

House of Representatives Standing Committee
on Family and Community Affairs

Submission No: 121

Date Received: 16-8-03

Secretary:

8 August 2003

Committee Secretary
Standing Committee on Family and Community Affairs
Child Custody Arrangements Inquiry
Department of the House of Representatives
Parliament House
CANBERRA ACT 2600

INQUIRY INTO CHILD CUSTODY ARRANGEMENTS IN THE EVENT OF FAMILY SEPARATION

Introductory Remarks

The title of this inquiry is of concern given that the term 'custody' was abandoned in favour of the term 'residence' with the introduction of the *Family Law Reform Act 1995*. The only groups that I am aware of that continue to use the term 'custody' are fathers rights groups. It reflects poorly on the Government that it has elected to not use the correct legal terminology in relation to these matters. Custody evokes images of ownership which is a most inappropriate term in relation to children and it is of concern that this is the starting point of this Inquiry.

It is also significant that the Australian Parliament has invested large amounts of taxpayer funds and devoted considerable resources in considering the issues covered by this Inquiry over a period of many years. The concerns expressed about any presumption of joint custody have been acknowledged by the Australian Parliament in these earlier inquiries.

As an overarching comment I find it curious that the Government appears determined to dictate as to how children from separated families should live while not batting an eyelid as to how "in-tact" families live (ie. where parents reside together). I see little difference between these two categories of children. Consider those children in in-tact families who rarely see a parent (usually the father) because of long periods spent in other cities (parliamentarians, business) and long hours at work, including working week-ends. If the welfare of the child is the Government's highest priority as it purports then it needs to also consider legislating to force these parents of 'in-tact' families to spend equal time with their children. With children comes responsibilities - both in doing the work (care) and financially. If the time spent caring for and being with children has not been shared equally between parents prior to separation then it ought to not be shared following separation.

Terms of Reference

(a) Given that the best interests of the child are the paramount consideration:

- (i) what other factors should be taken into account in deciding the respective time each parent should spend with their children post separation, in particular whether there should be a presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption should be rebutted; and

There should not be a presumption of equal time with each parent post separation. If the true intent of the Government is to consider the best interest of the child then a law to enforce a presumption of equal time will fail to deliver this desired goal. In most cases, such a goal is unachievable and unworkable particularly for the following reasons.

- *Parents not wanting it.* If the child's best interest is the true concern then parents would be **forced** under law to spend time with his/her child both prior to and post separation. How is this to be achieved when the parent does not want to make such a commitment? In such circumstances the child would be at great risk of neglect and abuse whilst in that parent's care.
- *Drug/Alcohol Addiction.* Where a parent is drug and/or alcohol dependant then it is clearly inappropriate for the child to have any unsupervised contact at all let alone spending equal time with the child. Again, the child would be at great risk of neglect and abuse whilst in that parent's care.
- *Violence and/or other abuse.* In cases where there has been abuse of a child and family violence there should be no such presumption of equal time. More importantly, in such cases, it is highly questionable that any contact occurs at all with an abusive parent. The existing operation of Family Law often results in children attending for contact with abusive parents. This provides the clearest of all examples of where the child's best interest is of no consideration whatsoever. This is particularly so where the child experiences trauma in visiting such a parent. If the purpose of this Inquiry is to consider the best interests of the child then this whole issue of forcing children to spend any time with an abusive and/or violent parent should be of utmost concern and a high priority for reform.
- *Conflict between parents.* Where there is conflict between parents this suggests an unwillingness and/or inability to cooperate, communicate and reason with each other. It is naïve to think that Governments and courts can compel parents (as adults) to communicate well and be civil to each other. How would such an order be achieved? Human nature is such that any attempt by courts to order a particular outcome is bound to have tragic consequences - for both the parents and/or the child. An order will not produce the ideal or even desirable outcome as attitudes and behaviour will not change.
- *Geographical location of the parents.* Consider the following factual scenario. A child is born. At three weeks of age the father leaves to pursue his business interests in another city. If the Government's true concern is to ensure the best interest of the child then surely there would be no issue about restraining such a father from relocating away from his child. This would enable the child to have equal time with his/her father would it not? If the assumption is that a child

should spend equal time with both of his/her parents, what would be the alternative in this case if the father was not restrained from moving? The answer is that the child would be ferried (by someone) from city to city for years to come. Such an outcome is unacceptable and clearly not in a child's best interests. Such a situation would deny the child the chance of experiencing anything slightly resembling a 'normal' life and childhood. Such a situation would appear to be in only one person's interests and that is certainly not those of the child.

- The geographical location of the parents is also of concern where parents live some fair distance apart but nonetheless in the same city. I do not agree that young children (and by this I mean primary school aged children) should spend equal time between households. I am aware that some parents already do this by agreement and this seems to suit their own lifestyles. I do, however, wonder about the impact on the child and I do wonder whose interests such an arrangement is really in. To my knowledge, **no Australian studies** have been undertaken to assess the impact of such arrangements on young children in particular. It has been recently reported that there are concerns that children are not faring well in places such as California where, some interest groups claim a presumption of 'joint custody' exists. What is known by the research is that children generally fare well where there is stability, consistency, love, care and no conflict between their parents. If children are shunted from house to house then there is a risk that they may feel that they have no real home and suffer from feelings of not belonging anywhere and confusion.
- *Primary school aged children.* Young children, especially those under primary school age should generally not be separated from their mothers. Whilst I realise that it is unfashionable to say it, young children primarily need their mothers. Motherhood has been increasingly devalued and I would call on the Government to acknowledge, value and recognise the critical role a mother plays in her child's life, particularly in the formative years. The emotional and physical impact on a mother who is unwillingly separated from her young child may have serious consequences for both the mother and child.
- *Infants.* If the Government legislates for a presumption of parents spending equal time with their child, then what will happen when a baby is being breastfed? Consider the scenario mentioned above where a father left the mother when the child was just three weeks old. The mother is best placed to meet the immediate needs of, and decide what is best for, her child in this area. This is not an area where Governments and courts should ever seek to interfere. Whilst I realise that some fathers cannot bear to hear it, a baby needs its mother most at this time. Clearly, fathers cannot meet these needs of the child. This is a biological fact and it is ridiculous that I feel that I even have to explain this to the Committee. If the Committee considers that a baby should be separated from its mother, this raises questions about the mother's right to choose to breastfeed and the baby's right to the associated benefits. Again there are potential issues surrounding the emotional wellbeing of the mother where her baby has been forced away from her at such a critical and vulnerable time. As indicated in the above dot point, in these circumstances there should be no such presumption of equal time.

- Lack of demonstrated ability to care.* To say that parents should automatically spend equal time with a child post-separation is absurd. On what basis is this claim sought? For many families, prior to separation such a concept is an alien one. Clearly, all the research shows that it is mostly mothers who are the primary carer of children. Why should this change simply because the parents no longer live together? I am considering the child's rights here and not the parents. I am not considering that the mother and father may like one-half of the week off each to do whatever they please. I am trying to consider the impact of such an arrangement on the child, particularly where the child is very young and where the parents are in conflict, refuse to cooperate and use the child as a messenger between homes. Such a situation is atrocious and ought not to be allowed. The Committee needs to consider that were it to recommend that there be a presumption of equal time, this means that the parents would equally undertake such care on a day to day basis and by that I mean collect children from school/child care arrangements, prepare meals, wash clothes and dishes, shop, sweep, clean the house, iron the clothes, assist with homework, run children to sports and social activities, attend school functions/sports days and the list goes on and on. This is predominately what mothers do. Mothers generally sacrifice earnings and their own developmental/educational and social activities whilst they tend to the needs of their children. Many fathers generally spend their time buried in work at the office, meeting up with mates and pursuing sporting activities. As research shows, fathers are more likely to re-partner than mothers post-separation. Given this fact, it is counterproductive to legislate for a presumption of equal time spent with a child when, in reality, it will be the father's second wife/girlfriend who will be doing all the care for a child who is not hers! In the absence of a father's commitment to undertake all the care personally, then such an assumption of equal time is meaningless. Such a situation clearly shows the true motive for fathers seeking such a presumption and that is solely for the purpose of reducing or even eliminating the requirement to pay child support. That is what this whole issue is about.
- Cultural considerations.* The Committee cannot overlook the myriad of cultural issues in the event that it recommends a presumption of equal time. In many cultures, it is the mother who is required to care for the children. For many fathers in some cultures, to care for children is an alien concept and would not be accepted. Nor would it be understood and accepted by many mothers. To tear children away from a parent who does not agree with or understand the idea of equal time between parents may have significant consequences on the emotional wellbeing of the mother and, indeed, the whole family unit (even though it is not residing together). This argument also applies to a large number of mothers of anglo-saxon descent.
- Wishes of the child.* For too long we have talked about the rights and best interest of the child. Reality is, however, that for those children under about aged 11, they have no rights. Courts order them to visit a parent whether they want to go or not. It is high time the views of all children were given primary consideration in making any orders about who they will see and with whom they will live.

- *Not have children.* If such a presumption of equal time became law in Australia, I would not have any children. I would predict that many women will take a similar view. It would appear that mothers are good enough to do the full-time care of children (even whilst holding down paid jobs!) **prior to separation** but they are not good enough to continue in this role **post-separation**. The message is that mothers are devalued if they become separated from the father of their child. Women will know that if they are in a violent and unsatisfactory relationship then they must remain in that relationship to protect the child and endure ongoing abuse - or - alternatively, women will know that if they leave such a relationship then the child will be forced to spend equal time with a violent parent.

Quick Summary

If the Government legislates for a presumption of equal time between parents then I would expect that parents:

- would not be free to move away from their child;
- would be compelled to undertake the personal care of their child on a day to day basis. This, of course, limits the opportunities that many parents currently enjoy of spending weeks and even months away from their child (eg. Parliamentarian);
- would be liable to pay at least exactly one-half of all expenses relating to the care and welfare of their child;
- would be expected to contribute their one-half time to attend sporting, school and other social events (which I should warn occur at the most *inconvenient* of times - ie. during work hours);
- would need to leave their jobs and collect children from child care arrangements;
- would be required to live in close proximity to the other parent of the child.

Note: There is no clear benefit for a child to spend equal time with a parent post-separation if most of the care and work associated with the child is undertaken by the parent's second wife/husband. In such situations there can be no such presumption of equal time.

Terms of Reference

(a) Given that the best interests of the child are the paramount consideration:

(ii) in what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents.

Life for a child where its parents are waging war is complicated enough. I would urge the Government not to impose laws which provide for another layer of orders to be made for yet other categories of persons. In highly fractious families, there would likely be further problems for the child (grandparents undermining a parent, further court applications if breaches occur because a child does not want to go on the visit etc.)

Contact with grandparents can be, and is currently, facilitated through means other than the Family Court. Presumably, most separated parents take their child to visit

grandparents on their own side of the family at times when they are themselves spending time with the child. This is fairly usual practice. With additional persons staking their claim 'in the child's best interest' and demanding a slice of time with the child, will the child ever be home and will the child even have time to pursue his/her own activities and social/sporting interests?

I am strongly opposed to any proposal that courts should order children to have contact with other persons, including grandparents for the following reasons.

- Children in separated families have enough to deal with. The fact that such an order is sought implies the existence of conflict between the child's parents and also other family members such as grandparents. Such conflict impacts on the child and adds further strain and anxiety for all concerned, particularly the child and his/her parents.
- In cases where there is conflict between all the parties, there will be extraordinary difficulties in terms of contact changeover arrangements.
- In many cases there will be geographical and logistical problems and costs in facilitating such contact.
- Court ordered contact would likely cause further strain and possibly great stress on a child, particularly in cases where there has been family violence.
- There are cases where a child does not want to spend time with another person or grandparent, particularly where there are allegations of abuse (which is often difficult for a child to prove).
- Court ordered contact with other persons is likely to have a major impact on the welfare of young children, particularly those with special needs. Many children do not cope well with change and suffer adversely when this occurs. I do not want to see the Government support any policies which result in any child, and particularly those who are disabled, being shunted from house to house on a frequent basis. There are also issues about the capacity of other persons such as grandparents to meet the immediate care needs of the child and particularly those with special needs.
- Introducing other parties into court proceedings will add significantly to the costs of administering the family law system. There will be claim and counter claim and potentially numerous parties involved in legal proceedings.
- Large numbers of children in 'in-tact' families do not, or are not allowed to, have contact with grandparents. The Government does not seem to be overly concerned about this and yet, at the same time, it is considering telling parents who their child should see and be influenced by simply because they are separated! It is pointless to try and force separated families to do certain things and behave in certain ways.
- If the Government legislates that contact be ordered for grandparents then what is to stop a whole lot of other people seeking a similar order such as Aunts, Uncles, cousins, godparents and so on. The list is endless. The poor child would be subject to considerable pressure, would never be home and be shunted around to accommodate the wishes of others. In all such cases, the express wish of the child should be paramount and personally, I would hate to see a society where Governments start dictating as to the range of people we must see/visit and essentially have contact with.

Quick Summary

Whilst I do not support courts ordering contact for other persons and whilst I do not support the introduction of further parties into Family Law legal proceedings, if the Government wants courts to order such contact then it should be on the following terms only:

- Where a parent refuses to allow the child to have contact with a grandparent and where the child has had a previous on-going and good relationship with a grandparent and only where the child expressly states that they wish to see this same grandparent.
- The grandparent on the father's side cannot seek contact at a time when the child would ordinarily be with his/her mother. Similarly, on the mother's side, a grandparent cannot seek contact time when the child would ordinarily be with his/her father.
- Consider that contact comes in many forms. It does not have to be spending physical time together. It may be preferable to consider contact by telephone and/or mail/email, particularly where there is conflict within the family. This also reduces the strain on the child and avoids the child having to spend even more time away from his/her own home.

Terms of Reference

(b) Whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children.

I make the following general comments in relation to child support.

- The cost of raising children is grossly under-estimated and typically, mothers tend to carry the overwhelming burden of bearing such costs.
- Many fathers use the taxation system in which to minimise their incomes. The following is a factual example. I know of a professional in his own business who shows a 'nil' income. It is virtually impossible for the other parent to 'prove' the existence of income and assets of an ex-partner.
- The Child Support scheme allows continuing reductions for the paying parent and yet there appears to be no requirement that such expenditure is actually incurred or even necessary on the child's behalf. I can cite numerous examples of where money is spent by non-carer parents on children unnecessarily. For example, doubling up on clothing items.
- Where a parent moves away from his/her child, then that parent should not have any rightful claim to reductions in child support payments on the basis of travel costs. A child should not bear the brunt of a parent's decision to move away resulting in less financial support. There should be no reduction in liability to pay for a child when a parent moves away from his/her child.
- *Second Families*: Reductions in paying for a child should not be given to parents who have established a "second family". Fathers must understand that they cannot become serial fathers and that they must accept their financial responsibility to *all of their children equally*. Why should the "second set of children" be more valued than the "first set of children". It is an appalling

situation which should not be supported by the Government in any way. It must also be considered that in second families, there may already be a second income. Consider the following scenario:

- A father has children with a second wife/partner. They both earn an income. This father's ex-partner has not re-partnered. Were the Government to allow this father to seek reductions in meeting his financial responsibilities to his child of the first relationship, who will be better off and who will be poorer?

Answer: The **second** family will be better off financially and the **child of the ex-partner** will be disadvantaged and deemed of lesser importance. The Government must send a clear and strong message to parents that children of first families will not become the forgotten people and that parents will not be given incentives to avoid their financial obligations to any of their children.

- The Government appears to accept claims made by fathers interest groups on face value. Is this the way public policy is developed in Australia? Is it simply a matter of showing a few receipts and a bank statement? Has anybody looked into how many bank accounts an individual might have? Has anybody asked whether that person diverts income into trusts, companies and other such entities? I find it difficult to believe that a father claim to have just \$5.00 left in his pocket simply because he pays child support. If a father has \$5.00 left in his pocket it is likely to be due to his own personal spending habits which may include expenditure on gambling, drinking, holidays, quality clothing and other items deemed "necessary" and "reasonable".
- Has anyone asked primary carer parents what proportion of their income they spend on their children? Why is it expected that the primary carer must spend almost all of his/her available income on maintaining a reasonably standard of living for the child? This is discriminatory and unfair. If primary carer parents restricted their expenditure on their children to the same level paid by non-carer parents then many children would be hungrier, have inadequate clothing and reduced life opportunities. As a mother, how would I be viewed if the food cupboard was low and I said to my children *"Sorry guys you can't eat tonight because I've already spent 27% of my income on you this month"*.
- Departure orders for child support should be able to be changed quickly and easily to take account of children's changing needs without having to return to court. Such a process is costly and stressful for all concerned. Orders may need to be changed to take account of educational, medical and other expenses along with increases in the CPI. In response to my concerns about the difficulties involved in seeking a new departure order, a solicitor told me *"Look, it's like this, no-one gives a stuff about whether your children eat or not and the sooner you accept this then the better you'll be able to deal with it"*. I confess that I have grave reservations about applying to the court to seek an increase in my departure order (which is grossly inadequate) given the range of exemptions/reductions that the father may claim. It would be a harrowing experience and it should not be. I find it difficult to accept that the effect of the Government's policy is that I, as the primary carer, must bear the overwhelming financial burden of raising my children.

Quick Summary

- A full assessment of all of the changes made to the Child Support Assessment Act under this Government should be undertaken.
- Government changes to child support have impacted negatively on residential parents (usually mothers) and children. They have reduced the financial liability of the non-carer parent for the care of children, moderated the non-carer parent's obligation to the child in terms of the mother's capacity to pay and improved the capacity for non-carer parents to minimise (conceal) assessable income. The overall effect has been to increase the absolute and comparative financial burden on the mother and has produced a net reduction in levels of financial support available for children.

Thank you for taking the time to read my submission.

