

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

House of Representatives Standing Committee on Family and Community Affairs	
Submission No:	1342
Date Received:	16-9-03
Secretary:

Dear Committee

Please accept this submission to the inquiry into child custody/residence arrangements in the event of family separation. I am aware that submissions were due on 8 August 2003. As a member of the public with first hand experience of many of the issues to be considered, not a representative of an organisation involved in promoting the current regime I was unaware of the deadline or specifics of the Committee's responsibilities, until I received a response to my correspondence with the Prime Minister, courtesy of the Attorney General's Department. In the response I was encouraged to put forward my views to the committee.

I have had the opportunity to read the submissions posted on the Committee's website, thereby considering the points of view previously expressed to the Committee. I have read the Report of the Family Law Pathways Advisory Group and the Government's response to this report, ensuring that I am properly informed as to the context in which the terms of reference for your inquiry were drawn.

I strongly support the need for an inquiry into the issues effecting families following separation or divorce, particularly where children are involved. This is a highly emotive subject and an issue which can and most commonly has life changing consequences for those involved. Recognising that families and relationships are diverse, I do not believe that there is a one size fits all solution to the myriad of issues to be addressed, however I believe it is important prior to any negotiation towards a parenting solution that both parents be viewed on an equal footing, without any bias or preference, as currently displayed within many of the services involved in family law.

I have through my own experiences gained a thorough understanding of the issues dealt with in this inquiry. I am a sole father, and have been for thirteen years since my two elder daughters were babies. I have dealt with all issues that being a sole parent involves. My responsibility as a parent has shaped my life, my children come before anything. I have succeeded without any involvement from the Child Support Agency (CSA). I also now have a one year old, born to my girlfriend of the time who saw great opportunity through the family law system and the CSA. At no time has the current regime acted in the best interests of my child, she was taken away by her mother and her partner, with the CSA demanding money within hours. The judge at the interim hearing was clearly lost at trying to apply facts, as our situation did not fit the standard judgement. Resulting in my fulltime parenting being overlooked in favour of my ex partners unemployment, deeming her to have majority time. I am exceptionally well equipped to comment on the failure of the current system, as I have acted in every parenting role and received the good and the bad of the services provided.

Terms of Reference

Having regard to the Government's recent response to the Report of the Family Law Pathways Advisory Group, the Committee should inquire into, report on and make recommendations for action:

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

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

- (c) With the committee to **report to the Parliament by 31 December 2003.**

Submission Relating to the Terms of Reference

"The best interests of the child are the paramount consideration"

This is a wonderful phrase, which appears to be taken in different ways, by different groups. Conflicting points of view espouse these words to qualify very different opinions as being justified. Those achieving their goals claim to be righteous on the weight of these words, whilst those who feel aggrieved plead for these words to hold some meaning.

From the outcomes of previous studies and reports (including Report of the family Law Pathways Advisory Group), by virtue of these words being included in the terms of reference for this inquiry it appears necessary to clarify that this phrase has no bearing on the interests of either parent or any party, other than the child at the centre of such issues.

I do not believe that any party disagrees that the best interests of the child are the paramount consideration; I do believe that overuse to defend conflicting actions has diluted the meaning, and there is a need for any claims to be justified by more than this phrase.

To start with a presumption that children will spend equal time with each parent is a reasonable point to commence assessing the interests of the child. This is not to say that this will necessarily be the final outcome. Many families will want to adjust this arrangement to suit the best interests of the child. Not all separating parents wish to continue parenting or feel capable.

Such issues as a parent wishing to move away, not being able to provide adequate care or resources, the interests of the child or instances which may put the child at risk are obvious reasons why a negotiated adjustment may be necessary, or arrangements reviewed. Any variation from an equal sharing situation can be negotiated through mediation and counselling, thus removing the very costly adversarial approach of winners and losers we currently

experience in the Family Court system. Should either parent wish to reduce the amount of time their co-parent has, it is their responsibility to show cause as to why the other parent's time should be reduced. With a starting point presuming that children will spend equal time with each parent, frivolous claims which are not in the best interest of the child should be taken into consideration, and in some circumstances these actions may and should work against the parent making the allegation.

Equal time co-parenting as the basis for the commencement of parental responsibility negotiations could be rebutted in certain circumstances. These circumstances could include:

- Unavailability or unwillingness of either parent to participate in the ongoing care for the child. Where a parent is incarcerated the presumption of equal time parenting is obviously rebutted for the term of the incarceration.
- The expressed wishes of a teenager suitably mature enough to request otherwise. (This would have to be monitored to ensure that no parental coercion occurs.) Cases where a teenager chooses to runaway from home
- Instances where the child has been deemed to be at risk, of abuse, neglect, moral danger or exposure to criminal activity.
- Following proven allegations of violence by another member of the household. (It is very important that only proven allegations are considered if the allegations are made by any person other than the child. It is common practice amongst many services and some family law practitioners to advise clients to make allegations of violence against a former partner to help weight any future decisions. It is clear from some submissions already provided to this inquiry that there is a belief that all men are violent offenders despite the statistical data showing that violence occurs in less than four per cent of family breakdowns.)

This list is by no means meant to be exhaustive, merely an indication that there is recognition that there will be some instances where a presumption of equal parenting may need to be ignored, in the best interests of the child.

For most parents separating it is a very confusing time, with many uncertainties about their own futures let alone the futures of their children. By commencing with a situation of equal sharing of parental responsibilities, the focus is maintained on the children. With this as the recognised starting point parents yet to separate can better assess their own capabilities. Indeed by allowing the parents to consider the future before separating may go some way towards parents resolving differences (even not separating) in a far less adversarial manner. Recognising that everybody concerned, parents, children, extended family are entering a new way of life and still on an emotional roller coaster, it is important that final decisions are not made and that any arrangements can be reviewed. I would therefore propose that separating parents are to enter into written agreements to any variation from the equal parenting position, with agreed review processes for at least the first twelve months after separation. Thus allowing both parents the opportunity, to adjust to a new way of life, whilst maintaining the necessary relationship with their children.

If equal parental time and responsibility are presumed from the outset, the child's right to extended family and community are in some ways preserved. Grandparents etc will be able to assist in the nurturing upbringing of children helping them gain a stronger sense of self and belonging. If parents maintain the equal parental time (or close to it) the child will be provided the necessary time to establish or maintain bonds with extended family or community, without the need for courts to make orders considering such issues. Under the

current regime it is not uncommon that one parent (typically the father) has substantially less time with the child. This makes it very difficult for extended family to be able to provide additional care for the child, particularly in cases where travel is involved. Many grandparents do not feel welcome when approaching their child's former partner to ask if they may see their grandchild. The abilities of many separating parents to meet the best interests of the child could be enhanced through greater involvement of extended family.

The existing child support formula and the actions of the Child Support Agency (CSA) do not work fairly for both parents in relation to their care of, and contact with, their children. The CSA should be reserved as a final option not the preferred option when dealing with the financial welfare of the children from separated parents. The whole issue of parental responsibility is voided by the inclusion of the CSA into the equation. The current formulae and methods are so damaging to the best interests of children that they are beyond the point where a review will suffice, they need to be abandoned in favour of a collaborative approach which builds on the presumption of equal parental responsibility.

- The CSA is incompetent in its dealings with parents, there is far too much presumption in the way that it treats parents.
- There is an exceptionally strong bias against fathers, both as paying parents and as the recipient parent.
- The CSA has no interest in children, money is the sole focus of this organisation, this is clearly demonstrated as the only Government agency to utilise the \$ as its logo.
- Paying parents are treated like criminals and for some recipient parents there is the expectation of an easy source of income.
- In many cases parents would be better able to discuss child caring issues if it were not for the intrusion of money. "I can't let him have more time or else I don't get paid as much."
- The formulae calculate on the gross, deduct from the net, then pay without tax considerations.
- Facts such as tax returns are commonly ignored in favour of deemed incomes.
- Paying parents who are unfortunate enough to have had a reduced income are deemed to have chosen to fall on hard times to spite a former partner.
- The relationship between the formula and real expenses is non-existent.
- The CSA acts as a catalyst to family breakdown, as it creates an incentive for women to leave a relationship for financial gain.

The CSA promotes a welfare mentality amongst some separated parents, by removing responsibility to provide for their children and placing a burden on others.

There is clearly no justice implied or applied when a father who loves his children can through no fault of his own have his partner leave (with the expectation that the family law system will grant her residency), have her take a majority of shared assets. He now has no home, only gets to see the children he has previously seen everyday of their lives on alternate weekends, and must pay a considerable amount of whatever he earns to his ex-partner (who may have since remarried) with no acquittal as to how the money is spent. This very common situation can and often does continue for up to eighteen years. The father is not able to rebuild his life due to the emotional damage and financial hardship.

The important factor in equal parental care and responsibility is that it incorporates choice, through the current regime and CSA there is no choice. One parent "wins" one parent "loses",

one parent is able to maintain their relationship with the child and gets paid to do so; the other parent is severely punished, without any say in the matter. If parents can move to equal parenting time, the concept of paying child support should also be able to disappear. Both parents have the equal opportunity to care for the children; both parents have the equal responsibility to provide for the children half of the time. It is unreasonable for either parent to object to this, and should have been a consideration prior to separation. Should one parent find it impractical for them to care for their children, career comes first, then by asking the other parent to assume a greater caring role there may be grounds for support payments to be justified. Just because one parent earns more or does not wish to work is not grounds on which children's relationships with either parent should be eroded. Parents who consider CSA payments their right should step back and consider the plight of parents whose partners have died. When parents separate, at least one of them has chosen to do so. If parents are aware that they will not be able to rely on the tactics of the CSA to provide them with an income and that they will have to bear some responsibility for their actions, they may reconsider the separation, better prepare themselves for the new role of sole parent or seek to negotiate an amicable solution with their partner.

There is a growing population of single mothers who exist purely on welfare payments and CSA payments, indeed some even have additional children to new fathers in order to gain further financial benefits. Find two fathers on good incomes and you gain substantial CSA payments (18% each) guaranteed for years, add to this a pension, allow for health care cards, travel concessions and government housing etc There is no incentive for the single mum to work and she has a better than average income. The upbringing children receive in this situation is just as damaging as being exposed to violence or sexual abuse. The child grows up without any reasonable understanding of contributing to community and gains a welfare based attitude that others provide for them.

Parenting involves both the physical nurturing and the ability to provide, this exists throughout nature. As a parent I do both, every parent should do both. The current regime promotes separating these roles which is damaging to our future generations, teaching children that men are nothing more than sperm donors and bank accounts. Parents are all different, some good, some not so good, some natural, some need help, but they are all parents and should always be. The current regime of family law and CSA are not in the best interests of children.

Thankyou for allowing me this opportunity to make this submission to the inquiry. I wish you well in working through this highly important issue which has such serious effects on so many Australians. I must urge you to stay focussed on the terms of reference, not allow yourselves to be side tracked and remember that there should be no gender issues with parenting. I am willing to expand on anything I have stated in this document and would welcome the opportunity to do so.

Yours sincerely

James Sizer