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This submission is from an individual

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Question 1

1) First and foremost, the law should reflect what most Australians expect of it, which is to implement equal shared parenting and equal division of property wherever possible.

2) It should be a fair and just system, gender neutral, treating mothers and fathers as equal and accepting that no one can truly know what took place in the former marriage, who did what etc.. nor can anyone - including "experts" or "family consultants" - accurately predict what is in the best interests of the children going forward.

3) As such, the system should avoid intervening except in extreme cases and should treat the former marriage as an equal partnership, discouraging conflict/disputes and encouraging a good relationship between the parents where children are involved. Separation counselling should be compulsory.

4) The law should encourage both parties to reach agreement and move on with their lives as soon as possible. The reality is the first objective will definitely achieve this and greatly reduce the load on the court.

Question 2

1) The traditional roles of mothers and fathers should be discarded, as should the old model used for property division. Society, the workplace and property market have changed completely.

2) Placing children under the control, dominance and power of one parent (which includes the amount of time they spend with each parent) should be avoided. It should be acknowledged that both mother and father have a unique role to play.

3) The children's best interests should be prioritised but the language "paramount" should be changed. Mothers and fathers - surely the two most important people in that child's life - should be treated with dignity in this system rather than being told "you don't have any rights, only your kids do". The reality is the two things are inseparable.

4) Ideally, one parent should not be allowed to force an arrangement on the other and assume a position of power. It should be equal access and equal division of assets by law, from the start, and the parent disputing this should be the one who brings a court case.

5) Ideally, the system should be non-adversarial, as the current system only works for lawyers and encourages conflict/attack/false allegations and damages the relationship between the parties.

- 6) The system should give a voice to grandparents, allow them to speak with family consultants and allow them time with the children.
- 7) The system must be predicated on a national gender neutral approach to family violence that affords protection and dignity to all Australians - including male victims - acknowledges female abuse, and removes conscious/sub-conscious bias against men/fathers.
- 8) There should be a better gender balance amongst the judiciary and family consultants.
- 9) Gender bias and barriers to fathers seeking at least equal time with their children should be removed. It is generally accepted that under the current system the court hardly ever does equal access - in direct violation of the legislation and the intention of parliament - and it is much harder for a father to obtain the primary care than for the mother (it is often said the mother has to be on drugs or an alcoholic, ie. something dramatic, for this to occur).
- 10) The system should not just look at the number of nights, but also after school care arrangements. For example, if a mother is working and the father is available to pick up and look after the children this should be allowed, rather than them being placed in childcare or left unsupervised at home. Especially if this is something the kids themselves want.
- 11) There must be natural justice. Last minute affidavits lodged before judicial proceedings or family consultant meetings, without giving a chance to respond, should be disallowed.
- 12) Family consultants should be held accountable for the high position of "expertise" and influence they hold in custody decisions, with full video recordings of all interviews - especially the kids evidence - and a proper complaints mechanism
- 13) Judges must be held accountable for their decisions with a proper appeals mechanism. It is widely regarded that under the current system the original Judge's decision is rarely touched - ie. no proper right of appeal - and Judges are acting from a position of power and impunity
- 14) Judges must conduct themselves with dignity, without shouting or getting angry at the already distressed parents in the courtroom
- 15) There must be a defined punishment/loss of custody for parents making up or grossly exaggerating allegations of abuse. All such behaviour should be severely discouraged. Lawyers found to be encouraging such allegations should also be punished
- 16) In the case of babies/toddlers/infants, if it is considered absolutely necessary for them to spend more time with one parent than the other, it must be possible for the other parent to bring another application when the kids are older, seeking more time with them (under the present system, this is only possible under very limited circumstances)
- 17) For matters that come to court, family consultants should be instructed not to lean so heavily in favour of the existing arrangement (which usually favours the mother) and should implement equal time where it is demonstrably practical and possibly, rather than saying "What's wrong with the current arrangement, is the kid unsettled? If not, we're not going to change it"

18) There must be a willingness on the part of the Judge and/or Consultant to say that one party is being unreasonable, rather than blaming both parents for the conflict

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Question 14

I note the issues paper raises concerns about the presumption of shared parental responsibility and questions whether this should be removed.

This would be an extremely backwards step for father's and children's rights in this country and would undoubtedly lead to a further increase in the rate of male suicide.

The 2012 amendments mentioned were unnecessary and have harmed fathers seeking shared care.

After 30-40 years of this system creating a fatherless society, which has clearly not been good for the children concerned, we actually need more shared care not less.

Equal Shared Parenting

It is not so much that the law should be changed, but rather the law should be implemented properly as per the intention of the 2006 Act.

In particular, the legislative requirement that the court consider whether equal shared time is practical and possible - in cases where the presumption applies - has been subverted by the Judiciary/Family Consultants and is not being implemented.

It is well known in the legal profession that the court hardly ever does equal access and has set an unreasonably high bar for this, different to all other arrangements, that no reasonable father or mother can meet.

I have even heard one senior lawyer joking you have to be "hugging and kissing each other" and "communicating better than any married couple does" to satisfy the court.

There are Judges and Family Consultants in the system who have stated that "equal access doesn't work unless both parties agree on it" and refused to consider it in family law cases because the very act of the parents not being able to agree on this constitutes "conflict".

There have been cases of Family Consultants ignoring the wishes of kids - even teenage children - to spend equal time with both parents and even overturning existing equal time arrangements against their wishes.

This bias and prejudice against equal shared parenting defeats the whole purpose of having a court system that is supposed to consider each case on its merits.

It goes against not only the legislation but the expectation of the vast majority of Australians, which is to not only consider equal time but implement it wherever possible.

Another thing the court does is to favour 9 nights-5 nights arrangements. This is unreasonable. If a mother or father can do 5 nights a fortnight (and equal over school holidays), there is no reason at all why they can't do 7 nights a fortnight instead. Of course it is practical and possible.

The current implementation of the law - not the law itself - is untenable and unrealistic in this day and age of fathers wanting to play an equal role in their kids' lives. So many kids are missing out on the pleasure and balance of spending equal time with both parents because of this. The law is supposed to provide fairness and justice.

Right now, if the mother does not agree to equal access or is making unreasonable financial demands on the father in order to agree, the father literally has nowhere to go to seek justice because he is told by his lawyers "the courts don't do equal access".

And, ironically, this failure to do equal access often results in prolonged litigation and exacerbated conflict between the parents, where the case may otherwise have settled.

Question 15

Any changes to this should be very carefully considered. The current definition of family violence in state legislation is too broad and continually being expanded. It covers everyday behaviour happening in most Australian households, which most Australians would consider "inappropriate" but not violent.

There is no "reasonable person" test, nor is there any distinction between the huge spectrum of behaviour that constitutes family violence. From extreme violence to the most simple cases, everything is lumped in the one basket which is not appropriate.

As such, the "family violence" exemption/rebuttal of the presumption of shared parental responsibility is too much of a sweeping generalisation. There are many cases where shared care or equal shared parenting would still be possible and the presumption would assist parties to avoid engaging in conflict, so they move on and focus on the kids.

Keep in mind here, the family violence is often both ways, the mother and father don't live together anymore - so that environment has now ceased - and if IVO's are present they would not be going near each other anyway. So long as they can communicate via email and sms over children's matters, which is easily established.

Another concern regarding the "family violence" rebuttal of the presumption is that IVO's are too easy to obtain - without evidence or natural justice (with pressure applied thereafter to

just accept the IVO on a “without admissions” basis) - and family violence is alleged in so many cases as a tactic to gain a financial or custody advantage.

Question 16

Question 17

The unfair and inequitable division of property, usually in favour of the mother, is one of the biggest reasons for legal disputes, conflict and withholding of custody between the parties.

It is the cause of great hardship for fathers, many of whom rent for the rest of their lives - unable to get back into the property market - or commit suicide. It goes against what most Australians would expect.

In this day and age, when property is barely affordable even with both parents working, let alone post divorce by themselves, it is also a form of economic abuse.

The fact is, if two people owned a house 50-50 with both names on title, why should this change after marriage when the property division takes place? On the flipside, if the husband owned the house 100%, why should the wife not get 50%? (but **not** more than that).

The system should be simplified to view marriage as an equal partnership and prioritise 50-50 division of assets wherever possible (excluding obvious items such as an inheritance received by one party close to separation).

The existing system of attempting to work out who contributed what and crystal ball gazing into future needs is impractical and complicated. There is usually a lot of dispute over facts, which the lawyers fight over but rarely leads to a fair outcome.

The marriage is over, both must accept equal responsibility for their own lives going forward and this must be delinked from the custody decision.

Pre-nups should also be encouraged, or made compulsory, and these should be enforced by the court in most cases.

It is easy to foresee that if the money is divided equally - as a matter of law - the number of family court cases will drop dramatically and the likelihood of custody disputes will be greatly reduced (especially if this is combined with reform of the child support and family assistance systems, which again give financial incentives for withholding custody).

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Question 24

Not unless we have a gender neutral approach to family violence in this country, otherwise fathers will continue to experience conscious/sub-conscious bias, which will not lead to outcomes in the best interests of the children

Question 25

There should be defined punishment for mothers or fathers who make up or exaggerate allegations of family violence, abuse, or otherwise falsify facts. This includes misuse and abuse of the intervention order system for the purpose of gaining an advantage in family law proceedings. They should lose access to the kids. Any parent who knows they face these consequences will think twice and this behaviour will be greatly reduced.

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Question 34

Teenage children/those mature enough to clearly express themselves should be allowed to write affidavits/submissions to the court, without cross examination, including for the purpose of correcting facts and allegations made by one parent against the other

Question 35

Question 36

The interviews between the children and the family consultant should be video recorded and the Judge should be able to view this.

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Question 38

Yes. One risk is the Consultant/Court ignores the wishes expressed by the children thereby making them feel unsafe, unimportant and voiceless. On the flipside, they may lean towards spending more time with the “softer” parent, which may not be in their best interests.

I would manage this risk by implementing equal shared parenting wherever possible and giving more weight to the wishes of teenage kids. It is clear that children mature more quickly these days and this should be acknowledged.

Another risk is that the Consultant is biased in favour of one parent and either manipulates what the kids said in his/her report or speaks in a manner that is abusive/inappropriate to the children. Unfortunately, I am aware of such cases.

I would manage this risk by video recording all interviews in full.

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Yes - it is the veil of secrecy that has allowed this system to continue for so long. If the media were allowed to report on these cases, or the affected parties to otherwise go public, a lot of the injustice taking place will no longer happen.

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Question 47

Other comments?

I would like to finish this submission by noting my serious concerns that Family Consultants, Lawyers and the Judiciary do not apply common sense when assessing the relationship between mother and father.

From practical experience, I know that the level of communication required between parents even for equal shared parenting is minimal and they simply need to be able to communicate via email or sms over kid's matters, not "hugging and kissing each other" and being "best friends".

If one parent is being unreasonable or not communicating, this should be called out as a reflection of them, rather than blaming both parties and saying "they're in conflict".

There seems to be a desire to keep parties in the system - playing up and exaggerating issues of communication, tension and conflict - rather than being practical and realistic about what might be expected of divorced parents. Even married couples fight.

Lawyers are very quick to take out of context behaviour that occurs in most households. The adversarial nature of the system encourages this, making it all about "attacking the other parent" and "winning for your client" rather than what's really in the children's best interests. I would like to see an approach that more clearly reflects what everyday Australians consider reasonable.

I would also like to see 11F reports abolished and proper accountability for Family Consultants who have enormous, unchecked influence in the system.

11F reports are a rushed job for what is a very important decision. The consultant doesn't even observe the children with the parents.

As for the consultants themselves, it seems they are the ones making the actual custody decisions. Their report is the only way for the kids to express their wishes. The Judge usually follows it and relies on them as the "expert". It is very difficult to challenge and overturn a family report.

Effectively, the consultants are the ones deciding how these children will spend their crucial developing years till they turn 18. These are human beings with enormous power yet no accountability. Naturally, as with any system, there are consultants who do the wrong thing.

Clients who have bad experiences are told not to raise them by lawyers as the consultant is “sacred” in the system, “you can’t prove what happened” and “the Judge always sides with the consultant”. I have heard of this happening many times.

With the Judge, there is a transcript of court proceedings but recordings of the family report interviews are currently not allowed.

To ensure the integrity of the system, all interviews - especially with the children - should be video recorded.

The Judge can then review this and more effectively judge the children’s wishes and maturity, rather than relying on the consultant.

There also needs to be a proper complaints system for consultants. Again, video recording the interviews will help ensure consultants do not say some of the things they are currently saying to parents/children or otherwise manipulate their reports.