

House of Representatives Standing Committee
on Family and Community Affairs
(2)

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Secretary: [REDACTED]

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Committee Secretary
Standing Committee on Family and Community Affairs
Child Custody Arrangements Inquiry
Department of the House of Representatives
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RE: Submission - Inquiry into child custody arrangements in the event of family separation (*whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children.*)

To Whom It May Concern:

1. Detail

1.1. This submission relates to the Term of Reference: *"whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children."*

1.2. A bias exists in the child support formula assessment for shared care children.

1.3. When both parents care for their children the child support formula treats each parent as if they are paying child support to each other.

1.4. In cases of shared care, if all the children of the relationship are shared; neither of the parents of those children has any other child or children financially dependant on them and the incomes of the parents are equal; there will be a nil assessment of child support in each of their cases.

1.5. Should one parent then become responsible for some other child or children (for example: having a child with a subsequent partner) the child support payable for a shared care child is adjusted by \$1257 per annum irrespective of all other factors in the formula, the child support payable is adjusted by a further \$268 p.a. for each additional other child under the age of 13 (\$560 p.a. for each additional other children over the age of 16) (refer 3.4. & 3.5. Examples 3 & 4).

1.6. To demonstrate the bias in the formula:

- i) As an example, one shared care child living equal amounts of time between two households where the eligible carers have gross annual incomes of \$40000 and \$45000 respectfully and no other dependent children. The annual

child support liability is 12% of the difference of the incomes (i.e. \$5000 x 12%) being \$600 per annum, payable by the higher income earner to the other (refer 3.2. Example 1).

- ii) Should the higher income earner then have one(1) child to a subsequent partner the child support liability would change wherein the lower income earner would then have a liability of \$657 per annum payable to the higher income earner (refer 3.3. Example 2).

1.7. This demonstrates that the lower income earner is no longer entitled to \$600 child support per annum and in fact now has a liability of \$657 per annum.

1.8. The bias demonstrated above is due to the modification of the exempt income amount applied under the child support formula.

1.9. The child support formula is such that in determining eligibility for the higher exempt income amount:

- i) a shared care child who is the subject of the child support assessment does not allow eligibility for the higher exempt income amount; whilst
- ii) a child, in the care of a parent of the child support assessment, who is not a subject of the child support assessment (e.g. a child to a subsequent partner) does allow eligibility for the higher exempt income amount, even though the care of that child is shared with the subsequent partner.

1.10. The eligibility for the higher exempt income amount is inconsistent with respect to a shared care child of the assessment and a shared care child outside of the assessment.

1.11. The author of this submission is disadvantaged by this bias in the child support formula.

1.12. The exempt income amount in the formula does not reflect the basic living expenses for an eligible carer who shares substantially equally the ongoing daily care of a 'shared care child'.

1.13. The child support formula for a shared care child, is inconsistent with the particular objects of the Child Support (Assessment) Act, when one of the eligible carers of the shared care child has children to another person.

1.14. The author has appealed the application of the formula in the federal magistrates court without success (reference - *FMS judgement - N & B [2003] FMCAfam 72, Federal Magistrate Brown, 14 March 2003, CHILD SUPPORT - Child in shared care - calculation of exempted income amount - allowance for relevant dependent child.*)

2. Recommendations

2.1. The author recommends that both parents of a shared care child should be entitled to the higher exempted income amount in the formula to reflect the increased basic living expenses necessary to care for a shared care child.

2.2. The author recommends that prescribed non-agency payments be accepted towards the monthly child support liability, for a paying parent of a shared care child, at the rate of 50% (currently 25%). This equitably reflects the principle of shared care.

3. Examples of the child support formula

3.1. Using the 'advanced child support calculator 2003' from the child support agency internet site, the following child support liabilities are calculated:

This calculator can only be used if you know the other parent's income					
Paying parent's annual income \$	45000	Receiving parent's annual income \$	40000	Calculate	
Paying parent's level of care:	Child 1 shared	Child 2 *	Child 3 *	Child 4 *	Child 5 *
	Sole = 256 nights + Major = 220-255 nights		Shared = 146-219 days or nights Substantial (sub.) = 110-145 nights		
Child's age	6-12	*	*	*	*
Give details of the paying parent's other dependent children (if any)					
	Child 1	Child 2	Child 3	Child 4	Child 5
Child's age	*	*	*	*	*
Give details of the receiving parent's other dependent children (if any)					
	Child 1	Child 2	Child 3	Child 4	Child 5
Child's age	*	*	*	*	*
Child Support Payable:					
	Annual = \$ 600		Weekly = \$ 11		

3.2. Example 1 - one shared care child living equal amounts of time between two households where the eligible carers have gross annual incomes of \$45000 and \$40000 respectively and no other dependent children. The annual child support liability is 12% of the difference of the incomes (i.e. \$5000 x 12%) being \$600 per annum, payable by the higher income earner to the other.

This calculator can only be used if you know the other parent's income

Paying parent's annual income \$ Receiving parent's annual income \$

	Child 1	Child 2	Child 3	Child 4	Child 5
Paying parent's level of care	<input type="text" value="shared"/>	<input type="text" value=""/>	<input type="text" value=""/>	<input type="text" value=""/>	<input type="text" value=""/>
	Sole = 256 nights + Major = 220-255 nights		Shared = 146-219 days or nights Substantial (sub.) = 110-145 nights		
Child's age	<input type="text" value="0-12"/>	<input type="text" value=""/>	<input type="text" value=""/>	<input type="text" value=""/>	<input type="text" value=""/>
Give details of the paying parent's other dependant children (if any)					
	Child 1	Child 2	Child 3	Child 4	Child 5
Child's age	<input type="text" value=""/>	<input type="text" value=""/>	<input type="text" value=""/>	<input type="text" value=""/>	<input type="text" value=""/>
Give details of the receiving parent's other dependent children (if any)					
Child's age	<input type="text" value="0-12"/>	<input type="text" value=""/>	<input type="text" value=""/>	<input type="text" value=""/>	<input type="text" value=""/>
Child Support Payable: Annual = \$ 657 Weekly = \$ 13					

3.3. Example 2 - one shared care child living equal amounts of time between two households where the eligible carers have gross annual incomes of \$40000 and \$45000 respectfully and the higher income earner has one(1) child (under 13 years of age) to a subsequent partner. The annual child support liability changes wherein the lower income earner would then have a liability of \$657 per annum payable to the higher income earner.

This calculator can only be used if you know the other parent's income

Paying parent's annual income \$ Receiving parent's annual income \$

	Child 1	Child 2	Child 3	Child 4	Child 5
Paying parent's level of care	<input type="text" value="shared"/>	<input type="text" value=""/>	<input type="text" value=""/>	<input type="text" value=""/>	<input type="text" value=""/>
	Sole = 256 nights + Major = 220-255 nights		Shared = 146-219 days or nights Substantial (sub.) = 110-145 nights		
Child's age	<input type="text" value="0-12"/>	<input type="text" value=""/>	<input type="text" value=""/>	<input type="text" value=""/>	<input type="text" value=""/>
Give details of the paying parent's other dependent children (if any)					
	Child 1	Child 2	Child 3	Child 4	Child 5
Child's age	<input type="text" value=""/>	<input type="text" value=""/>	<input type="text" value=""/>	<input type="text" value=""/>	<input type="text" value=""/>
Give details of the receiving parent's other dependent children (if any)					
Child's age	<input type="text" value="0-12"/>	<input type="text" value=""/>	<input type="text" value=""/>	<input type="text" value=""/>	<input type="text" value=""/>
Child Support Payable: Annual = \$ 1257 Weekly = \$ 24					

3.4. Example 3 - both parents gross annual income of \$30000, one(1) shared care child aged 13-15 and one(1) other dependent child (under 13 years of age) results in a liability of \$1257 p.a.

This calculator can only be used if you know the other parent's income

Paying parent's annual income \$ Receiving parent's annual income \$

	Child 1	Child 2	Child 3	Child 4	Child 5
Paying parent's level of care	<input type="text" value="shared"/>	<input type="text" value="*"/>	<input type="text" value="*"/>	<input type="text" value="*"/>	<input type="text" value="*"/>
	Sole = 250 nights + Major = 270-265 nights		Shared = 146-219 days or nights Substantial (sub) = 110-145 nights		
Child's age	<input type="text" value="0-12"/>	<input type="text" value="*"/>	<input type="text" value="*"/>	<input type="text" value="*"/>	<input type="text" value="*"/>
Give details of the paying parent's other dependent children (if any)					
	Child 1	Child 2	Child 3	Child 4	Child 5
Child's age	<input type="text" value="*"/>	<input type="text" value="*"/>	<input type="text" value="*"/>	<input type="text" value="*"/>	<input type="text" value="*"/>
Give details of the receiving parent's other dependent children (if any)					
Child's age	<input type="text" value="0-12"/>	<input type="text" value="*"/>	<input type="text" value="*"/>	<input type="text" value="*"/>	<input type="text" value="*"/>
<p>Child Support Payable: Annual = \$ 1257 Weekly = \$ 24</p>					

3.5. Example 4 - both parents gross annual income of \$70000, one(1) shared care child aged 13-15 and one(1) other dependent child (under 13 years of age) results in a liability of \$1257 p.a. Note same annual liability as example 3.

Summary

The author is the father of one shared care child, born in 1990.

The shared care child has enjoyed shared parental care since separation (in excess of 11 years).

The author, a single parent, is assessed to pay child support to the child's mother even though the mother's income is greater than that of the father's and the mother is supported by her current husband. This is due to the current child support formula as a result of the mother having two additional children with her current husband with whom she lives.

The current child support formula and the inconsistent application of the higher exempt income amount places an eligible carer of a shared care child at a significant financial disadvantage.

The author requests an invitation to provide further evidence in support of this submission. The author is willing to provide such evidence via a remote conference arrangement.

Yours sincerely