

The family court does need reform, but not the way Pauline Hanson thinks

Written by Henry Kha, Lecturer in Law, Macquarie University

Senator Pauline Hanson has recently argued fathers get a raw deal from the family court, saying mothers often make up accusations of family violence to deny fathers contact with their children. These unsupported [claims](#) perpetuate a form of victim blaming and may make women who have experienced family violence reluctant to speak out for fear of being disbelieved.

Yet this seems to be what's pushing the latest parliamentary inquiry into family courts, of which Hanson is deputy chair.

It is, in fact, extremely rare for fathers to be denied contact with their children. This only happened in [3% of all court orders](#) in 2014.

Read more: [*We don't need another inquiry into family law – we need action*](#)

What's more, there have already been two recent inquiries into family law, one ending as recent as April [this year](#) from the Australian Law Reform Commission. But the government has so far not implemented any of their combined 93 recommendations.

So while Hanson's claims are wrong, there are still major issues the family court needs to fix to make sure the best interests of the child are promoted and victims of family violence are better protected.

'Equal responsibility' doesn't mean equal time

[Only 3%](#) of separated parents end up in court to decide their parenting arrangements. Of those, a [survey](#) has revealed more than half of respondents have experienced physical or emotional abuse.

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Despite these statistics, in the overwhelming majority of cases both parents still have care or contact with their children and exercise equal shared parental responsibility.

In 2003, former Prime Minister John Howard initiated a House of Representatives report, [Every Picture Tells a Story](#), which recommended the introduction of equal shared parental responsibility. This was introduced to the law in 2006. Joint parental responsibility for the care of children is also in line with an article in the [United Nations Convention on the Rights of the Child](#).

Read more: [*The long history of gender violence in Australia, and why it matters today*](#)

But there has been ongoing [misunderstanding](#) among some members of the Australian public that equal shared parental responsibility means equal time with the child between each parent.

In fact, the Australian Law Reform Commission recommended the Family Law Act 1975 should be amended to replace the presumption of “equal shared parental responsibility” in favour of “joint decision making about major long-term issues”. This means parents should consult each other on issues such as the child’s health, their religious upbringing, their education and the changes to their living arrangements.

The presumption can be rebutted if there are reasonable grounds to believe a parent has abused his or her child or engaged in family violence.

Long delays and high costs

Another significant problem is the high costs and long delays litigants face. According to a 2018 [report](#)

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, litigants can spend over A\$100,000 per matter in the Family Court of Australia. And the median wait time to have a case heard at trial is a whopping 17 months.

These are conservative figures. For some parties, the costs are even higher and the delays are longer. This causes frustration for those involved, which can not only lead to an escalation in disputes, but can also leave children and parents in unsafe situations.

Read more: [*Domestic abuse or genuine relationship? Our welfare system can't tell*](#)

High costs can significantly erode financial security. It also makes the family justice system inaccessible, especially if the parties are ineligible for legal aid. The high costs of litigation or financial abuse against a party can force individuals to represent themselves in court.

To address these problems, there needs to be increased government [funding](#) to relieve pressure on the under-resourced court, with money for registrars and family consultants. The family court structure must also be fundamentally reformed.

Child welfare is a state issue, but the family court is national

Contemporary family disputes that end up in court often involve child abuse, family violence, drug and alcohol issues and mental health problems. An effective family justice system requires information sharing and a coherent response.

But family violence orders and child welfare are exclusively managed by the states and territories. This means the Family Court has limited investigative powers to follow up allegations of family violence and child abuse.

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One of the major recommendations of the Australian Law Reform Commission is to abolish the federal-based Family Court in favour of creating separate family courts in each state and territory. There's only one state-based family court in Australia, in Western Australia.

This is a sweeping reform that would radically transform the Australian family justice system. It has potential to improve the way courts deal with family violence and child protection by closing jurisdictional gaps, unifying both commonwealth and state jurisdiction over family law matters.

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Authors: Henry Kha, Lecturer in Law, Macquarie University

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