

House of Representatives Standing Committee  
on Family and Community Affairs  
Submission No: 1154  
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Secretary:

5 August 2003

Committee Secretary  
Standing Committee on Family &  
Community Affairs  
House of Representatives  
Parliament House  
CANBERRA ACT 2600

Dear Sir/Madam

**Re: The House of Representatives Standing Committee on  
Family and Community Affairs Inquiry into child  
custody arrangements in the event of separation**

This letter is in response to the request for a submission in  
relation to the above matter.

***(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 could be  
rebutted;***

We do not agree that there should be a presumption that children  
will spend equal time with each parent, as in most cases this is  
not what is occurring. It is an incorrect presumption that all or  
most parents have equal shared care. Research reveals that in  
most cases one parent has daily care of the children. Moreover,  
research reveals that shared care is most likely to be a positive  
experience for children in cases where:

1. the parents have a positive relationship post separation; and
2. the parents live in close proximity to each other.

To change Acts and Legislation to work on the presumption that all children spend equal time with each parent will have many negative implications. These include:

1. There will be an increase in the number of cases in the Family Court where the parent who does not have equal time with the child applies for such orders. In many cases a parent is likely to make such an application to the Court regardless of the situation being impractical and against the best interests of the child. This will have further problems in:
  - (a) that the added stress on many carer parents will be severe, and this will subsequently effect their ability to provide quality care to their children;
  - (b) there will be an increase in the number of children subjected to the psychological harm of being implicated in Family Court proceedings and placed in the position of feeling pressured to please both parents;
  - (c) that there will be an unnecessary increased burden on the Family Court needing to hear more such cases.
2. There is likely to be an increase in conflict between many separated parents as decisions are being made about the care of their children.
3. Victims of domestic violence will be particularly vulnerable and at risk of added pressure or harassment.
4. An increase in Family Court proceedings which will be an unnecessary cost to the community.

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

The child support administrative assessment process enables a liable parent to apply for a reduction in their child support liability in cases where they have overnight contact for more than approximately 109 to 146 nights each year.

These administrative processes enable many liable parents to obtain a more equitable child support assessment.

In other specific cases these processes are restrictive in that prolonged contact time is only measured by nights. The Child Support (Assessment) Act and legislation does not consider contact time in the day, regardless of the number of days and hours that a liable parent has contact during a year.

This can create inequity in select cases where the liable parent may have contact with the child for more than 109 days for prolonged hours each time. To illustrate an example, a liable parent may have their child for contact 120 or 165 days each year and during these days is providing lunch and dinner and is taking the child home to the carer parent after dinner in the evening. This situation could arise in a case where the carer parent works during specific hours each day and/or during the evening, which subsequently requires the liable parent to have more contact time with the child and provide regular meals.

There could be special circumstances where based on the liable parent's income, assets and financial resources, in contrast to those of the carer parent's, the liable parent's financial contribution is not equitable compared to the carer parent's income, assets and financial resources.

### **Remedy**

That there be a ground for departure to include the number of days and hours that a liable parent has contact. This would need to consider the cost involved for the liable parent to have this contact.

It would not be equitable to have an automatic reduction in the liable parent's child support assessment based on the number of days she/he has contact with the child. The financial circumstances of both parties need to be considered, including the cost of having extra contact with the child.

Please direct any queries in relation to this submission to the writer, or in the alternative, solicitor Lyn Olds.

Yours faithfully

Peggy Kadis  
Manager  
Southern Community Justice Centre