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House of Representatives Standing Committee on Family and Community Affairs	
Submission No:	1335
Date Received:	7-8-03
Secretary:

8th August 2003

**SUBMISSION TO THE STANDING COMMITTEE ON FAMILY
AND COMMUNITY AFFAIRS**

Inquiry into child custody arrangements in the event of family separation

SUMMARY

Terms of Reference

- (a) (i) 1. To enhance the likelihood of strong attachments or bonds developing, or being maintained, between children and parents after separation, both parents need to have the opportunity to be involved in a variety of activities with their children
- 2 To restrict nonresident fathers (the vast majority of nonresident parents) to weekend or holiday contact with children is inconsistent with societal pressures on fathers generally to be more involved in family life
- 3 Sole resident arrangement lends itself to resident parents assuming a proprietorial attitude over children and a dictatorial attitude towards nonresident parents
- 4 Shared resident arrangements mean both parents share a common experience in that they both have some responsibility for children and know what it is like to be absent from their children. It also provides children with substantial involvement with both parents
- 5 Spending equal time with both parents is impractical for children unless parents live within reasonable geographical proximity to each other

6 Most fathers do not want shared residence even though they may want more involvement in children's lives

7 Separated parents may move more easily from a shared residence presumption to a sole residence arrangement than from a sole residence presumption to a shared residence arrangement

8. Substance abuse, mental illness, domestic violence counter-indicate the value for children of shared residence or custody

(a) (ii) Rarely, because the level of hostility between parents and other persons is likely to impinge on children to such an extent as to outweigh the advantage for children of contact with these persons

(b) 1 Child support formula needs substantial overhaul

2 The current formula often impedes nonresident parents' ability to re-establish themselves after separation

3 It does not account for nonresident parents' expenditure on children below the level of what is considered substantial contact

4 It provides insufficient opportunities for nonresident parents to undertake responsibility for specific payments with regard to children's needs

5 Child Support Agency is discriminatory in policy and practice

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SUBMISSION

BACKGROUND

I have worked with separated parents for twelve years as a mediator. I have conducted groups for separated parents and have facilitated groups for separated fathers. For the last three years I have researched nonresident fathers throughout Australia and am currently writing my thesis to complete a Doctor of Philosophy at Sydney University. My study involved two hundred and sixty nonresident fathers throughout Australia who completed a survey mailed to them. Of these, I

interviewed one hundred and thirty-five fathers. Participants in my study came from a range of socio-economic backgrounds and had achieved a variety of educational levels.

Term of Reference (a) (i)

1. Various studies have failed to find a link between the frequency and amount of contact with nonresident parents and children's post-separation adjustment or well-being. This has led some like Amato (1998) to conclude that the nature of nonresident parents' interaction with children is important, and that the key to children's well-being may be nonresident parents' involvement in what he describes as 'authoritative parenting'. This term is generally considered to involve parents' interaction with children, accessibility to them and responsibility for them. It could be cogently argued that the present presumption (even if not admitted to be a legal presumption) for sole residence with nonresident parents' involvement restricted to weekends and holidays for the most part is not conducive to strong bonds developing between children and nonresident parents. A recent trend has been for more nonresident parents to have some weekday involvement with children, thus allowing them to have some day to day responsibility for them. Shared residence certainly gives both parents the opportunity to provide more decisive parenting, without necessarily guaranteeing it will occur. Parents' willingness and capacity to undertake such parental responsibility is essential for shared residence to be of benefit for children.

2. In the almost thirty years since the introduction of the Family Law Act in Australia, there have been significant, if not substantial, changes in family life and in the extent to which fathers are involved with children. Fathers are encouraged to take on more responsibility for raising children, and while generally not doing as much as mothers do for children, many fathers assume considerable responsibility for children. Separated fathers thus complain that, when the parental relationship breaks down, they are marginalised by the system which often ignores the level of their pre-separation involvement with children. Some research (Kruk, 1991, 1992, 1995), in fact, has found that fathers most at risk of disengaging from children after separation are those who had been highly involved prior to separation. A father in my study wrote of the contrary messages he has received since separation: *'I grew up as a young man when society was actively encouraging men to be involved in their families. Attend the birth, go to school meetings, read to your child, etc, etc. Quality time was the mantra. And many of us took this on, albeit imperfectly in many cases, after all, where was our role model? Our fathers did not do it...but then the relationship breaks up and then you are the disposable parent...can it be a surprise that some men are pushed to doing irrational things? I think not. It is my belief that when a couple separates and faces the Family Court, the start point should be shared care, and that should be the outcome the Court is*

trying to achieve. But it is not. The reality is that fathers are advised by their lawyers (in my case, a solicitor, a barrister, a court counsellor and an independent counsellor all advised me) that they stand no chance of winning fair and equitable access. In my view, the Family Court is way out of step with what the community wants, and it is about time they came and joined the rest of us in 21st century, rather than reclining in some 1950's version of the ideal family unit'.

3. One of the disadvantages of sole residence is that it often impedes post-separation co-operative parenting because resident parents consistently see themselves to be the more significant parent (which in fact they generally are) who can dictate to the other parent how and when they can be involved in children's lives. This tendency, I suspect, is often exacerbated by the tendency of mothers to adopt the role within the family of being gatekeeper of children. On separation, mothers who are resident parents can become even more stringent gatekeepers of their children, stipulating what fathers can and cannot do with children. A further compounding factor found in many families is the lack of confidence mothers often have in fathers' parenting capacity. When the maternal expectation borders on fathers parenting in much the same way as mothers, that lack of confidence intensifies.

Nonresident parents commonly complain that resident parents 'hold all the trumps' when it comes to making decisions about children and are loathe to allow them significant input into parental decision making. (Many fathers in my study considered that they had little or no input into decisions regarding children). They perceive that resident parents can arbitrarily choose when contact will or will not occur, and will at times use the children as pawns when the interparental hostility intensifies.

4. Shared residence implies a common experience for parents. They both know the pain of being separated from children for a considerable time and the joys and challenges of being responsible for children on a day to day basis. In such a situation, parents are more likely to understand what the other is experiencing and to approach their parenting responsibility on a more reasonable and empathic basis. A distinct advantage of shared residence is that it provides children with substantial contact with both parents. In many families, the advantage of that outweighs the adjustment demands that shared residence makes of children and the constant moving from one home to another.

It is generally claimed that shared residence is not to children's benefit when the parental hostility is intense because they will consistently become caught in the tension. I would suggest that the same

thing can happen in families where one parent has sole residence. Often contact between children and nonresident parents becomes problematic and at times children end up being alienated from their nonresident parent. Whilst research into separated families has consistently found that interparental conflict is potentially very harmful for children and their development and well-being (Wallerstein & Kelly, 1980), it is not clearly understood to what extent sole residence arrangements in fact contribute to the ongoing conflict. By its very nature it creates an 'uneven playing field', which may in fact fuel the resentment and hostility between parents and provide opportunities for conflict.

5. Shared residence of school age children in particular relies on parents living reasonably close to each other for the sake of the children's continuity at school, with sporting and cultural involvement and with friends. The disadvantage can be that parents do not want to live in the same or neighbouring districts, especially if they have not yet emotionally separated from each other. Living in reasonable proximity to each other increases the risk of them coming into contact with each other which can further delay the necessary emotional separation and their post-separation adjustment. Children generally do not benefit from such a situation.

6. Not all separated fathers want shared residence. Some, while badly missing their children, acknowledge that their children's welfare is better guaranteed by them being in the care of their mothers. Others realise that they are incapable of caring for children in a shared residence arrangement for a variety of work, personal or temperamental reasons. In my research, only 42% of nonresident fathers indicated that at the time of separation they would have preferred shared residence rather than sole residence. At the time of completing the survey, some four to six years after separating, the percentage of fathers wanting shared residence was much the same.

Certainly, many nonresident fathers (parents) want more time with children and particularly want more say in matters concerning their children, and more opportunity for involvement in children's activities, such as schooling. Unfortunately, resident parents (predominantly mothers) often severely restrict the influence nonresident parents have on children. This seemingly is what leads to a lot of post-separation conflict. Also, institutions such as schools very often marginalise nonresident parents by their policies and practices. I would suggest that some fathers get to the stage of wanting either sole residence of their children, or at least shared residence, because of their utter frustration at being effectively excluded from children's lives, despite exercising regular and frequent contact with them.

7. While this hypothesis is untested at the moment, I suspect that, if shared residence is the starting point for the post-separation family arrangement, parents are more likely to (have to) do some negotiating as to what is best for their family than they are at present with the presumption for sole residence. Some sort of presumption for shared residence may indeed change the way parents think and even reduce the proprietorial attitude regarding children that many sole resident parents adopt.

8. Issues which are commonly affecting post-separation parenting nowadays include the prevalence of drug and alcohol abuse, mental illness or psychological disturbance, and domestic violence. The impact of these on children can be expected to be far greater when children reside with the affected parent than when they spend short periods of time with them. Shared residence in families where one parent is affected by such issues is unlikely to be to the children's benefit.

Term of Reference (a) (ii)

1. It is certainly true that after separation children often lose contact with members of their parents' extended families who previously were a source of love and support for the children. Granting children contact with these family members may be useful if they are related to the nonresident parent who, for whatever reason, is not having contact with the children. This is on the proviso that such family members undertake not to denigrate either parent.

However, if extended family members are related to the resident parent, or to a parent who is having contact with the children, it appears that granting contact to them is likely to involve children in intergenerational family conflict. Normally, grandparents and extended family are involved in children's lives through the children's parents. If that adult relationship breaks down, children usually do not see extended family members, as is the case in some intact families. This is not to deny the contribution extended family members can make to children. However, when there is intergenerational conflict, the value of extended family's contribution to children is likely to be outweighed by children's exposure to increased levels of hostility between adult family members.

Term of Reference (b)

1. The percentages of nonresident parents' gross income (less the exempted amount allowed) which were set over a decade ago seem to suggest that the role of nonresident parents (fathers) is mainly that of provider, which does not reflect the roles played in many intact families today. Fathers who had tried to extend their repertoire of paternal behaviours prior to separation, get the impression after separation that their financial contribution is all that is valued.

I think that aspects of the formula that deserve serious consideration include:

- a) **the assessment currently made on gross rather than net income** : in intact families, money paid in tax is not available for the benefit of the family. For low income nonresident parents, they are often left with very little to live on after tax and child support payments are deducted
- b) **the inclusion of income earned from overtime or a second job in the assessment**: many nonresident parents undertake more work or a second job in an effort to re-establish themselves after separation. Many resent that this added income is subject to child support assessment which becomes a disincentive for them to work hard to improve their situation. The situation is different for those parents who have consistently worked overtime as part of their employment terms
- c) **failure to consider joint income when resident parents repartner**: the resentment of nonresident parents who struggle financially and see their former partners and children sharing in the benefits of dual incomes is very strong

2. In my experience, I have encountered many nonresident fathers who live in relative poverty because of the level of their child support payments. Nonresident parents are often caught in a Catch 22 position. They have to find larger accommodation than they need for themselves in order to provide children with basic living facilities. They fear that if they do not, children will not want to spend time with them or resident mothers will not agree to children staying with them in substandard accommodation. Nonresident fathers, especially those on low incomes, commonly become depressed when faced with the unlikelihood that they will be able to re-establish themselves.

3. The formula does not take into account what nonresident parents, even those not having what is considered substantial income, spend on children. Apart from the cost of providing accommodation and furnishings (which in capital cities is now significant), nonresident parents face considerable expenditure when children are with them (Farbricius & Braver, 2003). They see that no allowance is made for that when assessing child support obligations. Nonresident parents who have holiday contact with children commonly complain that their child support is still deducted when they face the cost of keeping the children. Claims that all that is taken into account when setting the percentages in the formula do not carry much weight.

4. This point refers not so much to the formula but to the implementation of child support. In my experience and research nonresident parents constantly complain that they do not have any input

into how their financial contributions to their children are spent. At one extreme there are those who believe that their children do not benefit at all from their payments, as implied in the statement of one father: *'nine times out of ten the father is not against supporting his child, he just wants to see the direct benefit to his child'*. But those who do not doubt that the resident parent spends some of the money on the children, still lament their lack of parental input into financial decisions made which deprives them of any control over what they see as their hard-earned income. Somehow, if parents (both resident and nonresident) were encouraged more by the Child Support Agency to arrange for some child support to go towards meeting specific costs of children (eg school fees, sporting costs), nonresident parents would have a greater sense they were exercising some parental rights as well as meeting parental responsibilities.

5. Nonresident fathers complain constantly about the treatment that they receive from the Child Support Agency. One common complaint is that Agency workers seem to assume that whenever fathers contact the Agency they simply want to get out of their child support responsibility. Fathers also complain that they are not believed by the Agency, but whatever resident mothers say is believed. Many nonresident fathers clearly perceive that the Agency is biased against them and is geared to favour resident parents, as expressed by a surgeon whom I interviewed for my research: *'the actual or perceived bias in the Child Support Agency is a major factor...the system of redress of issues with the Child Support is buried in bureaucratic babble. No support system exists for underestimates of maternal income. When asked to review my wife's income which the Court had established was \$30K greater than she had estimated, I was informed the system doesn't cater for review of wife's income or return of overpayment. Furthermore the implicit threat was made that CSA had the power to remove capped payments [by nonresident parents]. Truly an unfair system in desperate need of overhaul.'*

Thank you for the opportunity to make this submission