

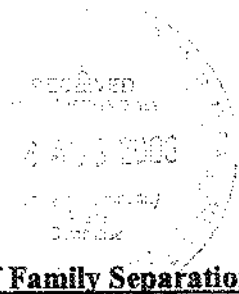
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Committee Secretary  
Standing Committee on Family & Community Affairs  
Child Custody Arrangements Inquiry  
Parliament House  
Canberra ACT 2600



Dear Sir

**Inquiry into Child Custody Arrangements in the Event of Family Separation**

I was separated in 1997. My wife left me with without notice for another man and took my two daughters aged 4 and 2. In the following 2 years I was involved in numerous court cases to gain and maintain fair and reasonable contact with my daughters.

During this period I gained experience with family and child support laws, as an un-represented litigant and through solicitors and barristers. I also learnt first hand how unfair and discriminating these laws work against a fathers.

Outlined below are my views to improve the current custody and child support arrangements for all fathers.

**1. What factors should be taken into account in deciding the respective time each parent spends with their children post separation.**

In theory I agree in principle that children should spend equal time with each parent. However in practice I recognise it would be difficult to legislate this arrangement. Unfortunately this would probably only benefit a minority of fathers who have the ability (eg live in close proximity to the former wife and have flexible work arrangements) to take advantage of shared residence (custody).

I believe contact and residence should be approached in a different way, to break the current legal presumptions. The interrelated and fundamental issue is to put in place (i) a presumption for minimum contact and (ii) fair criteria in which residence is awarded to a parent.

**(i) Presumption for minimum contact**

The Family Law Act does not prescribe minimum contact for a parent. This forces a father, faced with an un-cooperative ex-wife, to seek legal redress. This process is expensive, emotionally draining and time consuming. Many fathers at this point give up or accept less than satisfactory contact arrangements.

The frustrating irony is that during this process mothers have immediate access to child support from fathers under a legislated formula *without* the need for legal

action. In my case I had to fight in the courts for six months before I had regular weekend contact with my daughters – and during this time I had to pay \$750 per fortnight in child support. Then I had to fight in the courts for another 18 months to ensure my daughters remained in the Sydney area – and during this time I had to pay \$900 per fortnight in child support.

I propose that this unbalance, where fathers do not have access to automatic minimum contact, could be remedied by changes in legislation that:

- Sets a minimum level of contact, of say every second weekend and half school holidays, unless contested in court for limited range of criteria such as violence.
- Encourage increased levels of contact and shared custody where practical, unless there are good reasons to the contrary.
- The father can apply to CSA to be suspend child support if he does not have the minimum level of contact, unless there are good reasons the contrary.

**(ii) Criteria in which residence is granted**

A related issue to contact is that residence in most cases is granted to mothers. While fathers do win a few court cases, most cases do not go to court given the poor prospects for fathers. It is well known amongst fathers and lawyers that, “men don’t win family law cases, women have to lose”.

In practice there is an effective presumption of residence for the mother. This empowers mothers against fathers in relation to child support and in dictating contact arrangements.

The presumption is that residence is usually given to the primary care-giver. In most cases this is the mother given the biological fact that most women take care of infant children in the first year and social fact that most men work longer hours to support their family.

I propose that this unbalance could be remedied by changes in legislation that exclude past behaviour (including which parent is the primary care-giver) and make inquiries to award residence on the basis of two forward looking criteria:

- The prospects of which parent can provide the best care of the children in the future, and
- The likelihood of which parent will actively promote contact with the other parent.

**2. Whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children.**

The child support formula is based on two flawed criteria (i) presumption that the paying parent is largely responsible for financial maintenance of their children and

(ii) is applied arbitrarily on income without taking into account the individual circumstances of the payer.

(i) **Responsibility for financial upkeep of children**

The current child support formula is a 'financial prison sentence' for the father for up to 18 years. There is little hope or 'financial light at the end of the tunnel' for the father to share these child support liabilities with the mother. The system runs contrary to the current social view that women have the capacity to share the financial burden of maintaining children.

The current arrangements have the following impact on the paying parent (in 91% of cases this is the father):

- The more you earn – the more you pay. (The cap income of \$120,000 per annum is not achievable to most fathers). On an average income of \$47,000 per annum, fathers have an effective tax rate of 60% (inclusive of child support for 2 children). Over \$52,000 per annum the effective tax rate is 70.5%.
- Child support arrangements presume the father should pay all or more than the cost of supporting the children. For example the 'Lee Expenditure' survey show the cost of supporting 2 children is around \$400 per week (this cost includes all costs such as housing). Based on the current child support formula a father on \$50,000 per annum would pay 50% of this amount and a father on \$90,000 per annum would pay 100% of this amount.
- The mother's income/financial status have minimal impact on the level of child support paid by the father. The mother can earn \$36,000 per annum before there is a reduction in child support and this reduction is only \$0.135 per \$1 earned above this amount (based on 2 children).

The impact of this very regressive child support structure is that fathers can not see a way out of this child support 'tax' and encourages men *not* to work and earn money and pay child support. This creates a lose-lose situation, whereby fathers avoid work or minimise child support and mothers receive less child support. The facts from the CSA 2000/01 fact sheet show:

- The median earning of paying fathers is \$30,111 per annum – significantly less than the average earnings of \$47,000 per annum.
- Nearly 40% of fathers earn no income or are unemployed and pay less than \$5 per week in child support.

In 2000 child support was 'reformed' using a 'stick' approach of a minimum liability for fathers of \$260 and token adjustment in the disregarded income. This reform has failed to increase average child support payments.

I propose that a win-win solution should be developed for fathers and mothers both to share a fair burden for child support. An equitable system would encourage fathers to earn more and contribute more to child support. This could be achieved by:

- Tying the level of child support to the independent cost of raising children rather than a percentage formula.
- Reduce the child support payable as the children get older and the mother is more able to re-enter into the work force, eg 100% of this cost when the children are less than 5 years old, 80% when they are in primary school and 60% when they are in high school.
- Increase the contribution by mothers at a lower income level and at a fairer rate, eg mothers income above the disregard income amount (as used in setting child support for fathers viz \$12,000 per annum) should be used as the cut-in point for mothers contribution to child support (and reduction is fathers child support payable).

(ii) **Child support is inflexible**

The child support formula has a 'one shape, fit all' approach. This system does not take into account any factors of the actual individual arrangement.

Child support should take into account major financial situation of the father and mother.

- Level of child support should be adjusted for the level of contact (and cost) incurred by the father. Child support is the same if a father has children for nil nights or 100 nights a year. Clearly the more contact the father has, the more cost he has (and less cost the mother has). A sliding scale of child support should be introduced to account for the cost and to financially compensate (and incentivise) of fathers providing accommodation etc for their children.
- Level of child support should take into account the assets of the mother, in particular housing. Under the current system of family a father often loses his house to the mother and then pays child support which takes into account the cost of housing again. In this way a father loses twice. Child support should be structured in a way whereby if the mother has assets over a certain amount, child support is reduced eg if a mother owns a home or has assets equal to the cost of an average home cost, child support payable will be reduced.

Thank you for the opportunity of presenting my views on these important issues. I am willing to speak to my submission and present a 'real life' example of the struggle fathers have in obtaining reasonable contact with their children and coping with the crippling burden of child support.

Yours faithfully

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