

Atkin, Margaret (REPS)House of Representatives Standing Committee
on Family and Community Affairs

From: Hobson, Megan (P. Dutton, MP) on behalf of Dutton, Peter (MR)
Sent: Thursday, 13 November 2003 9:29 AM
To: Atkin, Margaret (REPS)
Subject: FW: PLEASE READ: Re - Child Custody Arrangements Inquiry
Importance: High

Supp.
 Submission No: 1705
 Date Received: 13-11-03
 Secretary:

Hi Margaret

Peter received the attached email yesterday, unfortunately she did not provide any contact details so you may wish to email her for her details. I have acknowledged her email and advised it was forwarded to the Committee for your consideration and appropriate action.

Kind regards

Megan

-----Original Message-----

From: [REDACTED]
Sent: Wednesday, 12 November 2003 9:52 AM
To: Dutton, Peter (MP)
Subject: PLEASE READ: Re - Child Custody Arrangements Inquiry
Importance: High

Dear Mr Dutton,

I have given a lot of thought to the issues being raised in the Child Custody Arrangements Inquiry and wish to present a letter to the Committee in which I've tried to encapsulate my knowledge, experience and observations in this controversial area.

I humbly request that you consider the points and recommendations presented in the attached letter.

Please feel free to contact me on [REDACTED] or at the email address shown if you have any queries.

Yours sincerely,

[REDACTED]

13/11/2003

In view of the upcoming review of **Child Custody Arrangements** and the present **Child Support system**, I feel compelled to share my knowledge and observations regarding the pressing need for complete reform of how we as a society, deal with the aftermath of the high rate of relationship breakdown.

It has been ten years since my own marriage dissolved, so merging into the population of the separated and divorced, of sharing children, of access visits and blended families, has, apart from being traumatic, also been an eye-opener. I understand that formulating or reforming policies in this volatile and essentially personal area must be daunting for any politician, but delaying, side-stepping and ignoring the desperate pleas for reform for so long, can continue no longer.

The *Standing Committee on Family and Community Affairs* is in the process of considering the **presumption of shared custody** in the event of a couple separating. I believe that this presumption holds a lot of merit as a **beginning point** from which residential arrangements can then be negotiated. It does not automatically mean that the residential arrangements decided by the parents will end up being 50/50 nor will it be practical in many cases, but it should help minimise the win / lose, “who gets the kids” and “who misses out” dilemma, which traditionally favoured the woman. I have no doubt that if the children of separating couples were asked how they wanted their time to be divided between parents, the majority would choose as close as possible to a 50/50 sharing.

As a society, we are increasingly valuing and encouraging the participation of **both** parents in raising their children. The shared custody presumption acknowledges the input of both parents to the child’s welfare, whether through direct child care duties or through willingness to earn income in support of the family. Many fathers who have had to work full-time to support their families should not have to relinquish residential rights to the full-time mother simply because those fathers have allowed their wives the privilege of being able to stay at home.

Bettina Arndt (well known Australian therapist and social commentator) clearly illustrates one of the ironies of the present system:

If you are male, working long hours to support the family but facing a shaky marriage, watch out. In the event of a marriage breakdown, you would find that dedication to work would leave you thoroughly the loser in divorce negotiations. For a start, your busy working life would mean you would be likely to miss out in battles over custody (residence) of children and be hard pressed to gain significant access (contact). And then, under the rules of the Child Support Scheme which determines how much financial support divorced men are required to pay for their children, you'd be locked into continuing to work to your maximum capacity, even if that meant you saw less of your children.

The “equal time” presumption thus at least provides a level ground from which decisions can be made and reduces the previous biases which have been heavily in favour of the woman. Furthermore, it acknowledges the children’s bonds with their father and his important role as a male figure in bringing up his children.

My observation is that the objections of sole parents who oppose equal custody, do so at least partly out of fear that their long enjoyed financial and lifestyle privileges as “sole parents” are under both scrutiny and threat. As one single mother put it during a television interview, “*These kids are my meal ticket.*”

The Standing Committee is also considering “*whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children.*”

In the years since my own marriage breakdown, I have seen first hand how some very fundamental flaws and biases in the formulation of the child support formula and its attendant policies, have created ongoing misery, resentment and outrage, particularly amongst fathers (who are usually the non-residential parents). The more glaring flaws and biases include:

1) The unreasonably high level of maintenance (as a percentage of gross income) which the Child Support formula prescribes.

In trying to reduce the calculation of maintenance payments to one simple “blanket” formula, the Child Support Agency (CSA) has created a scenario where it is costing some non-residential parents more to keep their child/children living with their former spouse than to keep them when they were at home! *Please think about this!* It is a ludicrous yet true situation.

I’ve heard it naively argued by a representative of the CSA, that *the higher the father’s gross income, the more would have been spent on the children (if the family was still together)*. This is a completely false assumption, as research into this very subject has shown and as I personally can verify from my own experience. There is no law which dictates that the amount of money spent on children in a marriage must be directly proportional to the father’s gross income, yet it is this assumption which has been used as a basis for determining the percentages and application of the CSA’s formula.

Consequently, some women are getting significantly more maintenance money than what would be needed for reasonable child-care costs, and are enjoying higher levels of disposable income than they had in their marriage, where the couple were most likely paying off a mortgage, or saving / investing for the future. Studies are available which show that this surplus money is usually used by the former wife for her own personal spending – a fact I have observed amongst my sole parent friends and acquaintances.

The CSA’s policy premise of “sharing of available income to assist the child” becomes an anomaly when one realises that **the “sharing” is practically implemented as a highly disproportionate flow from the non-residential parent.**

It is commonly recognised that a process of duplication is occurring, with the father paying dearly in child support, while paying again for the support of his children when they are with him. Furthermore the child support burden often leaves him with little surplus income to spend on the kids when they are in his care, and feeling inadequate as a parent.

I personally know of a case where [REDACTED], a very devoted and caring father of four young children was divorced by his wife. No clear reason was given and no attempt was made to save the marriage. She received the house and contents and immediately received, in addition to generous government handouts, 34% of Paul's modest wage. Paul cares for the four children 50% of weekends and when he can in holidays. At forty, having lost the bulk of his life's savings, he had no choice but to move in with his parents where he struggles to survive on what is left out of his pay after child support, income tax and indirect taxes. In these circumstances, he will never financially recover.

**** Warning** – don't be fooled by the misleading "statistics" waved about by some groups who for example, quote the national "average" maintenance amount paid to residential parents. They include the 40% of the base level "payers" and non-payers who are mostly registered as unemployed. Inclusion of this sector naturally pulls the "average" way down and disguises the very generous levels of maintenance which the CSA formula prescribes.

2) Residential parents can annually earn \$30,000 before their income is included in the maintenance calculation while the non-residential parent has only to earn over \$12,300.

Here again we have a rule which directly discriminates against the non-residential parent and is particularly unfair in cases where the woman with children has already, most likely, gained the largest portion of the property settlement, including the family home, and is eligible for tax-payer funded assistance. In addition, the father may be caring for the children for up to 30% of the time, with absolutely no maintenance or tax relief.

3) The normal tax deduction granted to families for dependent children, is not extended to fathers who are paying maintenance for their dependents.

This has been an outrageous oversight on the part of the CSA and the Taxation Department and reflects the discriminatory and exploitative thrust of the CSA's policies in dealing with the non-residential parent. While the Tax Department has known about this issue for many years, nothing has been done to redress it.

4) The system acts as both an economic and psychological disincentive to the non-residential parent to maintain or increase their income.

Having lost the major share of assets, which probably took years of hard work, saving and planning to accumulate, is a hard enough situation to face, even without the stress and turmoil of a family break-up. Knowing that for every dollar above \$12,300 that they earn, a large proportion is going to go straight into a cheque for the ex-spouse, does little to encourage the non-residential parent to feel enthusiastic about work, or building up a business.

It is no wonder that some men/women give up in desperation and go on unemployment benefits. Others work for minimal income, rather than feel they are still having to help keep a former partner, who may be making little or no attempt to earn any income and may be behaving vindictively to top it all off.

5) The present system offers no incentive to the residential parent to take financial responsibility in the rearing of their children (while placing a heavy financial burden on the non-residential parent and the tax-payer).

In cases where the residential parent is collecting generous child maintenance payments, a parenting allowance, family payment and family tax payment along with or including subsidies and benefits such as rental assistance and a health care card, where is any economic incentive to seek employment?

Unfortunately, our overly generous welfare system (itself a massive burden on the tax-payer) has cosseted sole parents / single mothers into the expectation that, other than parenting their progeny, they have no responsibility in the financial maintenance of such progeny. This responsibility is then foisted upon the partner and / or the tax-payer till the child is well into its teen years.

Simply having the status of "sole parent" renders one exempt from having to make any effort toward actively seeking employment, and according to present law, "justifies" tax-payer funded support for what can amount to most of one's working years.

I have seen how the system encourages women to see themselves as "victims" who both need and deserve to be supported by both welfare payments and their former partners, for a significant portion of their lives. It is also my observation that regardless of the level of child maintenance received, and despite their tendency to publicly "cry poor", none of the sole parents I've known, have had to "do it tough", in fact most enjoy a lifestyle which is envied by their working women friends and acquaintances.

In a group comprised of both single parents and working women / mothers, which I have regularly attended for years, it is noticeable how much leisure time and disposable income the former have. Their guaranteed support as sole parents allows them lifestyle and study options which most other able-bodied females would not have. For example, several years after ending her marriage, one mother of two school aged children decided to start an education degree. Eighteen months down the track, when the course becomes burdensome, she sits down and does her figures. **Not surprisingly, she discovered that overall, she is better off collecting her maintenance and welfare payments (not ignoring all the discounts and subsidies attached) than she would be working as a full time teacher during the first few years out of college.** After deferring her course for a year's leisurely break (a lot if it spent treating herself to what many of us would consider personal indulgences) she resumed studies, but only one or two subjects a semester. (During this period, spurred on by the fact that her former husband had his new girlfriend and kids residing with him, she mounted a case to extract even more maintenance and share of assets from the sale of their former home.)

If she does see the course through, she will no doubt time her graduation for the final year in which she can collect maintenance money and welfare payments.

6) The present laws and generous payouts (while not the cause of break-ups) act as a form of encouragement to anyone who is considering leaving a marriage.

Anyone who denies this is trying to ignore a fundamental tenet of human psychology: *the comparatively easier a course of considered action is, the more attractive it will be.* Unfortunately, government policies in many areas support the scenario of separation and divorce, making it an easy option rather than a final resort.

7) The bottom line scenario is that the non-residential parent has no say in how his children are raised or how his maintenance payments are used.

While the Family Law Court is recommending that parents form parenting agreements to encourage mutual decision making regarding child-rearing issues, these are not compulsory. In other words, the father may be handing over more than enough of his income to cover 100% of the child-care costs, yet has minimal or no say in the management of that money or the upbringing of his kids. This is both extremely frustrating and disempowering.

One father I know bought his daughters (who weren't involved in any activities outside school) new tennis racquets and found suitable tennis coaching for them, but their non-working mother did nothing about taking them to classes. This father watches, totally powerless, while his ex-wife spends frivolously on consumer items, while ignoring the more important aspects of the children's lives. Despite having politely warned her years ago to put aside some of the maintenance / family payment money she was receiving (and which was undeniably surplus to her needs) she continued her gross mismanagement of the funds. Predictably, when the oldest child started secondary school, she "cried poor", and emotionally manipulated the father into giving her a large cash payment in addition to the maintenance money which he religiously pays.

An acquaintance recently told me how the maintenance money, which he has been paying his first wife for over 11 years (with at least 4 more years to go), has served to subsidize putting her through a 4 year University course *and* frequent trips overseas. All the while, she deliberately abused her powers as custodial parent, and cunningly manipulated the relationship between father and child to the point where the father is no longer able to have contact with his son.

8) The child support agency's impersonal and formulated approach to maintenance payments neglects the very real human variations and circumstances which are of great significance to those involved.

Cases abound in which the woman, to the shock of her partner, leaves for another man, without any serious attempt at working on the marriage / partnership. As one

disillusioned father explains it, the woman wins all round; she gets the children; the power and privileges which being the residential parent provides; the bulk of the assets, and on-going financial support.

The father has most likely lost 60 -70% of the family assets to his former wife, has lost the daily contact he once had with his children, and not uncommonly, the mother will be instrumental in damaging the relationship he has with his children, and /or she may relocate to a different suburb, city or even state. To really rub salt into the wound, her departure may have been with or for another man.

Men's counselling services can verify the large proportion of men who are left feeling bewildered, betrayed and devastated when their spouse deserts the marriage.

A kind-hearted and gentle friend of mine sadly told me how he came home one day to find the house emptied and his former wife and two children gone. It took him several months of desperate searching to discover that she had run off to Cairns with a boyfriend.

He was stripped of his parental role (except as provider!) despite being a good father, and is left dealing with a lot of emotional pain. Ask him how "fair" he thinks the CSA policies are!

Some years ago, a female acquaintance with a young boy, confided to me that she had deliberately got pregnant because she was depressed and thought that having a child would resolve her condition! She told her then boyfriend, that she was using contraceptives so he assumed that there was no risk of pregnancy involved. When she did fall pregnant, he did the "responsible" thing and married her. When the child was two years old the relationship (predictably) fell apart. This girl's deception resulted in a future of 16 years of ongoing maintenance payments from him.

It is no wonder that men have been protesting bitterly and feeling like the victims in a system which has become obsessed with the rights of children and their mother, while forgetting that fathers are surely entitled to some rights as well.

The standard response from those who try to defend this system is to point out the number of mothers who receive little or no maintenance. Yet if one looks closely at each case, it becomes more understandable why the father is unable to, or has opted out of CSA determined support payments. *The fact that some females are collecting little or no child support money does not in any way justify the excessive and unfair taxing of paying fathers, in fact it is the very unfairness of the system (which largely neglects personal circumstances , and treats non-residential parents as "walking wallets") that results in non-compliance in the first place.*

It must be appallingly obvious by now that the present Child Support System is in desperate need of major reforms. To quote Bettina Arndt again: "The glaring inequities in our child support system are at the heart of the widespread disquiet and alienation of large numbers of non-resident parents and their families. This alienation

plays a role in the large numbers of children losing contact with their fathers, the astonishing (40%) of child support payers currently not in employment, the alarming rate of suicide among separated men, and the fact that more than half of lone parents receive very little or no child support. An unfair system makes for an unhappy, dysfunctional society.”

It's time to urgently reconsider ways of making the costs of child rearing more fairly divided between the parents. All the sole parents I have known (with one exception due to prohibitive travel distance) enjoy at least every second weekend, part of school holidays and sometimes a regular week night free of parenting responsibilities and costs, because the non-residential parent takes these on. Yet unless the non-residential parent consistently has care of children for at least 30% of the year, the present system treats him / her as if they contribute nothing in this way, and have no costs incurred.

Please, heed the call for common sense and fairness to at last be applied to the issue of child support and custody. I dread to think that, if major reforms are not enacted, my twenty year old son may one day, have to face the same ill-conceived and unfair laws which have made the lives of so many Australian fathers an ongoing misery or a cause for suicide.

RECOMMENDATIONS:

Take action to deal with the real consequences of the present family law system, particularly in the area of child maintenance so that the present injustices and biases towards the non-residential parents cease to be the basis of so much strain, resentment and breakdown.

- A. The Child Support Agency (as an off-shoot of the Taxation Department) should be disbanded or completely reformed, along with the majority of its policies and practices.** Refer – all points discussed above.

Originally it was conceived as a money collecting agency for single mothers / sole parents, thus saving the tax-payer on welfare handouts. In effect it has largely become a “legalized” avenue for residential parents to wreak revenge and / or claim unfair support from their former partners / boyfriends. The independent *Report into the Australian Child Support Scheme* (2002) conducted by the PIR Research Group, reveals that rather than saving the tax-payer money, the scheme costs us all dearly. Their findings and conclusions (available on the internet) are well worth reading.

- B. Establish a Body whose basic aim is to provide guidelines and assistance in helping couples to determine an appropriate sharing of both child caring duties and costs which are specific to each case.** Enforceable agreements should be drawn up by the parties, and reviewed when necessary.
- C. The “right” to claim maintenance from the father of a child should not be a basic assumption.** Refer – (8) above.

This is particularly so in cases of “entrapment”, i.e. where the female deliberately or through negligence, falls pregnant regardless of the wishes of the male involved.

In this the “Information Age”, consenting females have no excuse for falling pregnant “by mistake” and should be held responsible for their choices, rather than expecting society and the unfortunate male to foot the bill. I know this is a “hairy” area, but when government policy allows females to so easily pass on the financial responsibility for any offspring, it is surely only fair that those it is being passed on to, have some form of protection or redress.

In cases where one parent is going to be the only or primary care-giver:

D. Reduce the disproportionately large financial burden placed on non-residential parents. Refer – (1-4) above.

Any maintenance amount should **never** have to exceed a reasonable proportion of the **shared** child care cost.

E. The term “child maintenance” / “child maintenance payments” should be updated to “child maintenance contribution” to emphasise that such payments should not be seen and expected to be, the sole source of support for any children.

This updated terminology should reaffirm that the residential parent should also be contributing financially to the upkeep of their progeny.

F. The exempt amount of income used in the calculation of maintenance contributions should be equal (or very close to equal) for both parents.
Refer – (2) above.

G. Require the residential parent through both encouragement and economic disincentives to take active responsibility in providing for themselves and their offspring. Refer – (5) above.

Once the child / children are in school, there is really no valid reason for non-disabled sole parents to not be actively seeking, training for, or participating in the paid workforce. (Just ask the majority of partnered mothers who are involved in full or part-time work!) In cases where the residential parent has not gained significant employment within a year or two of their children being in full time schooling, welfare collecting parents should be required to participate in some significant form of community work, such as assisting at their child’s school; providing home assistance to the housebound; organising and providing a dog walking service to neighbourhood dogs whose owners are working tax-payers; collectively planning and working community organic gardens, such as the one at Windsor, Brisbane; assisting local Councils in their many areas of responsibility. Whilst many women would be “up-in-arms” about such a suggestion, returning some sort of contribution to the society which is supporting them, is only a just expectation. Furthermore, they would probably find that making a meaningful contribution would be far more rewarding than sitting around watching television, or

wandering the shopping malls while the kids are at school. Thus the sole parent pension should no longer be seen as the “take it for granted” handout which any un-partnered female should have a “right” to.

H. Recipients of Maintenance Contributions should be accountable in their use of maintenance funds. Refer – (7) above.

If the contributor has any doubts about the use of his / her funding, the residential parent should be required to show (through the keeping of dockets / receipts / records) how those funds are being used. This is something which could be determined through the Mediating Body mentioned in *Recommendation 2*.

I. The percentage and range of non-cash maintenance payments should be increased to include items such as tuition fees, sporting expenses, schooling requirements, school social or fund-raising function expenses, which maintenance recipients frequently foist as an added expense, on to the maintenance payer.

J. The normal tax deduction of dependent children should be extended to all maintenance paying parents.

K. Allow a "cooling down" period of about 3 months after separation, before any form of maintenance payments commence.

This will hopefully help lessen the emotional impact on the non-residential parent who is usually at a very vulnerable point through loss of family, assets and self- esteem, and may reduce conflict between the parties in the long term. It may also lessen the immediate incentive for the maintenance collecting parent to dissolve the relationship, knowing that they will have to take financial responsibility for their decision, even if only for a short time.

I am happy to discuss any of the points raise above and welcome your feedback.

Yours faithfully,

Note: I give permission for all or any of this letter to be disseminated, however I ask that my name be withheld as it could lead to identification of some of the individuals in the cases which I have cited.