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Committee Secretary
Senate Legal and Constitutional Affairs Committee
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Dear Committee Secretary,

Enclosed is a copy of our submission in response to the Family Law Amendment Bill 2023. This submission has sought to outline many issues with the legislation and, in particular, the detrimental effects the legislation will generate.

As an agency that deals extensively with families going through the pain of divorce, we have seen firsthand the distress and anguish that can arise from a parent being unfairly denied contact with their children, as well as the negative effects of fatherlessness on children.

We have combined our extensive knowledge of, and experience with, men, women, children and the family law system with widespread secondary research that has provided us with overwhelming support for our conclusions. These include research studies and statistics from government and non-government agencies and medical and academic journals.

We have provided a list of recommendations for the committee in regard to the proposed legislation. We would be greatly honoured to be able to share our specific concerns before the inquiry in person.

If you have any questions or require further information from us in regard to this submission, please contact Dads4Kids using the details provided at the top of this letter.

Thank you for taking the time to review our submission.

Yours sincerely,

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Senate Legal and Constitutional
Affairs Committee – Family Law
Reform

Family Law Amendment Bill 2023

Dads  Kids

Our Children Our Future

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1.0 Introduction

Dads4Kids is a harm-prevention charity dedicated to the promotion of excellence in fathering. We are committed to protecting children from harm. Dads4Kids stands against all forms of violence and has campaigned extensively to stop violence against men, women and children.

The objective of Dads4Kids is always in the 'best interests of the child'. Children benefit the most when Dad is at his best by providing a caring and loving environment for both the mother and his children.

Our Vision

- To transform the nation by inspiring fathers to help their children be the best they can be.

Our Mission

- To equip, encourage and inspire fathers; to strengthen and support families; to engage with community, church, business and government in order to see our nation's children thrive.

Our Strategy

- Educating and inspiring all people, especially fathers, through mainstream media, social media, our Weekly Dad email, our Daily Dad news site, mentoring opportunities, research and other resources.
- Equipping and training leaders of national, state and community fathering initiatives through fatherhood courses, summits, mentoring programs and training projects.

- Engaging every sector of society through strategic alliances and partnerships, in our pursuit to make excellence in fathering the norm.

Our simple goal is to put more smiles on the faces of the children of Australia.

Family Law Amendment Bill 2023

Dads4Kids strongly opposes the proposed Family Law Amendment Bill 2023. We have prepared this submission in order to highlight our concerns and demonstrate the negative outcomes that will result from the enactment of the proposed legislation.

2.0 Executive Summary

- The process of reform for the Family Law Amendment Bill 2023 is immoral.
 - It has been rushed and ill-considered.
 - There is no provision for a conscience vote (breaking a long history of conscience votes in major family law reform issues).
 - A partisan approach has been taken to a highly emotive and vexatious issue that affects the whole community.
 - This major family law reform proposal was not raised during the May 2022 Federal election. Thus, it is evident the government has no mandate for this reform.
- The ideology behind the Family Law Amendment Bill 2023 appears to be based on a father-phobic, radical feminist ideology that is now entirely outdated and unsupported even by modern family-friendly feminists.
- It is based on a rejection of the consensus on family law reform, from both major parties, over the last 30 years, with no due proper foundation for this

rejection. This is objectively wrong because we need to learn from and respect history, or we repeat the same mistakes.

- To call this Family Law Amendment Bill 2023 a minor reform, when in fact it is a major reform, is a distortion of reality and misleading the public is simply unacceptable.
- To say the reform will simplify legislation and thus reduce costs to divorcing parents is patently incorrect. Rather, it will increase conflict and litigation.
- It will encourage a 'winner takes all' litigation process in family law. The proposed reform will encourage unequal outcomes (he or she who has the most money wins).
- To say it is a reform that promotes the best interests of children is false and misleading. The reform will ultimately rob children of any hope of equal access to both parents after a family breakdown, which is their biological birthright.

Dads4Kids strongly rejects the Family Law Amendment Bill 2023 and argues the case that every child after a divorce or parental separation has the fundamental right to equal contact with both their mother and father unless there are proven mitigating circumstances. This and this alone will ensure the best interests of our children are preserved. We must do this as our children are our nation's future.

3.0 Lack of Due Process and Consultation

3.1 Rushed and Improper Process

The proposal for major family law reform disguised as an amendment to the Family Law Act is dishonest in its process. Every piece of legislation addressing marriage in relation to family law, since the Matrimonial Bill of 1957, has been decided in the Parliament by a conscience vote (free vote) by both parties, with the exception of the current proposed reform and the Gillard 2011 family law reform.¹ This is an entirely inappropriate way to handle such an important issue as family law.

The reason family law reform is decided in consultation with parliamentarians' consciences is that it requires free and open debate throughout the community to ensure unjust laws are not passed on a party-political basis. Why change that time-honoured process by promoting an unjust, radical anti-child, anti-shared parenting ideology, by a government who have not demonstrated care for the rights of the child?

Australia's most pressing reason for family law reform is to turn the tide of family breakdown, which will in turn lower the divorce rate. We must put our children first both in word and in deed.

¹ "Free votes in the Commonwealth Parliament 1950-2021: a quick guide", Parliament of Australia, 21 May 2021, <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp2021/Quick_Guides/FreeVotes#:~:text=A%20free%20vote%20occurs%20when,in%20accordance%20with%20party%20policy>.

3.2 This is a Major, Not Minor Family Law Reform

This is not a small reform. It is a massive reform. Family law expert Patrick Parkinson calls it a “radical change” and a “radical reversal” to the previous changes to family law during the 2003–2006 period.² To say it is not a major reform is a falsehood. Parkinson states:

Under the guise of simplification it actually involves radical change and radical reversal after a unanimous agreement of a parliamentary committee in 2003 and almost unanimous agreement of the parliament in 2006.³

The proposed vague Family Law Amendment legislation will require many new legal precedents to be set, thus requiring expensive litigation, and by those who can least afford it: divorcing mothers and fathers.

Many cases in need of a new precedent will end up in the High Court. The lawyers will get richer, and the children will get poorer. So much for the best interests of the children.

Sadly, both mothers and fathers will suffer more harm than they already do in the vexatious litigation process. The new amendments will result in far more ‘winner takes all’ outcomes. Sadly, the children will be the ultimate losers.

² As quoted by Jess Malcom, “Dads ‘cut out’ in changes to law”, *The Australian*, 30 January 2023, <<https://archive.is/Pt6Xr#selection-207.5-207.37>> (accessed 23 June 2023).

³ Ibid.

4.0 Family Law Amendment Bill 2023

4.1 Family Law Reform History

Twenty years ago, in June 2003, Prime Minister John Howard called for an enquiry into the need for a ‘presumption of equal shared parenting’.⁴

In late 2003, the House of Representatives Standing Committee on Family and Community Affairs⁵ sidestepped the Prime Minister’s original request and came up with a nebulous concept of ‘shared parental responsibility’.⁶

One positive of the report was that it highlighted the need to direct divorcing couples away from the Family Law Court via an early intervention programme.⁷ The committee was completely correct in their aim at directing divorcing couples away from expensive, heartbreaking, and often fruitless litigation procedures in the Family Law Court.

⁴ Liz Minchin, “PM orders inquiry on joint custody”, *The Age*, 25 June 2003, <<https://www.theage.com.au/national/pm-orders-inquiry-on-joint-custody-20030625-gdvxpp.html>>.

⁵

<https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_representatives_Committees?url=fca/childcustody/report.htm>

⁶ E.g., recommendation 1 states: “The committee recommends that Part VII of the Family Law Act 1975 be amended to create a clear presumption, that can be rebutted, in favour of *equal shared parental responsibility*, as the first tier in post separation decision making.” Standing Committee on Family and Community Affairs, “Every picture tells a story: Report on the inquiry into child custody arrangements in the event of family separation”, December 2003, xxi. Available online at: https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_representatives_Committees?url=fca/childcustody/report/fullreport.pdf.

⁷ E.g., see the committee’s recommendations under point 3.9 on page 47 of the report. Standing Committee on Family and Community Affairs, “Every picture tells a story: Report on the inquiry into child custody arrangements in the event of family separation”, December 2003, 47.

The team at Dads4Kids refuses to encourage people to go to the Family Law Court. Litigation between family members, especially mothers and fathers, is a destructive process at the best of times. With the current anti-father and anti-shared parenting culture in the Family Law Court, the decisions, more often than not, result in increased rates of fatherlessness for children.

Sadly, the proposed 2006 child custody changes in the Family Law Reform package did nothing more than recycle the ignored 1995 changes.

“The Family Court got it wrong!” was the plain message by the then Labor Minister Peter Duncan, as he moved the Keating government’s 1995 amendments. In response to the Family Court's refusal to comply with the intent of the original legislation, Minister Duncan stated that:

The original intention of the late (Labor) Senator Murphy was that the 1976 Family Law Act would create a rebuttable presumption of shared parenting, but over the years the Family Court has chosen to ignore that. It is hoped that these reforms will now call for much closer attention to this presumption and that the Family Court will give full and proper effect to the intention of Parliament.⁸

Strikingly, despite this further reinforced legislative directive from the Labor Party in 1995, the Family Court continued to ignore the intention of this legislation, and joint custody orders in fact fell from an already paltry 5% to a further low of just 2.5%.⁹

⁸ Peter Duncan, Consideration of Senate Message, House of Reps Hansard 21 November 1995, 3303.

⁹ “Family Law Changes, Real Change or More of the Same?”, Joint Parenting Association and Fathers4Equality Australia, 22 December 2005, <<https://www.prweb.com/releases/2005/12/prweb324609.htm>>.

In his telling *'Kangaroo Court': Family Law in Australia* critique,¹⁰ John Hirst, the well-respected academic and social commentator, underscored the inability of Australian governments to fully grasp the extent of resistance to equal parenting initiatives from a Family Court with remarkably entrenched views. Of those Family Law changes, Hirst stated in 2005 that:

Late in 2003, the standing committee reported its findings. It is not clear why it balked at recommending that joint custody be made law. The committee itself seemed committed to the change; the bulk of the evidence it heard was in favour; the Prime Minister had given them the cue. Although not prepared to recommend it as law, it remained sympathetic to joint custody and in appropriate cases it urged that it be encouraged. Judges in Australia were to consider equal time!¹¹

Fast forward 20 years to 2023 and we find the Labor Government wanting to take any remaining suggestion of equal shared responsibility, or the consideration of significant time for both parents, out of Family Law.

4.2 Family Law Amendment Bill 2023

The Labor Party's proposed Family Law Amendment Bill 2023 is unacceptable in both the process of its formulation and its outworking. The Labor Party's Family Law

¹⁰ John Hirst, *'Kangaroo Court': Family Law in Australia*, Quarterly Essay 17 (Melbourne: Black Inc. Books, 2005).

¹¹ "Family Law Changes, Real Change or More of the Same?", Joint Parenting Association and Fathers4Equality Australia, 22 December 2005, <<https://www.prweb.com/releases/2005/12/prweb324609.htm>>.

Amendment Bill 2023 will hurt children the most and will rob children of the right to equal and shared parental contact with both their mother and father after the divorce.

Family law reform has been a fiasco under successive Labor and Coalition governments. The inherent right of children to their mother and father in the event of family separation has never been properly addressed or protected. Sadly, in light of this proposed reform, the situation is set to continue and become overwhelmingly worse.

Many of the reform proposals, such as considering the best interests of the child, are well-intentioned. However, unless they solve the fundamental problem of the rights of a child to equal access to both their mother and father after separation, they really become another layer of legal bureaucracy to waste the money of divorcing parents and the taxpayer who funds the Family Law Court.

Furthermore, the language of the proposed draft Family Law Amendment Bill 2023 is remarkably vague and ill-defined. It will assuredly add hundreds of millions – if not billions – of dollars to the legal bills of divorcing mothers and fathers over the next five years.

This submission will focus on the core issue of the removal of the ‘presumption of shared parental responsibility’. One example of this is seen in the proposed repeal of Section 60B of the Family Law Act, which as it stands includes the following:¹²

¹² Commonwealth Consolidated Acts, accessed at http://classic.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s60b.html (23 June 2023).

- Ensuring that children have the benefit of both of their parents having a meaningful involvement in their lives, to the maximum extent consistent with the best interests of the child (1a).
- Children have the right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together (2a).
- Children have a right to spend time on a regular basis with, and communicate on a regular basis with, both their parents and other people significant to their care, welfare and development (such as grandparents and other relatives) (2b).
- Parents jointly share duties and responsibilities concerning the care, welfare and development of their children (2c).
- Parents should agree about the future parenting of their children (2d).

The Bill proposed to repeal Section 60B and replace it with the following:

(a) to ensure that the best interests of children are met, including by ensuring their safety; and

(b) to give effect to the Convention on the Rights of the Child done at New York on 20 November 1989.

Further, the Bill proposes to repeal Section 60CC 2(a) which lays out “the benefit to the child of having a meaningful relationship with both of the child's parents” and Section 61DA which begins:

Presumption of equal shared parental responsibility when making parenting orders

(1) When making a parenting order in relation to a child, the court must apply a presumption that it is in the best interests of the child for the child's parents to have equal shared parental responsibility for the child.

The Bill seeks to remove each instance of 'the presumption of equal shared parental responsibility'. This is highly concerning, for reasons which will now be discussed.

4.3 Implications of Omitting Equal Shared Parental Responsibility

Patrick Parkinson, Emeritus Professor of Law at the University of Queensland, and chair of the body that advised the Coalition government in 2006 over amendments to the Family Law Act, has written that the proposals have "stripped almost all references which encourage the meaningful involvement of both parents in relation to the child after separation".¹³ The effect of this is that the new changes will "cut out" more dads from their children's lives and "take us back to a time when mums had the kids most of the time and dads would see their kids at weekends and on school holidays."¹⁴ Such a proposal is not in the best interests of children.

It should be noted that divorce is never a good option for children. At best, it is only a better option than others.

¹³ Jess Malcom, "Dads 'cut out' in changes to law", *The Australian*, 30 January 2023, <<https://archive.is/Pt6Xr#selection-317.37-317.144>> (accessed online 23 June 2023).

¹⁴ Michael Pelly, "Time's up for 'equal rights' in court custody battles", *Australian Financial Review*, Feb 3 2023, <<https://www.afr.com/politics/federal/time-s-up-for-equal-rights-in-court-custody-battles-20230201-p5ch1n>>; Jess Malcom, "Dads 'cut out' in changes to law", *The Australian*, 30 January 2023, <<https://archive.is/Pt6Xr>> (accessed online 23 June 2023).

It is a disappointing, inevitable and tragic reality that divorce will always produce a certain amount of fatherlessness and/or motherlessness. The key is to find a way to ensure equality for divorcing couples and justice for children, and ideally to reduce the number of divorces that take place.

5.0 Children’s Rights and the Best Interests of Children

5.1 Importance of the Presumption of Equal Shared Parenting

We still desperately need a presumption of equal shared parenting after divorce. Nothing else will do. We laid this objective out in our 2003 12-point plan in the document “Fathers in Families: Strengthening & Supporting Fathers & Turning the Tide of Fatherlessness in Australia”. Point six in our plan reads:

Acknowledge that after divorce or parental separation, every child has a fundamental right to equal contact with both the mother and the father, unless there are proven mitigating circumstances.¹⁵

The new proposed anti-shared parenting family law changes are an acquiescence to the whole culture of the Family Law Court, which is directed against such outcomes. Tragically, this anti-shared parenting bias within the Family Law Court is now set to become law. Parkinson notes the following about this anti-shared parenting bias:

¹⁵ “Fathers in Families: Strengthening & Supporting Fathers & Turning the Tide of Fatherlessness in Australia”, The Fatherhood Foundation, 2003, <<https://dads4kids.org.au/wp-content/uploads/2021/05/FathersinFamiliesLR.pdf>>.

There can be little doubt that a major impetus for these changes has been the advocacy of women's groups who have long been critical of any emphasis, however mild, on the involvement of both parents in children's lives after separation, unless this is something the mother agrees to.¹⁶

The radical ideology that men are no longer necessary as fathers negates biological science. It takes a mother and a father to create a child. It takes a mother and a father to raise a child. Children have a biological birthright to both their mother and their father.

5.2 The United Nations Convention on the Rights of the Child

The preamble to the UN Convention on the Rights of the Child (UNCRC), adopted on 20 November 1989, confirms every child's biological birthright to both their mother and father. The Preamble states:

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.¹⁷

Furthermore, Article 7 of the UNCRC confirms the biological birthright of a child to his or her mother and father:

¹⁶ Patrick Parkinson, Submission to the Senate Legal and Constitutional Affairs Committee, 20.

¹⁷ United Nations, Preamble, Convention on the Rights of the Child, <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>>.

The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and *as far as possible, the right to know and be cared for by his or her parents.*¹⁸

This biological birthright to both parents is further confirmed in the words of Article 9, Section 3 which states that “Parties shall respect the right of the child who is separated from one or both parents *to maintain personal relations and direct contact with both parents on a regular basis.*”¹⁹

Interestingly Article 18, Section 1 of the UNCRC provides a strong legal argument for a presumption of equal shared parenting in the event of separation or divorce.

“Parties shall use their best efforts to ensure recognition of *the principle that both parents have common responsibilities* for the upbringing and development of the child.”²⁰

It is a simple biological reality that a mother and father are responsible for the conception of their child. The UNCRC recognises that both the mother and the father have responsibilities towards raising the child whom they have conceived. Further, the child has the right of access to both parents on a regular basis. Therefore, the presumption of equal shared parenting finds strong support from the UNCRC and by our nation’s obligation to this convention, must find expression in the Family Law Act.

¹⁸ Emphasis added.

¹⁹ Emphasis added.

²⁰ Emphasis added.

5.3 Desirability of Equal Shared Parenting

If we purport to represent the best interest and viewpoints of children, why not give our children what they themselves tell us they desire most? Studies show that children, in the event of divorce, want equal time with both of their parents.²¹

According to the late Judith Wallerstein, a psychologist and researcher who created a 25-year study on the effects of divorce on the children, a recurring theme in the field of child psychoanalysis is that children of divorced couples often desire to develop a strong and closer relationship with both their parents.²²

Richard A. Warshak, clinical professor of psychiatry at the University of Texas Southwestern Medical Center at Dallas, states that everything we know about children impacted by divorce, is that for their best interests, we need to maximise the involvement of both parents for the benefit of the children.²³ As he points out, “sufficient evidence does not exist to support postponing the introduction of regular and frequent involvement, including overnights, of both parents with their babies and toddlers”. As noted by Professor Warshak, “the theoretical and practical considerations favouring overnights for most young children are more compelling than concerns that overnights might jeopardize children’s development”.²⁴

²¹ Linda Nielsen, “Shared Parenting After Divorce: A Review of Shared Residential Parenting Research”, *Journal of Divorce & Remarriage*, vol. 52 (2011): 586–609, <https://www.theparentingcentre.com.au/wp-content/uploads/2014/11/www.malestudies.org_assets_shared_parenting.pdf>, doi: 10.1080/10502556.2011.619913.

²² Judith Wallerstein and Joan Kelly, *Surviving the Break Up* (New York/NY: Basic Books, 1980), 1.

²³ Richard A. Warshak, “After divorce, shared parenting is best for children’s health and development”, *STAT*, 26 May 2017, <<https://www.statnews.com/2017/05/26/divorce-shared-parenting-children-health/>>. He cites his journal article that was endorsed by 110 practitioners and researchers. This article is: Richard A. Warshak, “Social Science and Parenting Plans for Young Children: A Consensus Report”, *Psychology, Public Policy, and Law*, vol. 20, no. 1 (2014), 46–67, doi: <https://doi.org/10.1037/law0000005>.

²⁴ *Ibid.*

It is important to emphasise that 110 leading academics, researchers and practitioners, who are amongst the best in the world in their fields, have endorsed Professor Warshak's authoritative conclusions. This includes Dr Don Edgar (former Foundation Director of the Australian Institute of Family Studies), Dr Judy Cashmore AO (Professor in Socio-Legal Studies, University of Sydney), and Dr Barry Nurcombe MD (Emeritus Professor of Child & Adolescent Psychiatry, University of Queensland).²⁵ According to Professor Nurcombe, Professor Warshak's empirical research "highlights the fact that current policies relating to overnight contact with [...] young children have been excessively affected by misplaced concern to the mother".²⁶

It would be most appropriate if the government would consider not only the wishes of Australian children but of the voting public. In polls taken at the last major change to family law reform in 2006, the polls showed that the concept of shared parenting, in the event of divorce, received between 91% (Insight Poll) and 82% (Channel Nine Poll) support.

In a federal poll at the time, in early 2004, family law reform and child custody was the number one issue, outpolling Medicare by over six times.

²⁵ Ibid, 67.

²⁶ Ibid.

6.0 Underlying Issues: Marriage, Separation, Divorce and Fatherlessness

6.1 Divorce is Heartbreaking for Our Children

Divorce is a heartbreaking process for the mothers and fathers who divorce, but even more so for the children. We need to put our nation's children first and work to actively reduce Australia's divorce rates.

To do less is to acquiesce to the process of family destruction already embedded in family law. The proposed reform will only increase the rate of destruction of our families. Worse, it will lead to more broken hearts among our children.

The following tragic case demonstrates the awful results of divorce on children. In the interests of privacy, the name of the daughter involved has been changed.

Crystal's mother and father had broken up a few months prior and had moved out of the family home, each going their own way. The family home was put up for sale. One night the neighbours were awoken by a loud noise that sounded like an explosion.

They looked out their window to see a massive fire quickly engulf the house. Arson squad detectives said it appeared that an accelerant had been used to start the fire, which quickly spread throughout the house. Crystal's body was found in the laundry. The laundry door was locked.

Police said it was unclear why Crystal had returned to the house. She had been living nearby with her mother and brother. Her father was no longer in the family home.

We all know the pain of family breakup, whether we have experienced it firsthand or we have close friends who experienced the searing pain that comes with the loss of close family relationships. It's not hard to see why a young girl would return to what was once her family home and grieve.

Put yourself in Crystal's shoes. What would she have been thinking sitting there in that empty house, remembering happier times or recalling the arguments and the unravelling of her family? The sadness of what happened clearly overwhelmed Crystal. She poured petrol throughout every room of her old home, then lit a match and resigned herself to death.

6.2 Harmful Effects of Fatherlessness

Sadly, there are 870,000 children who will go to sleep tonight in Australia without their father in the home, just like Crystal. Many cry themselves to sleep, while others bury the pain. For many the pain comes out in unexplained and damaging behaviours as they grow to adulthood. Whatever the case, the cost is far too high.

Stephen Baskerville, former professor of political science at Howard University, wrote the following on the devastating effects of fatherlessness:

Virtually every major social pathology has been linked to fatherless children: violent crime, drug and alcohol abuse, truancy, unwed pregnancy, suicide, and psychological disorders—all correlating more strongly with fatherlessness than with any other single factor.²⁷

Writing about the situation in America in 1996, sociologist David Popenoe, professor of sociology at Rutgers University, said, “The decline of fatherhood is one of the most basic, unexpected, and extraordinary social trends of our time.”²⁸

A massive longitudinal study undertaken in Sweden, involving over one million children, found that children from single parents showed increased risks of psychiatric disease, suicide or suicide attempt, injury and addiction. The authors, writing in *The Lancet*, a highly prestigious international medical journal founded in 1823, concluded that growing up in “a single-parent family has disadvantages to the health of the child”.²⁹ It is important to note that the vast majority of single-parent homes are fatherless, with one recent UK-based study finding that 86% of single-parent homes are fatherless just like Crystal’s.³⁰

Fatherlessness has been shown to increase the likelihood of poverty, crime, incarceration, violent sex crimes against women, drug abuse, poor educational

²⁷ Stephen Baskerville, “Is There Really a Fatherhood Crisis?”, *The Independent Review: A Journal of Political Economy*, vol. 8, no. 4 (Spring 2004): 485.

²⁸ David Popenoe, “A World Without Fathers”, *Wilson Quarterly*, vol. 20 (Spring 1996): 12.

²⁹ Weitoft, Gunilla Ringbäck, Anders Hjern, Bengt Haglund and Måns Rosén, “Mortality, severe morbidity, and injury in children living with single parents in Sweden: a population-based study”, *The Lancet*, vol. 361 (Jan 2003): 289, doi: [https://doi.org/10.1016/S0140-6736\(03\)12324-0](https://doi.org/10.1016/S0140-6736(03)12324-0).

³⁰ Rebecca Jayne Stack and Alex Meredith, “The Impact of Financial Hardship on Single Parents: An Exploration of the Journey from Social Distress to Seeking Help”, *Journal of Family and Economic Issues*, vol. 39, no. 2 (2018): 233. The situation in the UK would be very similar to that in Australia.

performance, susceptibility to mental health problems, risk of suicide and child sexual abuse.³¹ David Blankenhorn has stated in *Fatherless America*:

“Fatherlessness is the most harmful demographic trend of this generation.”³²

If Australia can increase the proportion of children growing up with involved, responsible and committed fathers, we can begin to reverse the problem of fatherlessness in Australia. In 2003, Dr Bruce Robinson estimated that fatherlessness costs Australia 13 billion dollars per year.³³ With inflation, that would equal approximately 26 billion dollars today.

The problem of fatherlessness calls for a broad range of both government and community-based initiatives. The easiest aspect of the fatherlessness problem that we can fix would be wise reform of the Family Law Court.

In the event of separation and divorce, the simple introduction of a presumption of equal shared parenting, in order to protect our children’s rights to equal access to their mother and father, is the best solution by far.

6.3 Solution to the Fundamental Problem

The high rate of family breakdown and divorce continues to be the fundamental problem. It was President Barack Obama who said the following:

³¹ “The Consequences of Fatherlessness”, *fathers.com*, <<https://fathers.com/the-consequences-of-fatherlessness/>>.

³² David Blankenhorn, *Fatherless America: Confronting Our Most Urgent Social Problem* (New York: Harper Perennial, 1996), 1.

³³ “Fathers in Families: Strengthening & Supporting Fathers and Turning the Tide of Fatherlessness in Australia”, The Fatherhood Foundation, <<https://dads4kids.org.au/wp-content/uploads/2021/05/FathersinFamiliesLR.pdf>>.

There's no more important ingredient for success, nothing that would be more important for us reducing violence than strong, stable families – which means we should do more to promote marriage and encourage fatherhood.³⁴

Unless Australia focuses on reducing the divorce and separation rates and puts a premium on marriage, the family law reform fiasco will continue.

According to American researchers John Guidubaldi and Richard Kuhn, divorce rates in the United States declined nearly four times faster in high joint custody states, compared with states where joint physical custody was rare.³⁵ As a result, the states with high levels of joint custody now have significantly lower divorce rates on average than other states.

The reason this proposed legislation is so pernicious is that our society has refused to put a premium on the wellbeing of its children. This is a result of the refusal to put a premium on marriage. Our children are the benefactors when marriages thrive.³⁶

Unless family law reform helps to prevent divorce in the first place, it will continue to be a 'Clayton' style of reform.

³⁴ Dennis Byrne, "Obama's fatherhood stance confounds liberals", *Chicago Tribune*, 19 February 2013, <<https://www.chicagotribune.com/politics/ct-xpm-2013-02-19-ct-oped-0219-byrne-20130219-story.html>> (accessed online 23 June 2023).

³⁵ Richard Kuhn and John Guidubaldi, "Child Custody Policies and Divorce Rates in the US", paper presented at the 11th Annual Conference of the Children's Rights Council, Washington, D.C., 1997. Accessed online at Separated Parenting Access & Resource Center, <<https://deltabravo.net/cms/plugins/content/content.php?content.288>> (22 June 2023).

³⁶ Richard A. Warshak, "After divorce, shared parenting is best for children's health and development", *STAT*, 26 May 2017, <<https://www.statnews.com/2017/05/26/divorce-shared-parenting-children-health/>>.

7.0 Conclusions and Recommendations

This submission has focussed on the key issue of the presumption of equal shared parenting to protect our children's rights to equal access to their mother and father following parental separation. It has been argued that this presumption is the fair, equal and neutral starting point for the tragic situation children face in divorce or separation.

This presumption, while not completely covered under 'the presumption of shared parental responsibility', is nonetheless contained or indirectly implied within existing law. It has been the intended position of family law initiated by Justice Murphy in 1976. Labor Minister Peter Duncan referred to this fact in his speech to the Parliament in moving the 1995 family law reform under Prime Minister Paul Keating.

Further, this submission has argued that, intended or not, the text of the Bill downgrades, and in practicality, eliminates, the so-called presumption of shared parental responsibility. It is a serious and pernicious amendment to remove these sensible provisions which are currently articulated in the family law legislation as it stands today. This proposed amendment must be roundly rejected.

The result of eliminating this presumption of shared parental responsibility will be largely seen in an increase in fatherlessness in Australia. The submission has presented evidence of the severe consequences of fatherlessness on the wellbeing of a child.

Finally, the process has been rushed, without proper due consideration and community consultation. It goes against proper procedure, including that it is not subject to a free (conscience) vote.

In conclusion, we recommend that:

- The Family Law Amendment Bill 2023 (which is immoral in its basis, formulation, promotion and outworking) needs to be rejected.
- The Government give a firm direction to the Family Law Court towards the presumption of equal shared parenting in legislation in order to protect our children's rights to equal access to their mother and father after parental separation. This must be the starting point for all divorcing and separating couples because it is the only way to put our children first.
- The 'presumption of shared parental responsibility' is strengthened to 'the presumption of equal shared parenting' to protect our children's rights to equal access to their mother and father after parental separation.
- An open and transparent inquiry be commissioned in order to review current family law, in particular to find where it falls short of this presumption.
- Family law focus on ways to reduce divorce and separation rates, since the best environment for children to be raised is in a loving, supportive family comprised of the child's biological parents.

Until these recommendations take place the family law reform debacle will continue, and "re-arranging deck chairs on the Titanic" will continue to be our nation's primary occupation in regard to family law.

Instead, let us put the needs of Australia's children first.