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

Submission Re: Inquiry into child custody arrangements in the event of family separation, and the Operation of the Child Support Formula.

Dear Sir/Madam,

I seek to make a submission to this inquiry, based on my recent personal experiences.

Background

I am 40 years old. I consider myself well educated but down to earth with my fair share of common sense.

I believe strongly in the importance of family life and the benefits it has on society as a whole.

I have been separated from my ex-wife for four and a half years now. At the time of separation, we had a six year old daughter, and she had a nine year old son (cerebral palsy) by a previous relationship.

We lived in England, then Brisbane prior to separation, whereupon my ex-wife relocated to the Warwick region.

Children and the Family Law Act of 1975

The Family Law Act of 1975 specifies the rights of the child and obligations of the parents of that child.

In particular, Section 60B is the primary section that underpins most of the remainder of the Act dealing with children's issues.

60B Object of Part and principles underlying it

(1) The object of this Part is to ensure that children receive adequate and proper parenting to help them achieve their full potential, and to ensure that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children.

(2) The principles underlying these objects are that, except when it is or would be contrary to a child's best interests:

(a) children have the right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together; and

(b) children have a right of contact, on a regular basis, with both their parents and with other people significant to their care, welfare and development; and

(c) parents share duties and responsibilities concerning the care, welfare and development of their children; and

(d) parents should agree about the future parenting of their children.

There is no doubt that the presumption of shared care in the event of separation, is entirely consistent with the principles of 60B(2).

Shared care in relation to section 60B(2)(a) of the Family Law Act 1975.

children have the right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together.

By definition, shared care satisfies this principle to the maximum extent, except in cases of genuine abuse.

It has been recently argued by some in the community that a father who works while his wife is the homemaker is not in fact caring for the child, and somehow that lack of care should be interpolated into the care arrangements following union dissolution.

This argument is flawed for the following reasons:

- It is in the child's best interest to be breastfed and it is very difficult for a woman to be able to do this whilst at work.
- It is in the family's best interest to maximise income. It therefore follows that the father try to earn as much as is possible, often by extended working hours.
- The high cost and unavailability of child care facilities mean that both parents working is not always a suitable alternative.
- The high cost of living, coupled with reduced social security benefits, mean that both parents not working is not a suitable solution.

For the reasons listed above, the father is compelled to work as much as possible to provide as good a standard of living possible. By working in this way the father is paying a price of spending less time with his family, but is doing so in the best interests of his family.

The time I have spent caring for my children, I consider to be the most rewarding of my life, however, I should have been able to spend more time with them so I can contribute in the day to day things such as, homework, making school lunches, birthday parties, school events. This has proved increasingly difficult since my ex-wife relocated.

I chose not to fight the relocation or access times through the courts as I was informed by "learned" gentlemen of the legal profession that I needed pots of money, strong resolve and plenty of time, only then for a 50/50 chance of success.

Fathers, post separation, should not be penalised for spending less of the time with children previously during a relationship as this was done with the children's interests at heart, as listed above.

Once a man is faced with seeing less of his children due to a failed relationship, he should be free to adjust his working and private lifestyle to be able to do so.

Because a man has supported his ex partner to a certain standard, the Child Support Agency then expect that man to continue to do so indefinitely, rendering his chances of spending more time with his child/ren extremely slim. The father is thus compelled to work to continue support his child and his wife to within his demonstrated earning capacity.

This is the trap many men are finding themselves in, with a whole system supporting them to be legally removed from their children's lives.

I argue that by working, at the expense of time with children, particularly young children, the father is indeed caring for the child, and indeed for the mother of the child, in the most practical way, but at great personal and emotional cost.

Indeed, just as the mother forsakes career opportunities to become a homemaker, and that is recognised by society, and most particular the courts, the father has forsaken much in working, however this has yet to be recognised.

Post-separation, the sacrifices the mother has made in being the homemaker are considered and recognised by the courts, and an adjustment of the matrimonial property pool is made accordingly.

The sacrifices of the father has made in working at the expense of time with his family are not ignored by courts, but rather used against him to ensure that those sacrifices continue into the longer term.

The presumption of shared care will in address this inequity, in the same way that a presumption of shared property is an attempt to address the inequity in the financial resources of the mother and father.

Shared care in relation to section 60B(2)(b) of the Family Law Act 1975.

children have a right of contact, on a regular basis, with both their parents and with other people significant to their care, welfare and development

By definition, shared care satisfies this principle to the maximum extent.

Indeed, the current state of the law is such that residence is granted to one parent, who then retains overwhelming control and responsibility of raising the child. A recent study [1] showed that more than one-third of children of separated parents in Australia do not see their fathers, ever. A further 17% of children only have day-contact with their fathers.

If the mother re-partners, the statistics are even more alarming, with only 51% of re-partnered mothers reporting that the child had any contact with their father.

Clearly, the current system is not producing a result consistent with the principles of Section 60B(2)(b) of the Family Law Act 1975.

The same study indicated that 41% of mothers and 74% of fathers would like the child to see more of the father.

Indeed, the authors suggest that one of the reasons why contact fails over the longer term is that the emotional bond between the child and the father is not established in the absence of frequent overnight stays.

By establishing shared care as the default position, both parents are then able to establish the meaningful emotional bonds with the child that will last the lifetime of the child, and work to reduce the incidence of fatherless children.

Shared care in relation to section 60B(2)(c) and (d) of the Family Law Act 1975.

parents share duties and responsibilities concerning the care, welfare and development of their children; and

parents should agree about the future parenting of their children

By definition, shared care satisfies these principles as much as possible.

Because both parents will be bound by the one common set of life choices for their child, they will have no choice but to agree, or to have an agreement imposed upon them by a higher authority such as a court.

Shared Care Rebuttal

I am not suggesting that shared care should be the forced position where it is impractical, or clearly not in the child's best interest because of violence, on either of the parents parts, however I am saying that shared care is a reasonable starting position for each parent and their expectations as to the future relationship with their children.

A recent media release by the Law Society of NSW states:

"Rather than consider each family's special circumstances and needs, the current proposal for a presumption of 50/50 residence will set up parental expectations. An outcome that doesn't result in this split may leave the parent who has 'lost out', feeling disappointed and angry, and the presumption may encourage more litigation"

I would argue that parents would be quite right to expect a meaningful relationship with their child, and the current system is clearly not working to foster any sort of relationship between the child and both parents in many cases.

Further, if you are one of the 33% of non-resident fathers who never see their child, surely you would feel as though "you had lost out". The obligation imposed

on the father to support those missing children while at the same time trying to rebuild his own financial and emotional resources, I imagine, would further build on this feeling.

Currently any change to existing orders involves lengthy drawn out and extremely costly court proceedings. The only people profiting from family breakdown and related incidents is the Legal Fraternity, CSA, at the expense of a great many decent Australian citizens who are just trying to spend a bit more time with their children.

It is difficult to imagine a group of people with a greater vested interest in the perpetuation of the current system than the Law Society.

The reasons for modifying the amount of time a child spends with one parent compared to another are numerous, but it is important to note that once the reason why shared care was not practical ceases to exist, then the care arrangements for that child should again be based on the presumption of shared care.

Below are some examples of how might work.

Example 1: the parents are located too far away for shared care to be practical. If at a later stage one parent was to move so that shared care was a practical alternative, there should not a complicated and costly court procedure to justify the new arrangements.

With regard to relocation, if a parent chooses to relocate, then the parent that did not relocate should be the resident parent of the child, unless the circumstances were such that this was clearly not the child's best interest.

This would not limit the freedom of either parent, but would encourage them to weigh the consequences of their actions in terms of their parental responsibilities. Bringing a child into this world also brings responsibilities to that child, and to the other parent, that override personal wishes from time to time.

Example 2: one parent is unable to have overnight care because she works shift work. After a while, she starts working straight day shifts, so is able to care for the child. She should be able to do this without a complicated and costly court procedure to justify the new arrangements.

Example 3: the child is a breastfeeding infant, so it would be impractical for the father to have sole care for an extended period of time. However, one day the child will cease to be breastfed, and the father should be able to care for the child for extended periods of time. He should be able to do this without a complicated and costly court procedure to justify the new arrangements.

Had my ex wife not been able to relocated, I would have and would be still having, a far greater input into my children's lives, in turn making our relationship a closer one.

Shared Care and Cost of Care

Clearly, in the situation where care was equitably shared between the two parents, then each parent would presumably pay half the living expenses of the child.

However the costs of the child whilst in the parents care needs to be adjusted by the relative financial position of the parents to determine if the cost apportioned to each parent is indeed equitable.

For example, consider the case where the father earns twice as much as the mother. In this situation, an equitable split of the costs of raising that child would be 1:2. Using the Budget Standards Unit cost of raising a child, it is estimated that the cost of a child is $66 per week, or $132 per fortnight.

The father pays two-thirds of this amount, or $88, while the mother pays the remaining $44. The father than pays to the mother the difference between $66 and $44 a fortnight, or $22.

Both parents should be eligible for any government benefits in accordance with the rate of which care is distributed between the two parents.

It has been recognised that there is a positive relationship between the amount of contact a parent has with their child and their willingness to pay child support to the other parent.

Yours faithfully

Paul Hodgkinson