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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
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I have been involved in the family law system for almost 10 years as the wife of a non-resident parent. I have read the Report of the Family Law Pathways Advisory Group as well as the Government's response and would like to make brief submissions to the inquiry.

Should there be a presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption could be rebutted

"*I don't care where I live, as long as I get to see both my parents.*" These are the words of my step-daughter who was stuck in the middle of her parents' battle over residence. I think there **should** be a rebuttable presumption that children spend equal time with each parent.

There is an overwhelming amount of evidence to support a case for children spending more time with their fathers (who are more often than not the non-resident parent). Even if a child is seeing the non-resident parent fairly regularly (eg every second weekend), weekend only contact promotes the "Disneyland Dad" syndrome. My husband and I have recently been accused of trying to "buy" my step-daughter's love because we often go places on weekends and of course take her with us. Our weekend life tends to be quite different to our weekday life. We want my step-daughter to become involved in our every day ordinary home life however this is very difficult to do when a child is only over for weekend "visits". The mentality is that the child is going to "visit" her father but she "lives" with her mother rather than she lives with both parents but is in Dad's house one week and Mum's house the next. This makes effective parenting extremely difficult.

The presumption should be 50/50 residence, and this presumption can be rebutted in the following circumstances:

- *The arrangement would necessitate the child attending two separate schools*
  If, for instance, both parents live within the Sydney metropolitan area and they are able to make appropriate arrangements to ensure the child attends the same school each day regardless of which parent's home the child is staying at, 50/50 residence should not cause much disruption. However, I believe it would be too disruptive to have a child attending two separate schools.

- *Child abuse*
  Where the child is being abused by a parent, it would obviously not be in the child's best interests to force them to reside with that parent.

- *Partner abuse*
  Where one parent is being abused by the other parent, equal parenting should still be encouraged however dependent on the circumstances it may be necessary to either limit the amount of contact the abusive parent has with the children or alternatively, find ways of avoiding the two parents coming in contact with each other.

- *Large distance between parents' place of residence*
  If one parent resides/will reside in Wagga Wagga and the other resides in Sydney, it would be physically impossible for the child to attend the one school and the one GP, optometrist, dentist, etc. Aside from the issue of having more than one school, etc to attend, having to travel large distances on a regular basis would not be in the child's interest.

- *Parent elects to spend less than 50% of the time with their child*
  A parent may be unable due to work or other commitments to have their child reside with them for 50% of the time. In such circumstances, the court should still try to encourage options which allow as high a level of contact as possible (eg child attends non-resident parents house for dinner each Wednesday night and is collected from school on Friday afternoon, then returned to school on Monday morning).

Does the existing child support formula work fairly for both parents in relation to their care of, and contact with, their children?
No.

I believe that the formula should be based on both the payer and the payee's **net** income and not their **gross** income. Parents can end up having to pay around a third of their take home pay in child support payments for their "contribution" towards the upkeep of one child. As far as I am aware the parents are meant to *share* the financial responsibility and child support is not intended to cover 100% of the expenses related to the child's upbringing.

Prior to separation, both parents would generally have a say in the way the money is spent on their child. Credit can be given for prescribed non-agency payments up to a maximum of 25% of the ongoing liability. I think this amount should be increased to 50%. One of the biggest complaints I have heard from parents paying child support is that they do not feel the money they are paying is being spent where it should be, ie on their child. If parents know that up to half the money they are paying is going directly towards necessary expenses such as school fees, school uniforms and medical expenses, I believe they would more willingly make the child support payments.

I understand that in terms of different care arrangements, the child support formula is based on "actual" care rather than the amount set out in Court orders ("prescribed" care). If this is the case, it means that contravention of Court orders is not taken into account when calculating the amount of child support payable. This is unfair to the paying parent as not only do they miss out on having contact with their child, they also have to pay more child support for a child they are not even having the benefit of seeing.

Accordingly, I believe the care arrangements should be taken into account as follows:

(a) where the Court orders stipulate that the child is able to "choose" when to attend contact, there should be a presumption of shared care (ie 50/50 residence) regardless of the actual amount of time the child spends in each parent's care. Where a child is able to choose whether or not to attend contact and it is only actual care that is taken into account in the child support calculation, this provides a financial incentive for the resident parent to encourage non-attendance at contact.

(b) where the Court orders specify particular contact periods:

    (i) if the contact does not occur as a result of the resident parent contravening the orders (without reasonable excuse), the prescribed amount of contact should be used to calculate the child support payable rather than the actual amount of contact;

    (ii) if the contact does not occur as a result of the non-resident parent's failure to exercise contact (without reasonable excuse), the actual amount of contact should be taken into account in calculating the child support payable.

In effect, if a parent wishes to see their child but is being prevented from doing so by the other parent, the prescribed amount of contact should be taken into account. However if a parent does not wish to exercise contact with their child, the child support should be calculated based on the actual amount of time they spend with their child, not the amount of time stipulated in the Court orders.

It is possible to obtain a child support review based on income obtained from a second job or overtime if such additional income can be shown to be for the benefit of a child within your current family. However, in order to have the Agency consider reducing the amount of child support payable, it is necessary to disclose to the Agency (and the ex-partner) all financial details such as the amount of rent/mortgage payments, childcare payments, groceries, etc.

I do not believe it is fair for the paying parent to have to go through the process of disclosing all of their private financial details to their ex-partner in order to have the additional income excluded from the child support amount payable. Further, I have been advised by the Child Support Agency that this is a very difficult ground to prove. I would like to see additional income obtained by way of overtime or a second job automatically excluded from the child support income amount where the parent has a second family. Overtime and/or a second job have an impact on the current family as it means less time the parent can spend with their current family. Therefore the current family should be the ones who benefit from the additional income.

I have no objection to any of the material contained within this submission being published.

Please feel free to contact me if you wish to discuss any of the above.

Kind regards

Nicole Capper