

House of Representatives Standing Committee
on Family and Community Affairs

Submission No: 442

Date Received:

Secretary:

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

Dear Sir or Madam,

In regards to the Government's response to the Family Law Pathways Advisory Group Report, I would like to make the following submission. I will try to keep my submission within the terms of reference to the Standing Committee of Family and Community Affairs inquiry into child custody arrangements in the event of family separation.

A brief summary of the main points are:

- (a) I believe that in all cases of family separation, the best interests of the children of a separating family will be served by children spending equal time with both parents also known as shared custody. Circumstances such a presumption could be rebutted is if there was a case of child abuse, domestic violence, alcohol abuse, drug abuse or if a separating parent decides to move interstate or overseas.
- (b) It is hard enough for parents to agree on care arrangements for their children after separation that bringing other parties like grandparents into the equation could lead to more conflict and tension. It should be up to the parents to keep family ties for the unity of both the children and their relatives.
- (c) In a shared care arrangement, neither parent would be liable to pay child support for the children. This would encourage negotiation between parents in relation to education, health and other children's issues for the best outcome for the children. The current child care formula is fair although a little restrictive and seems structured to suit the mother.

I am a divorced parent who has re-married. I have an eight year old daughter from my previous marriage and a two and a half month old son from my current marriage. My ex partner has also re-married but does not have any other children.

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Attached to this summary is a chain of events pertaining to the custody of my daughter since my separation and divorce with my ex partner. I will give you my opinion about how the system could be improved based solely on my case. Of course, this is only based on my family case and will not be pertinent to many other child custody cases. But I do believe that the conclusions I make could easily be helpful in many other situations.

I am free to discuss or answer any questions anytime in relation to your committee's inquiry. Thank you for taking the time to read my submission.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Dominic Gomez', with a stylized flourish at the end.

Dominic Gomez.

INQUIRY INTO CHILD CUSTODY ARRANGEMENTS IN THE EVENT OF FAMILY SEPARATION.

SUBMISSION by Dominic Gomez.

I believe that in all cases children of separated families should spend equal time with both parents. Unfortunately, our current Family Law system plays a very big part of the entrenched parental conflict. The fact is that fathers of separating families always start the process on the back foot. There is the community perception that the mother would gain automatic custody of the children and the father only be given "visiting rights" or an alternate weekends arrangement. Lawyers with expertise in Family Law also believe that Family Court Judges give preference to mothers. Therefore, any father wanting a shared care arrangement with his children would have to go through the court process. Unfortunately, this is not a guarantee that the father would get shared care, it is a very expensive, time consuming and mentally draining process. These funds could be put to better use in areas of mediation and counselling.

Unfortunately, lawyers make a living off marriage breakdown and there seems to be no urgency placed to get matters resolved between separated parents. Obviously, the longer the case, the more the fees paid. It is also unfortunate the court only makes separated parents use mediation after they appear in court. By this stage, months could have gone by and parental conflict is at a stage of almost no return.

My suggestion is that Family Law lawyers should be re-trained. The emphasis should be on early conflict resolution. The best way to achieve this is to have the presumption of shared care. This immediately puts the separating parents on an equal footing. If, on initial negotiation by the respective lawyers the parents do not look like reaching a quick and equitable resolution as to the care of the children, a court mediator should be appointed. The parents should be briefed by their lawyers and advised that the mediator will report their findings back to the court. The earlier this process takes place the better the chance of a resolution with little or no conflict and in favour of the children.

In my case, after separation with my ex-wife, I requested shared care of our daughter, but my ex-wife was adamant that I would not get shared care, (see attached letter from my solicitor, Attachment 1). After quite a bit of negotiation, we agreed to care arrangements (Attachment 2). This was not my favoured resolution, but with no assurance from my lawyer of me being given shared care if I did proceed to court, I decided to negotiate and try to get the best possible outcome for my daughter. My lawyer even advised me that there are some Judges in the Family Court that could move to give me even less contact if I did proceed to court.

It is obvious that the Government's three overarching themes: early help; better outcomes for children and young people; and an integrated system that meets families' needs is a fantastic start for the unfortunate situation of family breakdown. It gives future separated families, and more importantly the children of those families, a better chance of early conflict resolution, thus making the process less traumatic.

I am sure that if I was originally given shared care, most of these problems would not have surfaced. My daughter has already been to the Family Court once, but thankfully only as far as to see a court counsellor. I am sure that there are many separated families that have much worse problems than what I have mentioned, but I believe that a lot of these problems could have been resolved, or may not have surfaced, with early intervention, mediation and counselling.

If shared care is an automatic presumption and one parent is unable to fulfill their responsibility due to work or other commitments, negotiation between parents could resolve the situation for the best possible outcome for the children, therefore if looked at positively, the presumption that the children spend equal time with both parents would be a positive step in reducing conflict between separating parents. This could also influence the number of marriage breakdowns, as in many cases the mother takes the soft option of separation because of perceived financial gain and possible mental torture of the father.

As mentioned in my summary letter, the presumption of children spending equal time with each parent would be rebutted in cases of child abuse, domestic violence, alcohol abuse, drug abuse or if a separating parent decides to move interstate or overseas. In these cases, I believe that other persons, including grandparents and immediate relatives, should be included in any contact arrangements with the request of either parent.

As for the child support formula, if both parents were working prior to the separation and there is little difference in their remuneration, then with shared care neither parent will have to pay child support. This is a very complex part of the separation process. Many factors come into play and it is very hard to list all the scenarios. The current child support formula is reasonable. I do believe that it should be a bit more flexible depending on the parents' circumstances. As in my case, both parents are re-married and both the parents and new partners work full time. In this case, I believe that after the child support formula is calculated, the paying parent should be allowed to pay directly the children's costs, like school fees and other activities like sports, arts, etc. with the child support payment. Any balance can then be paid to the other parent in cash. There are several reasons for this suggestion in my situation and I am happy to discuss and give examples of why I prefer a more flexible form of child support.