschild Street & Crewe Place)  
Public car parking and truck access will be via Crewe Place

Our new switch & fax numbers will be:

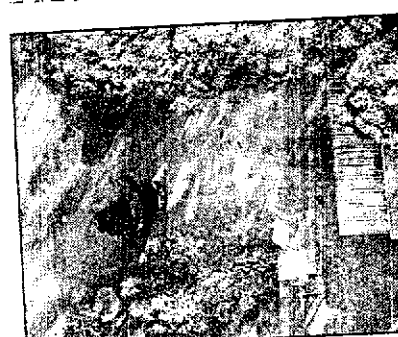
Tel (02) 8334 7444  
Fax (02) 8334 7555

Our postal address will remain:

PO Box 657, Mascot NSW 1460

For further information, contact AQIS on Tel (02) 8334 7444

**DEPARTMENT OF AGRICULTURE, FISHERIES AND FORESTRY**



Scene of Monday's stabbings

mering, and those who knew Kongson spoke of a quiet peaceful man, privately the relationship between the Thai man and his partner was becoming increasingly turbulent.

Assistant Police Commis-