Explanatory summary only

Regarding the Family Law Judges explanation of the meaning of the words used in the Family Law Act, and how it determines what is in the best interest of children.

Part 1

In Australia separation is governed by the Family Law Act. Key components are:

1. Must act in best interest of child. (though Judges say the best interest is not defined in the Act)

2. Must elevate protecting child from harm above other considerations (though Judges say what elevates is not defined in the Act)

3. Then try to promote a meaningful relationship (though Judges say how is not defined in the Act)

4. First consider equal time......to the maximum extent that is in the best interest of the child (The underlined words have different meaning to judges than what the average person or academic would suspect)

The fascinating part is how judges interpret this. The words are defined differently to how the universities teach the meaning of the words. Though the psychological research applied is being taught to students in year 11 at high schools who lack the experience to critically analyse what they are being taught or to critically analyse the research.

To understand the judges understanding of the meaning of the words in the Family Law Act you need to know that the Federal Government Attorney General’s office tendered for research and a psychologist Dr Jennifer MacIntosh won the tender. The research was on Attachment Theory. It was a longitudinal study which implies high quality (longer = better impression), but bad methodology over longer time just means more poor quality research. There is no empirical evidence used in this research and it is almost exclusively based on reports by the parent with more time with the child and old research on orphans as well as from interviews of Attachment Theory advocates.

From this research we get the terms Primary parent and secondary parent (recent shift has been to stop using the obvious label of secondary parent and replace it with the less obvious term non-primary. And the psychological disorder called primary parent separation anxiety, which replaces the old term Parental Alienation. (This language shift is important as it allows judges to change behaviours that were once deemed inappropriate into actions they can now say is in the best interest of the child ie now good behaviour).

Next Macintosh says a child suffers a failure to develop neurologically as a result of primary parent separation anxiety (or any disorder with anxiety as a symptom such as autism, this is important as it allows other ways for judges to distort the appearance of the child’s circumstances) in two ways. First their brain will not develop if away from the first person to get the child for as little as one night, or secondly the child brain will not develop if the first parent to get the child feels stress. (She claims leaving one parent a child loves to see another parent the child loves triggers the failure of the brain development described by a different body of research called neuro science in which a severely abused child’s brain does not develop after severe child abuse. Suggesting going from one loved parent to another loved parent is the same as orphans who lose both parents.)

Her attachment theory says children are biologically hard wired to only be capably of having one parent learn their body and sound language the other parent can’t learn this. And that biologically children are not able to shift their attachment needs to anybody else. (Like ducks imprinting)

A child will only suffer primary parent separation anxiety if they go to someone the primary (or first parent to get physical possession of the child) does not support or like. They can leave the primary parent without brain damage for many nights at any age so long as it is someone the primary parent likes.

This is partly because if the first parent to get the child is upset in anyway, they lose the ability to read the child’s body and sound cues which is like physically sending a child to someone the primary parent does not support resulting in child brain damage.

And partly due to the third finding, that if the primary parent is upset by the secondary parent the primary will expose the child to the primary parent’s emotions which will also induce neurological trauma associated with primary separation anxiety, and that primary parents are incapable of not leaking their anxiety over the child.

MacIntosh’s research establishes prescribed levels of secondary parent contact which satisfies a meaningful secondary relationship required under the Family Law Act. This is super important.

1. Under age two no overnight contact at all.

2. From age two to age five no more than 1 night a week,

3. and from age five to 18 no more than 5 nights a fortnight. (though no evidence of primary parent separation anxiety can be found in this group it is in the best interest of children to just play it safe, after all the child at the point of trial would have never been allowed to experience equal contact.)

She specifically finds contact of equal (7 nights each) and near equal (8/6 night splits) are of no additional value to children. (This is significant to remember when we explain how Family Law Judges describe the meaning of the words to the maximum extent and the word best written in the family Law Act)

To clarify Macintosh attachment theory says quantity of time/greater residency is essential to primary parent meaningful relationship or Primary parents report losing the ability to read their children's cues.

But secondary parent meaningful Relationships are not dependent on time. Secondary parent meaningful relationships are dependent on quality time as grandparents have secondary meaningful relationship even with no overnight contact

Lastly anxiety causes the same harm as all but the most sever types of domestic violence like beatings, starvation or sexual abuse.

Part 2

Next we will show how the judges apply the best practice research and their definitions of the words in the Family Law Act to determine the best interest of a child.

Australia in law does not acknowledge parental alienation as existing, and this behavior was considered a bad thing to do to your children. A quick description of parental alienation is to use restricted access primarily along with other psycho emotional techniques to turn the child against the other parent so that the child was incapable of going to the other parent and eventually the child chooses to limit contact with that other parent.

Parental alienation has been given a new name which is legally recognized thanks to Dr Jennifer MacIntosh’s research and is now considered a good thing to do to your children by the judges. Primary parent separation anxiety is the product of using principally restricted access endorsed by the courts through interim orders, and other psycho emotional techniques to destroy a child’s resilience so they can only attach more with the first person to get the child or people the first person likes, such that they can't go to the other parent and eventually chooses to limit contact with that other parent.

So the Family Law Act says first consider equal time. Judges say this does not mean consider equal time with preference. Instead the words first consider, means begin discussion of how equal time is never in the best interest of a child when the first parent to get physical possession of the child or the other parent does not communicate or cooperate. Which parent is mostly causing this is irrelevant to the best interest of the child regardless of how unfair this is to the secondary parent/child contact levels. (But even if it was written in the Act, judges have this really clever way of making it always the lesser important secondary parent who is causing this.)

The next part of the sentence “first consider equal time” contains the end rider .... “to the maximum extent that is in the best interest of the child”.

As MacIntosh research proves contact over 5 nights with a secondary parent makes no difference to children, this no additional value means the word "best" being defined as improved can never be achieved with any contact above 5 nights a fortnight. So the words "maximum extent" means contact above the prescribe minimum per age for a meaningful relationship is never possible, as it is never in the best interest of a child. Renditions of this information satisfies the Family Law Act “consider equal time” and satisfies the Family Law Act “to the maximum extent”. And if you say it first it satisfies the Family Law Act “first consider”.

The Family Law Act says all assumptions are rebuttable. So to test if attachment theory is rebutted judges ask the question, how is the child is coping in each house hold? There are only four possibilities to answer this question, it’s really clever. (Keep in mind we are only looking at cases where the secondary parent is not abusive and the first parent to get the child or the secondary parent will not communicate or cooperate.)

First the child is less happy while with the secondary parent. This attachment theory says is because they are away from the primary parent so the first parent to get the child or primary parent must have significantly greater residency in the best interest of the child until age 18.

Second possibility the child is less happy while with the primary parent. This attachment theory says is because they have been away from the first parent to get the child or primary parent. Macintosh finds Primary parent separation anxiety does not occur only on separation, but the primary parent separation anxiety occurs when returning to the primary parent. So the first person to get the child or primary parent must have significantly more residency in the best interest of the child.

Possibility three. the child is equally happy with both parents. Then judges say equal means the same and the same does not pass the definition of the word “best” used in the Family Law Act, which requires an improvement, so the first person to get the child or primary parent should keep significantly more residency in the best interest of the child.

The last possibility is when the child is upset at each parents. Attachment theory says this means the child has two disordered attachments and the child needs at least one good attachment so the first person to get the child or primary parent gets significantly more residency in the best interest of the child regardless of who better meets the child’s other needs.

There are no other possible variable outcomes to this question.

In summary even the tiniest sign of having been upset at any location makes it in the best interest of the child for the first parent to get the child or primary parent to have at least significantly more residency than the maximum substantial contact allowed between the child and secondary parent.

And a perfectly happy child, makes it also in the best interest of the child for the first parent to get the child or primary parent to get significantly more residency of the child.

Part 3

Next how does the Family Law Act, prioritize protection from harm work, according to judges?

Key to understanding this is realize that the Family Law Act elevation of protection from harm is not limited to harm caused by the secondary parent but includes all possible sources of harm.

And conflict is deemed caused by the secondary parent if they do not do what the primary parent wants even if the secondary parent is refusing to harm the child at the primary parent’s request.

And anything that upsets the first parent to get the child or primary parent or anything that stresses the primary parent will cause the primary parent to severely and seriously harm the child, according to attachment theory.

So coupling this part of the Family Law Act with attachment theory means harm caused by secondary parents is treated differently to harm caused by primary parents in the best interest of the child.

Resulting in three different levels of threshold for action in both separation under the Family Law Act and child protection under the Children, Young Persons and their Families Act which mimics the wording of the Family Law Act and has the same judges sitting as the highest authority in child protection.

1. The lowest threshold for action is the secondary parent engaging in harm of the child,

2. The next higher threshold of action is child protection and

3. The highest hardest threshold to reach is when primary parents engage in harming a child. (It is worth noting the Family Law Act requires Judges to notify child protection once any allegation is made but there are problems in the involvement of the child protection such as, allocation of cost if not successful, judges dismissing evidence from child protection even though they are better resourced for investigation than the family consultants and single expert psychologist are the three key issues that negate most of the involvement by child protection)

First look at how non extreme abuse is treated under the Family Law Act.

If a secondary parent engages in non-extreme abuse you protect the child from harm directly caused by the secondary parent by reducing secondary parent residency and increasing primary parent residency.

But if the Primary parent engages in non extreme child abuse you first measure the level of harm caused by the primary parent abusing the child against the theoretical harm Macintosh says primary parent separation anxiety harms a child.

Macintosh says primary parent separation anxiety causes the child’s brain to not develop.

Judges say the word “Best” in the Family Law Act means benefit to the child must produce an improvement, and further that improvement must be significant in nature. This means a situation that is the same does not satisfy the condition of “best” written into the family Law Act.

This means all child abuse inflicted by the first person to get the child or primary parent, that does equal or less damage than stopping the brain developing, does not reach the thresh hold for the word best in best interest of the child so you cannot reduce primary parent contact and increase secondary parent contact towards equal or near equal contact, even if the secondary parent is not abusing the child at all. So the first parent to get the child or primary parent must have significantly more time in the child’s best interest.

Stress should be made on the Judges explanation that, all primary parent child abuse that causes harm “equal” to the brain not developing - remember the definition for the word "best" in the family law act , as the word equal is the equivalent to the word “same” thus– will also not reach the threshold of harm that would activate the Family Law Act condition to elevate protection from harm by shifting contact towards equal or near equal residence.

In addition conflict plays a role in the Family Law Act in relation to non-extreme child abuse under attachment theory in two ways legally.

1. Firstly if the first parent to get the child is engaging in non-extreme child abuse and the secondary parent speaks out and reports it, the secondary parent has demonstrated a poor attitude towards the first parent to get the child and the first parent to get the child or primary parent must have significantly more residency in the best interest of the child.

2. The second way is for the first parent to get the child or primary parent to instructor/request the secondary parent to also harm the child in the same way. If the secondary parent refuses to comply and harm the child then the secondary parent is again at fault for causing conflict and poor cooperation making it in the best interest of the child for the first person to get the child or primary parent to have greater residency.

According to judges this dynamic under the Family Law Act over rides the Family Law Act aspect of shared parental decision making and shared parental responsibility, and subsequently also over rides equal or near equal contact.

Now look at extreme abuse under the Family Law Act.

With extreme abuse such as, sexual abuse, beating, and starvation. if a secondary parent engages in extreme child abuse you remove the child from the secondary parent and give the residency to the first parent to get the child.

If a primary parent engages in extreme child abuse you protect the child from the primary parent abusing the child by removing the child from the primary parent. But unlike when a secondary parent engaged in extreme child abuse you can’t give the residency to the secondary parent because Macintosh says the child’s brain won't develop under attachment theory and the court has to elevate protecting the child from harm under the Family Law Act. So you give the child residency to an intervener.

Now how to pick the intervener?

You can’t let someone who would promote the secondary parent be the intervener because Macintosh says children suffer primary parent separation anxiety with anyone the primary parent does not support/like and the Family Law Act elevates protecting the child from harm originating from any source so the intervener has to be someone the primary parent likes. This allows the primary parent to retain control through the proxy primary intervener parent figure, and the intervener blocks secondary parent contact on behalf of the primary parent.

A final note on elevating protection from harm. What used to be associated with parental alienating behavior and not acknowledged under the Family Law Act and considered bad to do to children is now addressed legally under attachment theory and considered good to do to children. An example is when a parent exposes the child to the court conflict like crying in front of the child.

To understand this remember Macintosh says if a primary parent is stressed the child’s brain will not develop.

According to the Judges if a secondary parent exposes a child to the secondary parent’s anxiety the secondary parent is acting inappropriately so the first parent to get the child or primary parent gets more time in the best interest of the child.

But if the primary parent exposes the child to their anxiety it is not the primary parents fault and it is not the primary parent who is at fault, primary parents according to Dr. MacIntosh’s research are incapable of helping themselves and cannot prevent themselves from exposing the child to their own anxiety like secondary parents can. It is therefore the secondary parents fault for causing the primary parent to have to harm their child as a result of the secondary parent seeking to regain contact that the primary parent took away from them initially. Which Macintosh says is of no value to children anyway. So the first parent to get the child or primary parent gets more residency in the best interest of the child.

Just to tidy some things up as the child gets older.

Under The Family Law Act secondary parents can’t seek greater contact than Macintosh prescribes is required for a secondary meaningful relationship or the judges say the secondary parent and their evidence lacks creditability (even secondary parent evidence such as a favorable report by a single expert psychologist lack creditability) as the secondary parent is asking for something of no additional value to children. The secondary parent must therefore be looking more after their own personal interests, and lacks insight into the needs of their children.

You cannot seek court orders incrementally increasing residency as the child hits the prescribed ages that Macintosh says the child needs more residency to maintain a secondary meaningful relationship because legally the judges say it is unconstitutional. (you cannot see clairvoyantly more than six months into the future) so as the ages of 2yrs and 5yrs are reached theoretically secondary meaningful relationships talked about in the Family Law Act can’t be maintained because they cannot be achieve through the Family Law Act unless the first parent to get physical possession of the child has a change of heart. But MacIntosh says that’s ok because secondary parental relationships can be established anytime in the future such as when the children have become adults. (Anecdotal evidence suggests this ability to create attachment with the reduced contact is not always possible like Dr. MacIntosh’s research found, especially if the primary is able to get the child to refuse all contact with the secondary)

You cannot return to court when the child reaches these ages because Aspland and Rice requires a significant change of circumstances. As all children hit these mile stones Judges say, age is not a significant change of circumstance.

Furthermore the Family Law Act elevates protection from harm from any source. Judges say parents in court harms children. Macintosh says when secondary parents disagree on contact level chosen by the first parent to get the child this causes the first parent to harm the child. Judges say this means two things.

1. First that so long as parents aren't extremely abusive any residency split that allows a meaningful secondary relationship, will do under the Family Law Act.

2. And secondly, it is the final order stopping the court action that saves the child from harm by preventing the secondary parent from upsetting the primary or more important parent (The primary is more important because they can do the most neurological harm to the child). The loss of meaning full secondary relationship as the child reaches these ages is not a problem because preventing the secondary parent seeing more of the child preventing court action which harms children and preventing conflict which Macintosh attachment theory says causes the primary parent to harm the child is how you elevate protection of harm.

Interesting domestic violence issue is if a primary parent cry's in front of a child or makes the child scared to leave them to the point the child who is happy with the secondary parent choses to not see as much of the secondary parent so that the primary parent stops crying in front of them. A secondary parent trying to see more of the child is found to be guilty of domestic violence. You see stalking is defined as attempts to make contact not wanted by the subject of those attempts or that attention. This makes it in the best interest of the child to reduce contact with the now abusive parent.

There are two exceptions to the first possession is best interest of the child rule.

One exception is that the first parent to get the child must drop false unsubstantiated allegations of risk of harm originating from the now secondary parent and replace it with the risk of harm from primary parent separation anxiety now that they have successfully been able to restrict the child’s access and contact with the now secondary parent. Failure to do this often results in reversal of care levels but it is important to note you can maintain the secondary parent as the source of risk right up till you have started the final trial and not lose residency of the child because the Judges rule once the primary parent switched there is no evidence under the Family Law Act of the primary parent having a poor attitude towards the secondary parent at the point of decision.

This means under the Family Law Act so long as at trial you allow a lesser meaningful relationship with the other parent, in exchange you will get to enjoy significantly greater time with your child until they turn 18 as you have made it in the best interest of the child to do so.

The other exception is if a child runs away from home, because under the Family Law Act the judges can’t make orders that they can’t force the child to comply with. While this is the easiest way for children to have a say it is still difficult for children to do, and primary parents don’t mind because it is usually not until they are teen age or adults that this happens so they still get many years of significantly greater time with the children. (Sometimes because this is the only way under the Family Law Act for a child to see more of a secondary parent, secondary parents pressure the children in this case often the child who is more scared of being told of by the primary parent who they see as having more power in court will run away from the secondary parent – they associate the pressure by secondary parents trying to explain what the judges and primary parents are doing as evidence the secondary is abusive. This is also often taken as evidence by judges of greater primary parent attachment but often the children would prefer more time with the secondary parent if there was another way for this to happen, but as there is not they are just stopping the pressure from the secondary parent the only way they are brave enough to. This often happens about age 8 for girls who develop emotionally first and age 9 for boys)

While running away from home is the most common/easiest way for a child to alter court orders the other ways to create significant change of circumstances that hold greater risk than the brain not developing include things like cutting themselves.

Part 4

Evidence Handling under the Family Law Act.

Judges have three tools under the Family Law Act.

These tools used as Judges do alters the appearance of the child’s circumstances, allowing it to look like they are acting in the best interest of the child, satisfying the requirement under the Family Law Act.

1. First is to remove any evidence that they feel will not help their decision, so any evidence that will not change the judges mind. This is interesting because instead of evidence leading to decision making, the view of what a separated family should look like determines/leads to what evidence is in trial. It is also worth noting such evidence removed is not able to be used in appeals.

This raises an interesting point, a researcher who posts his findings often through the Australian Institute of Family Studies, a Professor Chisholm, has been advocating Government to amend the Family Law Act to remove the ability of secondary parents to be involved in psychological assessments.

At the moment primary parent with secondary parents who are not abusive, often seek psychological evaluation of their children. (note that while a report of abuse is often sort, reports of anxiety or any other condition where anxiety could be a symptom will do the trick) what commonly happens is the primary parent goes first and they avoid the legal issue of obtaining a report without the secondary parents input by obtaining a preliminary report until the secondary parent goes in. This results in preliminary reports where a medical expert says based on what the first parent to get physical possession of the child reports, (Much like how Dr. Jeniffer McIntosh designed her research) to which the judges says there now is medical evidence that the primary had justifiable reason for concern so the secondary should not have gotten involved. This preliminary often looks like the children experienced abuse or may actually have the other disorder (like allergies, asthma, or autism) that has anxiety as a possible symptom. Then when the secondary parent sees the psychologist, a correction of report or a final report is maid that demonstrates the child does not have these conditions. At this point the Judges has to use this first evidence handling tool to remove the correction report, or to remove parts of the final report in order to say the primary is the more creditable witness. If Government were to make the amendments sort by Professor Chisholm Judges would no longer have to put themselves at risk by having to remove evidence as they will simple be able to just prevent that evidence from ever being created in the first place, there for we advise against this amendment as being even worse than the tool to remove evidence.

2. Second Judges assign meaning to each event. For example if a secondary parent would not take a child to live overseas for nine months a year but a primary parent would. Instead of saying the primary parent has a poor attitude towards the secondary parent relationship; Judges say it is the secondary parent who has a poor attitude towards the primary parent.

3. Third they assign weighting under the Family Law Act. So if a single expert psychologist supports the secondary parent having equal or near equal contact the judges say judges make court orders not experts, but if the single expert supports the first parent to get the child, having significantly more residency Judges say, how fortunate they are to have the help and insight of the expert to guide them in determining the best interest of the child.

It is worth noting that the safe guards built into the Family Law Act do not work.

1. Appeals are not funded through legal aid under the Family Law Act because funding does not happen if you can’t win rather than being based on evidence or merits of the argument.

2. Independent Children’s Lawyers put too much emphasis on appearing neutral so pick levels of contact between the sole residency primary parents are allowed to ask for and the equal contact secondary parents ask for but are not allowed to ask for without having creditability assigned against them and evidence down rated as a result.

3. Family Consultants are trained in Dr Jennifer MacIntosh’s attachment theory in making their assessments, so every initial report has the words judges use to apply attachment theory, namely that one parent got more time, and that the child is likely to have a stronger attachment to the parent who got more time.

4. The single expert witness, a concept introduced to stop both parent getting their own psychologist have them both in court, is addressed by judges not allowing the secondary parent to have a another psychologist and often dismissing or refusing the single expert or parts of the single expert report, yet allowing the primary parent to bring in their own psychologist.

5. Cost while no longer able to be awarded for the loser to pay in final orders can still be allocated to the loser in appeals.

6. Evidence removed by the judge cannot be used in appeals.

There is this mistaken feeling out in the community in people that with separated families when considering equal or near equal contact, it is the same as removing a child from their family, the only family they ever knew because that is all the first parent allowed, with the courts interim ordered support, and forcing them to live with a lessor cared about adult they can’t possibly love as much or want as much. This is not correct, regardless of the academic theories supported by the Attorney General’s office. In actual fact the children are going from a unilaterally imposed significantly unbalance opportunity between two parents loved and wanted equally, to a more equally balanced or equal level of contact with parents they love and enjoy being with equally.

Further it believes that children are inflexible and can never adjust to two parents, can never develop stronger emotions to an estranged parent even if allowed more time to bond with them. Again this is not a valid research finding; children have elastic or plastic ability and can develop these stronger emotions and attachments.

This practice under the Family Law Act where the first parent to get the child even when being the source of conflict or harm to the child, when the secondary parent is not abusing the child, can trade a lesser secondary relationship and receive significantly greater time to enjoy with their children in exchange because by successfully restricting contact with the other parent so that you have made it in the best interest of the child to never spend more time with the other parent is something that needs to be amended in the Family Law Act.

The other principle many don’t understand is that an action can be and often is deemed to be both in the best interest of a child and not in the best interest of the child at the same time. This often needs an example because it is so bizarre that many academics automatically dismiss this as impossible. SO for an example if a primary parent hides that they have not immunized a child by pretending to the secondary parent that they have done it, and then try to send the child to school during a known hoping cough outbreak. (Remember while just claiming a disorder will be validated as a finding of fact by judges this is not as good as actually having a child with a serious disorder) Should the secondary parent seek to have the child immunized, the judges who must act in the best interest of the child will make orders for the child to be immunized, then say at the trial for final orders that the secondary created conflict in seeking the immunization so did not act in the best interest of the child making it another reason why it is in the best interest of the child for the first parent to get physical possession of the child to have significantly more time than the other parent.

Note that reversal of primary care can happen if the primary parent fails to take the hint that they need some small token of contact, even as little as talking on skype only when they relocate, or some contact during the week and some contact on a weekend. Because Judges explain it by saying the Family Law Act requires an always lesser value “meaningful relationship” with the lesser value non primary parent, or the failure to allow this lesser value relationship is evidence of the primary engaging a level of harm to the child that exceeds the damage to the brain caused by primary parent separation anxiety.

The principle judges apply under the Family Law Act that is most abhorrent is the idea that a secondary parent if asked to engage in harmful practice towards a child by the first parent to get physical possession of the child, must in the best interest of the child engage in that harmful behaviour as being in the best interest of the child, because not doing so is conflict which makes the first parent to get the child have to damage the child’s brain.

Attachment theory is the justification used to seek the government remove the notions of equal contact and make it clear the parent not able to get physical possession of the child at the start and is not successfully able to restrict access to the other parent via interim orders or claims of risk of harm by the secondary parent, must be of lesser value and there for cannot possibly indicate a situation in which equal contact is in the best interest of the child. The less valuable parent should be responsible equally instead and should seek to pay more money to discharge that equal responsibility instead of seeking to be more involved physically with the child.

Recommendations to address the issue of how judges define the words used in the Family Law Act, to bring about judicial integrity.

(Note it is important that these amendments stick to the exact words used, as these words are require to address the explanations given by judges to parents when explain the Family Law Act )

1. Take the object of ‘Best interest of the child’ and amend it to be ‘Best interests of the child with in standardised expectations’. (Expectation standards written into the Act via examples)

1.a. Expressively remove attachment theory from use in determining the best interest of children.

(Law should never say that the more you harm a child the more it’s in the best interest of the child to increase your contact if you’re the first parent to get the child and so long as you’re not too extreme.

Or something the children strenuously object to that if they say they love both parents the same it no longer gets interpreted as meaning the child wants to spend significantly more time with the parent who got them first. When they say they love both parents the same it means they want to see both parents the same amount of time.

It will also remove things like how if the parent with greater possession can create discord or refuse to communicate or co-operate with the other parent during interim orders that it makes it in the best interest of the child for the primary parent to end up with greater time after trial or the child’s brain wont develop.)(Though judges often use the argument that conflict is partly the blame of both parties to work around this objection)

In essence there needs to be a removal of the upper limit of secondary parent residency that can be considered as being in the best interest of a child.

1.b. Clearly specify that the starting level of care for what is in the best interest of children is equal time.

(This will remove two problems, first the ability to say as equal and near equal time is of no value to children we can never begin consideration with equal time under the Family Law Act as it can therefor never be in the best interest of the child, as emphasised by the wording “to the maximum extent that is in the best interest of the child. Those words mean that if the level of care is just as good in both houses there is no difference between houses and the definition of the word best is never achieved so you start consideration at the level put in place by the first parent to get the child and don’t consider equal time as the first option.

Second it will remove the principle that so long as the first parent to get the child is not doing too much harm or if both parents are equal or near equal in parental skill there is no need to move the level of care from the starting consideration which is not equal time or near equal time but whatever the first parent put in place. And further that you cannot shift towards equal or near equal care only towards the level of care under the Family Law Act of substantial and significant being the minimum needed for a meaningful secondary parental relationship.)

1.c clearly specify that the best interest of children in determining the move towards spending more time, and/or the move towards equal or near equal time is assessed on a positive for positive negative to negative principle with regards to the condition of the child while actually in the care of the parent in question.

(This will remove two problems, First the ability under the Family Law Act to pick and choose meanings like when judges say if the child is displaying signs of trauma while in the primary parents care that the child needs to have more time with the primary parent as that is the only way for primary parents to meet the needs of the child, while if the child is displaying trauma signs in the care of the secondary parents care you reduce the child’s level of care with the secondary parent because they must be missing the primary parent.

Second it will remove the ability to say it’s in the best interest to leave the child significantly more with the primary parent and offer only substantial time with the secondary parent if the secondary parent is better able to meet the child’s emotional needs or any other need such as developmental needs because the happy child in the secondary parents care indicates that the Family Law Act’s objective of allowing a meaningful secondary relationship has been achieved and no further increase in contact needs to be considered making stability of residency the new focus of what is needed to establish the child’s best interest.)

2. Expressly prohibit the use of the terms primary parent and secondary parent (or non-primary) by both the courts and the auxiliary services to the courts such as at mediation centres and change over centres.

(This will remove two things. It will stop those parents with initial possession from telling their community and the children, other parent, and courts that they are neurologically more important to the child than the other parent.

Secondly it will also remind the judges, psychologists, court family consultants, and mediators that their reports, assessments and decisions are not to be based on the notion that the needs of the parent initiating with greater possession is more important to the child’s best interests and that they need to change how secondary parents think.)

3. Include in the Family Law Act that after consideration of equal time – in a non-biased belief that equal time is possible even if the primary parent does not want it, and even if the parents don’t get along, that the next level of care the judges have to consider is near equal contact (6/8 nights) if the level of care the parents provide is similar. This needs to be given genuine consideration not applying attachment theory which says near equal time is a worthless to children as equal time when the parents can’t co-operate or communicate. (may have to legislate that Family Consultants are not allowed to say in writing or verbally that children are likely more attached to the parent who was able to initiate with greater physical possession of the child, instead legislate that they must only comment on attachment levels after equal contact has had time to allow opportunity of contact to create the natural bond levels that would have developed before one parent unilaterally imposed a distortion in that opportunity)

4. Change the order of assessment of parent and witness creditability and evidence weighting so that instead of determining creditability and applying it to the weighting of evidence you determine the creditability of evidence and apply it to the weighting of parental creditability.

(This will stop the judges saying things like because the first parent to get the child is seeking they have more time proves under attachment theory that they are doing what is essential to the child’s neurological development so the child will stop screaming in the primary parents care, but the secondary parent is seeking something of no value to the child neurologically because the child is usually always happy in the secondary parents care, the primary parent and their witnesses must be more creditable than the secondary parent and their witnesses so you have to take that into account when weighing the importance or accuracy of the evidence such as reports prepared by the single expert witness.)

5. Include in the Family Law Act that while the child’s rights remain paramount that parents also now have the following three rights.

5.a. Included that Parents have the right to apply for whatever level of care they believe is in the best interest of the child without criticism.

(This will remove the problem that under the current Family Law Act secondary parents are not allowed to apply for primary care according to judges, or near equal or equal time, as to do so proves under attachment theory that they are not acting in the child’s best interest or that they must lack insight into the needs of their children.)

5.b. include that Parents have the right to fair and equitable evaluation of evidence in a non-biased environment.

(This will remove biased evaluations such as things like judges saying you can present your case but you are going to have to work extremely hard to prove to me that increasing the child’s time with a secondary parent when they clearly can’t communicate or co-operate.

And it will remove things like judges being able to remove entire assessments by single expert witnesses or refusing to allow secondary parents to present witnesses only allowing primary parent witnesses, and it will stop judges from only allowing half of a report like the courts family consultants reports and dismissing the half that supports the secondary parent.)

5.c. That evaluation of dismissal of a judge on the grounds of bias be not made by the judge accused of being biased.

5.c.i include bias against a principle expressed with in the Family Law Act as grounds for dismissal of a judge.

(thus means a judge can no longer say they are non-biased as to the parents but biased against equal time as a poor model of how a separated family should look and function in the best interest of children if they need a judge to resolve how much time a child spends with each parent)

5.d. Amend so that judges are deemed to be real people when acting in the role of judge.

(This will allow other legal bodies such as the commissioner for anti-discrimination to take action also on the grounds of discrimination due to parental status, which the judges are currently safe from as a result of not being people.)

6. Include in the Family Law Act that after the reason for judgement is written up by the judge that the secondary parent has a right of response and a right to expect the judge to counter respond.

6.1 That in this right of reply the parent may include evidence that has been

a. poorly weighted

b. had inappropriate meaning attached to it by the judge or report writer

c. new evidence that gained significance after the Judge raised an issue in their reasons for judgement.

6.2 that the right of response and the judges counter response including any evidence presented with them be permissible in an appeal before the full court.

6.3 That the Judge has the right to amend his orders if it alters their opinion on the matter.

(The inclusion of this new section in the Family Law Act, will address many problems including things like, first it stops judges from removing key evidence that is no longer able to be used in appeals which is often essential for a successful appeal.

Secondly it will prevent judges from raising new reasons for the orders that the secondary parent’s solicitor never realised was relevant and so did not raise the counter argument and evidence during the trial.

Thirdly it will increase the likely hood that judges will think twice about making outrageous comments or connections with evidence as they will know that it will be clearly presented for observation by other people. Because at present these only show up in the system if the secondary parent can afford a full appeal.

Fourth, it will allow judges the opportunity to reconsider their performance on the bench and allow them to adjust their performance mid trial without criticism, if they feel they had made an honest mistake.

Fifth it will save the courts and the parents thousands of dollars as you can divert the requirement for appeals as errors can be raised prior to going to a full court of appeal.

Sixth it will reduce the use of parental poverty as a way for judges to prevent the judgements ever being evaluated by a full court of appeal as it might not require an appeal if the judges feel they were in error and amend their ruling, but even if judges don't change any inappropriate behaviour can be raised and audited or reviewed without the appeal process.

7. Amend the Law so that Legal Aid for appeals is not granted on the basis of whether or not you can win, but rather that it be paid on an evaluation of the strength of the evidence and on the merit of the argument.

(At present many impoverished parent as a result of legal costs are not able to have appeals raised so judges know they are likely to not be corrected through an appeal process)

8. Amend the Family Law Act that instead of having to apply at the time of appeal for the cost of transcripts to be covered by the courts which is insanely expensive at $1800 per day over 7 days for a half trial or 14 days over a full trial, Which if refused results in loss of the appeal and having to pay the primary parents legal costs.

8.1 Change the Family Law Act so that the auditory recording of the trial must be admissible for used in an appeal free of charge with relevant time stamps identified prior to the appeal trial. Instead of only allowing total paid written transcripts. (or increase funding to legal aid but make it specifically only for use in appeals and transcript payments but we suspect this will break the government bank accounts, transcripts are prohibitively expensive)

9. Increase the time to prepare an appeal to 6 months as appeals are far more technically difficult especially for those who can’t afford solicitors as a result of the cost of trial.

10. Remove the section of the Family Law Act that awards legal cost at appeal so that the loser does not have to pay the winners cost.

(As this is a grave injustice because it scares people of from appealing bad decisions which ruin the emotional aspect of children and their attachment levels to the secondary parent.)

11. Remove the concept of Final Orders

11.1 Replace final orders with 3 yearly review orders.

(This will address several issues. Firstly the idea that children need stability of time for the entirety of child hood unless there is a significant change of circumstances which almost never eventuates in an appropriate timely manner. Even when attachment theorists say as a child grows older they can spend time with someone with initial possession does not like without neurological failure to develop, family law says a change in the child’s age is not a significant change of circumstances as all children go through this process. This three years insures the child will have stability of time over several years. – We also have issue with the idea that stability is a factor of keeping the primary parent with more time than the other parent for years on end after one parent has unilaterally imposed contact restrictions, and feel that the stability of a child’s life is better measured by the environment of stability with in each parents home that each parent can individually provide.

There for if the secondary parent provides a more stable life or environment, reversal of initial contact levels should be possible.

Second it will address the stress on both children and parents of having limited contact with children until the child is about sixteen and able to run away from home under the current Family Law Act as if there is a mistake or biased judge in three years there is hope this can be corrected. (of course the Family Law Act must change to insure appropriate Judicial behaviour and attitude at the review time) This is the issue that angers and upsets children the most. Children hate that they might have been tricked into saying something to a family consultant when they were too young to understand how the courts family consultant will use that in the report after applying attachment theory. Children hate that if they change as they grow up that the primary parent can ignore the child’s wishes until the child can “vote with their feet” which they say is scary. They hate that they are not allowed to have a say about their living arrangements. With the replacement of final orders with three yearly orders they like that they will be able to correct or amend the orders as they get older and their voice can be heard once again.

Thirdly the current Family Law Act has lowered the stress of considering time as a priority but has had negative repercussion, as now Judges are not giving it much consideration at all. This removal of final orders and replacement with three yearly revision orders will also remove the stress of time as a consideration for parents and children but leave the opportunity still as an important consideration for the judges.

12. Children want an inclusion in the law that relocation away from the secondary parent is not allowed until the child is about 8 years old and old enough to understand and clearly voice if they wish to go or stay by swapping to living with the other parent, because after the primary parent “had to relocate and take them away” the opportunity to bond enough with the secondary parent for them to feel comfortable changing primary carers and home location disappears until they are teenagers and less scared.

12.1 And that the determination of relocation in the best interest of children is not based on the primary parent having always retained primary possession of the child’s time.

12.2 Or prevent granting relocation on the basis that the now primary parent is lacking the ability to look after the child and needing to relocate closer to other family supports when the secondary parent can cope.

(if the primary parent still can't cope, after winning primary care on the bases that only primary care will allow them to comfort the child, then primary care should have gone to the other parent who could comfort the child and could cope in the first place)

13. When children turn 18 that all material from the trials including the transcript recordings and including evidence the judges removed from trial be forwarded to them free of charge. They don’t want it to be something they have to apply for first.

(First some children think they won’t care but they prefer having the choice to review it or not.

Second this will become a small incentive for parents and judges to act with greater honesty as they know the truth will be available to the children when they grow up.

Thirdly several child victims of family law when they grew older felt that being able to verify what the secondary parent said may have helped speed up the healing process after the parental alienation inflicted on them by the primary parents and the courts. – (realise now the term parental alienation which involved turning the child against the other parent so they are incapable of spending more time with the other parent, has become unpopular in the court system as being a bad thing to do to your children and not acting in the child’s best interest. It has now been replaced by the term primary parent attachment which involves destroying the child’s resilience and retarding the child’s development so that the child is incapable of spend more time with the secondary parent, and is deemed to be a good thing to do to your children and acting in the child’s best interest.)

14. Include in the Family Law Act that the Independent Children’s Lawyer must make recommendations for residency levels based on what the evidence shows where the child is happiest and is developing best prior to judges handling of the evidence.

14.1 And that the ICL is not to make recommendations for residency based on prioritising their appearance of neutrality.

(This removes what is currently happening where ICL’s are just choosing a level of contact which is somewhere between what the primary parent seeks, mostly in their care and what the secondary parent seeks, often equal or near equal care. Or defaulting to what attachment theory says is the minimum level of contact a child needs to maintain a secondary relationship. If the evidence demonstrates that a child is better of primarily in the secondary parents care, or with equal time then the child has a right to have that recommendation put forward by their independent children’s lawyer.)

15. Reduce the emphasis on what the child says in determining the child’s wishes when they are under the age of 8 years old

15.1.1 Replace this with increased emphasis on what the child expresses as being the child’s wishes once the child has turned 8

15.1.2 And continue to increase the importance of what the child says is the child’s wishes for each three year revisionary cycle due to the increase age and capacity of the child to reason, capacity to express themselves, and make informed decisions.

15.2 remove the application of attachment theory in determining the child’s wishes and replace it with evaluation of the child’s level of happiness at each parent’s house but being directly related to that parent as per recommendation 1.c.

15.3 remove the application of “creative interpretation” of determining the child’s wishes and replace it with evaluation of the child’s level of happiness at each parent’s house but being directly related to that parent as per recommendation 1.c.

16. Include in the Family Law Act that siblings can spend the same number of nights with secondary parents, and that those nights can be together regardless of the attachment theory that says younger children must always have less time with a secondary parent than older children once both children begin primary school.

17. in cases of sever child abuse amend the orders so that if the primary parent engages in sever child abuse that

17.1 increasing the child’s contact with the secondary parent be given priority as the best interest of the child, and if not immediately possible

17.2 That the intervener must be someone supportive of the secondary parent.

( This will address what is happening now as at present if the secondary parent engages in extreme abuse you reduce secondary parent contact to protect the child and increase primary parent contact, but if the primary parent engages in child abuse you reduce primary parent contact to protect the child, but because of the best interest of children principle in the Family Law Act you can’t increase secondary parent contact because the child’s brain won’t develop if the child spends time with someone the primary parent doesn’t like according to attachment theory. So they are giving the child to someone who supports the primary parent allowing the primary to retain control over the child through the proxy primary caregiver who acts to interfere with the increasing of child contact with the secondary parent.

18..1 even if this requires the younger child to increase level of secondary parent contact faster than the 1 night per year specified by attachment theory as the maximum a child can cope with without the brain failing to develop.

19. Introduce an external audit of judge’s application of evidence that is independent of government and independent of family law judges. Make it mandatory for a yearly report of the audit findings be submitted to both the chief justice and, with powers to make recommendations to the Federal Attorney General

(the independents will maintain the requirement for the legislative arm of the law to be separate from the judicial arm of government while removing the current situation where the only review process possible is an appeal sat upon by three other family law judges all engaged in the same decision making process.)

20- Introduce a process where by Judges who act with dishonour, act with a lack of integrity, or prove incompetent can be removed from the bench and no-longer be allowed to preside over the determination of the best interests of children.

21. Find some way to legislate and address the insane charges of solicitors at trial and at preparation of trial. It is unethical and immoral that it should cost upward of $70,000 to defend a child’s rights to be safe from a parent or spend the time with a skilled and loving parent that the child is capable of.

22. Introduce that the conduct of the parent must be measured over the course of the litigation and not only at or near the trial.

( this will remove how at the moment if a parent changes their behaviour just before trial or at trial or under the shadow of impending trial drop their allegations of the other parent being abusive that they are deemed the more creditable witnesses because they have suddenly had an epiphany )

23. Introduce transitional orders.

23.1 And make transitional orders extendable time periods.

(This will remove what is currently happening where it is unconstitutional to make court orders greater than 6 months into the future because you can’t see what the child’s needs or circumstance will be after that, coupled with the attachment theory that children can only increase secondary contact by 1 night per year and it’s impossible to transition slowly more into the other parents care.

The introduction of extendable transition orders means you can increase contact, review it at 3 months – not using attachment theory where a child screaming with the primary parent means the primary parent needs more contact but rather assessing it at the secondary parents care so if the child is happy with the secondary parent the child can cope with stepping up to the next level of contact with the other parent.)

24. Amend the Family Law Act so that Secondary parents are also allowed to use after school care or child care and not just the primary parent.

(Remove the best interest of the child argument that a child only derives benefit from secondary parent while physically by their side)

25. Amend the Family Law Act so that if a primary parent is engaging in minor child abuse or misconduct and the secondary parent is not. That the best interest of the child is not measured against the harm caused by the child being with someone the primary parent does not like. so minor forms of child abuse will strengthen the argument that increasing time with the secondary parent could be in the best interest of the child.

(currently if the primary parent is engaged in low level child abuse such as making the child sick with medication the harm of being sick all the time is measured against the harm attachment theory says spending time with someone who the primary parent won’t support, which is failure to develop neurologically according to attachment theory so it is in the best interest of the child to remain significantly in the care of the primary parent and be subjected to low level abuse for the duration of child hood.

Similarly currently if a secondary parent goes to court and gets court orders preventing the primary parent from engaging in minor child abuse this has the legal effect under the Family Law Act of the secondary parent having made it acceptable for the primary parent to retain significantly more, leaving the child more in the care of the parent who was engaged in low level child abuse.

Note that if a secondary parent engages in low level child abuse it is in the best interest of the child to spend less time with the abusive secondary parent and increase the primary parents contact.)

26. In the past Family Law Act amendments have carried the clause that the amendments don't count as a significant change of circumstances. However these amendments must constitute a significant change of circumstances and this must be specified as a part of the amendments to the Family Law Act.

(because when judges altered the evidence or relied upon attachment theory research findings from research completely lacking sufficient empirical evidence they back at the trial created the significant change of circumstances way back then)

27. Courts to collect and make available statistics on the number of times the parent leading into trial with more time with the child leaves trial with more time.

27.1 courts to separate 6/8 night splits from 7/7 night splits and stop calling near equal rulings as equal rulings.

28. Strengthen the access rights of children with secondary grand parents to match that of the primary grandparents.

(at present grandparents on the primary parents side are deemed more important to a child than grandparents on the secondary parents side because primary parents will often approve of and allow their own parents more contact so no risk of neurological harm so primary grandparents get better contact orders awarded.

 It is not uncommon for primary grand parents to be deemed more important than the secondary biologics parent as primary parents allow their own family greater access even than they allow the biological secondary parent. Under the significant substantial part of the Family Law Act primary grand parents often get the two days a fortnight taken from the secondary parent resulting in a split of 7 nights primary parent 5 nights secondary parent 2 nights primary grand parents.

Or interim orders of primary grandparents having greater nights than secondary parents.

29. Add an alternative to vexation proceedings that are less harsh given the special vulnerability of secondary parents under the Family Law Act as it is currently interpreted and give this option a less adversarial sounding name like Judicial Guidance orders. (See our Vexatious Proceedings document)

29.B Introduce a statute of limitations on the status of being a labelled a vexatious litigant, something like 5 years after the last trial or 5 years after the last child turns 18 years old whichever is sooner.

29.C Amend that the transition from one court to another is grounds for the judge to initiate vexatious proceedings as a trigger, and replace with, that the transition from one court to another on matters of family can only be a trigger to the judges starting vexatious litigant procedures if it can be demonstrated that the secondary parent was engaging in vexatious behaviour in the prior court.

30. In these cases where the secondary parent is not found to be a risk of harm to the child, set a limit of contact below which judges are not allowed to comply with what the children ask.

Remember the process of attachment theory (as it was when it was called parental alienation) is to get the child to say they want no contact with the other parent. Where false allegations of risk of harm by the secondary parent are dropped and replaced with risk of harm from primary parent separation after successfully keeping the child access limited and the primary parent leaking their anxiety onto the child, when the children say they don’t want any contact with the other parent so that the primary stops crying in front of them. The Family Law Act must protect the children by no longer legally ruling the child’s mother or father out of their lives with the justification that it’s in the best interest of the child to listen to the child. After all if children are asking to increase their residency with secondary parents, under this current Family Law Act Judges are also saying that they should not be letting children decide such important matters.

Just as the upper limit of what secondary parents can apply for needs to be removed so must legislative lower limits that Judges can comply with children’s requests be limited in cases of secondary parents with unsubstantiated domestic violence findings.

As at the moment too many children are having either their mums or dads ruled completely out of their lives simply because of fear, or the children give up fighting the primary parent who was given so much power from the interim orders, or side against the secondary parent because the primary parent distresses them emotionally.

One example of a lower limit might be a card every three months and on special occasions such as Easter and Christmas. These cards can be reviewed by a councillor or psychologist to insure the content is acceptable, and that the cards have to be signed for by the child. This way even if the primary parents keep the child from reading the cards by getting the child to say they don’t want the card the child will still receive in their minds knowledge that there is a secondary parent who loves them but just was not fast enough to grab the child first when the parents separated.

31. Avoid calls to government to amend the Family Law Act and remove equal time as a possible outcome. In fact the opposite is needed and equal time has to be introduced to the Family Law Act given Judges say it currently is not in the Family Law Act.

32. Avoid calls to government to amend the Family Law Act to prevent secondary parents from being involved in psychological assessments. In fact the Act needs to include sections that prevent primary parents from getting preliminary or final assessments done prior to seeing the secondary parent, who might have evidence that the child was actually being trained by the primary to act Autistic.

33. Add a section to the Family Law Act preventing mediators and solicitors from applying pressure to the parent they see as weak by claiming the judge will see them as un friendly parents. Let that be the responsibility of the judge or ICL to deliver that warning if they are concerned about it.

In summary

The concern of the courts and federal parliament is that the legislative part of government cannot amend court orders because of how judges make orders as both arms must be separate. So that forever more, future children must be left to suffer. However through the use of research by key groups the two arms are not separate at the moment.

It does no good having the Attorney General’s office be responsible for fixing this issue when their highest role is to defend the Judges engaging in this behaviour. The Attorney General’s office has known about this issue for years and done nothing to address it.

We suggest ignore what judges are doing, and ignore if they are doing anything wrong, but acknowledge that the interpretation of the Family Law Act can be understood in the terms highlighted by this, continuing education material produced by judges themselves and other social groups in Australia.

And on the basis that this alternative interpretation was never intended to be how the Family Law Act was to guide judges from the legislative body. Then you have not only the ability but an obligation to amend the Family Law Act to give clearer guidance to the courts and help rebuild the faith that has been lost by the public. (again this issue is only relevant in cases where the secondary parent is not abusive, in cases where the secondary is abusive obviously less time with the secondary is likely to be in the best interest of the child)

Consider the impact these amendments might have on reducing domestic violence on separation and improving mental health. Any form of domestic abuse should be illegal (even mild deliberate child abuse by primary parents) but secondary parents do get pressured and lose control when the first parent to get the child (with the courts help) say because they got the child first you lose contact to 30% or below for the rest of childhood, as your contact is of only limited value to the child and you should be happy with needlessly limited contact and only a meaningful relationships. And a lesser relationship at that, than the more important essential other parents relationship. Surely this is also something the legislative body is responsible for given it's their Act of parliament and the research they tendered out?

We call upon all federal members of parliament to look deeply at their own values and ethics and not stand by and allow this to go un addressed simply because the Family Law Act currently has no way to be amended.

Please our nation’s children deserve better, and so do the good mothers and fathers out their being denied or limited contact with their children based on this issue.

The Cultural Hegemony of Family Law

Currently the Turnbull government has initiated a comprehensive review of Family Law, this is significant for a couple of reasons. First is the stated reason that it has been some years since a comprehensive review was conducted.

But there are two other reasons why this review is unusual, first that it was negotiated between the Attorney General and the independent senators of the time. The significance of this is that for many years the Attorney General’s office has stood by the Family Law Act because it says judges must act in the best interest of children, even unto the notion that the best interest of children is to always remain more in the care of which ever parent gets possession of the child first prior to going to court unless the first person to get possession is damaging the child to a level greater than which damages the brain such as fails to offer the other parent a meaningful but always lesser value though substantial relationship.

The third reason this review is significant is related to timing, as the Institute of Family Studies, a research organisation in Australia strongly supportive of the primary parent model and the Attachment theory/Primary parent separation anxiety theory, had just finished a major review focusing solely on domestic violence.

We have previously discussed the fundamental unethical bases of Attachment theory for determining the best interest of children especially as defined by psychologist Dr. Jennifer MacIntosh, used by judges under the current Family Law Act, research tendered by the Attorney General’s office and defended as best practice.

Part of this review was the call for public submissions, (https://www.alrc.gov.au/inquiries/family-law-system/submissions) and we wish to draw attention to the institutionalisation of a particular social value that the judges and the government via it’s tool of the Family Law Act promotes unto social support organisations with peripheral connection to the family law processes in Australia.

We define this as a negative example of cultural hegemony. Hegemony being defined in Wikipedia as The Marxist theory of cultural hegemony, associated particularly with Antonio Gramsci, is the idea that the ruling class can manipulate the value system and mores of a society, so that their view becomes the world view. (https://en.wikipedia.org/wiki/Hegemony)

In relation to the Family Law Act we propose for your consideration that the judge’s preference for the model of what a separated family should look like, that is what they call a “Stable Home” and the other as an important but lesser value “non-essential” visitation model. Has been taken up by organisations intended to support the community where by those community support organisations have come through their discourse cultural hegemonic tools for driving the limiting of individual freedoms of expression.

As an example please consider the public submission to the Family Law Review by the social support organisation Anglicare.

 “Striving towards cooperative parenting, emphasising future needs of the children within the relationship. This requires recalibrating expectations of parents towards a more functional parenting approach that prioritises the wellbeing of the child; an AnglicareSA staff commented: “Many clients come to us thinking shared parental responsibility means 50/50 time, and we spend so much time encouraging and facilitating a shift of focus from what is best for the parent, to what is best for the child. If the family law act could be simplified so parents/lawyers don’t miss the ‘best interests of the child’ clauses of the act, then perhaps some of this confusion/entitlement could be addressed earlier and prevent establishing early expectations that are hard to shift later.”

Here we see clear words which advocate a desire to amend legislation to strengthen a limiting of what individual freedoms exist for what benefits our societal culture and its value on avoiding conflict. Yes disguised as or mistaken presented as being done for the child individual instead. The “recalibrating expectation of parents” (Parents meaning the secondary non primary parents, as primary parents in family court are not the ones seeking equal contact they are striving to have more time which they take by reducing the time the child could enjoy with the other secondary parent)

In relation to 50/50 contact as a possible outcome, or even as an acceptable outcome are addressed by Anglicare by the words “we spend so much time encouraging and facilitating a shift of focus from what is best for the parent, to what is best for the child”.

Look at that sentence. The implication is that a secondary parent seeking that the child not miss out on time possible with themselves but also with the other parent, both of whom maybe capable, non-violent, loving individuals cannot be considered in the best interest of the child as it must be an outcome motivated more by the selfish, self-motivated desires of the secondary parent, and that the primary parent seeking to gain and retain a greater share of the available contact, garnered from time they child could have enjoyed with the other parent not fast enough to grab the child before reaching court must be better motivated or more child focused.

This is straight out of what judges are saying the Family Law Act of Australia says reflecting what our government intended.

Notice if you go and read the full submission that it is never stated why this model that one home as stable and one visitation place is better for children is advocated as being in the best interest of a child, or on the flip side why seeking equal or two stable homes is considered an in appropriate thing for secondary on non-primary parents to seek.

The justification comes from the notion that conflict hurts children, and if the first parent to get the child does not want to share contact equally then the only option for the now secondary parent is going to court a form of conflict. The objection is not that equal time is bad for children.

Hence the cultural hegemonic control in family law situations is the use of an imbalanced linguistic power tool, of the support organisation narrative control over the individual, in this case over the secondary or non-primary/important but non-essential less important parent. This subconscious cultural hegemonic issue holds true with regards to the construct of equal time being deemed secondary parent focused (entitled), hence not in the best interest of the child, if you replace the social support organisations with other institutional organisations such as the research groups like the Institute of Family Studies or research individual’s such as Dr Claire Ralf of Relationships Australia (who campaigned for the MacIntosh created DOORS screening tool, Professor Chisholm, or Dr Jennifer MacIntosh herself, or by the legal institutions such as the Family Law Court Judges or the Federal Circuit court Judges, or by government when it stands by its current Family Law Act.

Peter James Gleeson had the following to say in his chapter Medical Interview: A Critical Discourse Analysis Perspective, that “Consent is manufactured by making social change unthinkable” in relation to medical hegemonic discourse. (Thao Le et al, 2009) That sentiment holds true here. When courts report to government and society that the current system has been successful because it has reduced the number of court cases, this is mistakenly being heralded as a success. This is a miss representation as it is in fact a failure.

From a societal point it is a success, court is faster, money is saved and our social fear of disagreement is addressed. But from an individual perspective (The children and parents who don’t get the child first) the outcome is not as simple as the consent given by secondary parents to less contact (which benefits the primary parent granting more contact to enjoy) but is in fact the result of institutionally manufactured consent to avoid disagreement, not a result of the contact level that is best for the child being achieved. As this thought process is being promoted verbally by institutions such as Relationships Australia and Anglicare, the concept of social change is rendered unthinkable.

Reference:

Languages and Linguistic Series, Critical Discourse Analysis, an Interdisciplinary Perspective, 2009, Thao Le, Quynh, Megan Short.