

Submission No: 243

Date Received: 4-8-03

Secretary:

3 August 2003

SUBMISSION TO THE CHILD CUSTODY ARRANGEMENTS INQUIRY

This submission agrees fundamentally with the proposition that children, so far as is practicable, should spend equal time with each parent in a post separation situation. The arguments in favour of this presumption of 'equal time' include:

This presumption recognises the rapidly changing parenting roles in our community, where fathers are playing a much more hands-on role in the bringing up of children from babyhood to their teenage years. Fathers are, in some cases, providing the primary care and thereby develop very close emotional relationships with their children and even where they are not the primary carer there is a growing community expectation, in line with these changing roles, that fathers should play a more active role in the upbringing of children.

Secondly, it is contended that a child has a fundamental right of equal access to both parents and almost as importantly to both sets of grandparents. The cohesiveness of the community and the transmission of society's fundamental values and beliefs are facilitated by a child having access to both sides of the family.

Thirdly, the present situation regarding custody and access heavily favours the mother so that there are a large number of fathers who hardly ever see their children and in some cases never see them at all due to circumstances where a mother deliberately disappears. Moreover, it would appear, in many instances, that the authorities including the courts and the police only make token efforts to trace the whereabouts of the mother. There is also extreme reluctance to impose restraining orders even when there is no reasonable cause for mothers to keep themselves and their children away from the father. Moreover, fathers in these circumstances rarely have the resources to pursue the matter legally, especially as many of them are still required to pay maintenance under these unfortunate circumstances. In any event, fathers are often still willing to pay maintenance because of their strong feeling of responsibility towards their children. In this context it should be noted that privacy legislation often prevents a father or his legal counsel, if any, to find out from the authorities where the mother and child/children reside.

It should also be stressed that the present arrangements make it all too easy for mothers to leave with their children and to get full financial and other support from the taxpayer plus maintenance from the father. There is no "quid pro-quo" for the receipt of these benefits, either in terms of employment (full-time or part-time), volunteer work or providing access to the father or abiding by court orders. The current situation is by any standards totally outrageous and represents an appalling breach of the human rights of both the father and the children. There are many instances where mothers ignore requests for mediation conference conducted under the auspices of the Family Court. Similarly mothers do not turn up to formal hearings at the court or do not abide by the orders of the court with respect to custody and/or access. Mothers in these situations appear to be untouchable and as the months and years pass the likelihood of a court ever giving the father custody or even reasonable access diminishes as the mother ultimately claims that there is an insufficient relationship between the father and the children. Again, this is an outrageous situation where a child's right of knowing and having access to their father is denied and arguably sanctioned by the Family Court which under present legislation appears to give a very narrow interpretation in practice to the rights of the child and gives the father virtually no rights at all. In some cases, fathers who have previously had a very close relationship with their children are only able to see their children at best for a few hours per week, as a result of mothers deliberately withholding the children from their father for very long periods of time, and then arguing successfully before the court that there is now only a tenuous relationship between father and children. Again, it should be stressed that mothers are often only able to do this because of the lack of penalties imposed on the mother by the authorities. In other words, in practice society condones what is essentially a kidnapping of young children by their mothers at great monetary and non-monetary cost to not only the fathers, but also the community at large.

In too many instances there is a situation where the father provides maintenance out of his employment income yet does not see or hardly sees his children yet the mother gets full financial support from the taxpayer. It can be argued that the equal time concept would generate a far greater sense of responsibility by allowing both parents to work and care for their children. This is vital to combating the growing dependency culture in our community and to the discouragement of recalcitrant behaviour by either party in the relationship.

Equal access would also allow both sets of grandparents to play a meaningful role in the lives of the children affected. Court orders do not appear at the present time to give sufficient consideration to the rights of grandparents and the rights of children to have access to their extended family. At the present time, where frequently only one parent, usually the father, has very limited time with the children, there is a huge injustice for the grandparents concerned, especially those grandparents who had developed close and loving relationship with the children prior to the separation of the parents.

This submission at least partially rests on the premise that custody access arrangements cannot be viewed in isolation from other features of our community. In particular, current welfare provisions provide no incentives for single parents to act responsibly, either in relation to the children concerned or in relation to the community as a whole. Indeed, it could be argued that single parents are encouraged to act irresponsibly. Further, in practice, it is the father who is treated as a second-class citizen. Often deprived of custody and/meaningful access while continuing to provide financial support funded from his own resources.

Even more disturbing is that single mothers see their income rise when they have subsequent children because family allowances and other payments increase. This, interestingly, contrasts with the situation for many working couples where additional children does not mean a rise in income as the taxation system itself makes virtually no provision for the existence of children or additional children. In other words, assistance for families with children comes almost exclusively from welfare provisions (rather than through the tax system) so it is not surprising that the birth rate is falling for those couples who are on the surface better off while the birth rate for the less well off, reliant on welfare, has increased very significantly. This is not a healthy situation for any community and has serious intergenerational effects creating a deepening of a dependency culture amongst a growing segment of our community. This situation is compounded by the ridiculous effective marginal tax rate when someone on welfare decides to enter the workforce and loses a range of benefits as a result.

The following statistics extracted from the ABS provide evidence of what is happening in our community as a result of the combined influence of Family Court decisions (under present legislation) and current welfare and tax provisions.

Between 1980 and 2002 the number of **jobless** lone parent families grew by 96% - a staggering statistic. In more general terms, in 1980 there were 269,000 single parent families. This more than doubled to 606,000 by 2002. By contrast, the number of couple families grew over the same period by only 9.8% from 1,856,000 to 2,037,000 in 2002

It is of interest that 84% of jobless lone parents are classed as not in the labour force at all. This, as alluded to in this submission, may be due in part because these lone parents (overwhelmingly mothers) have access to passive income support payments that do not require them to engage in work related activity or behave responsibly in relation to court mediation attempts or court orders.

In terms of trans-generational effects, Department of Family and Community Services research shows that young people whose carers rely on income support are much more likely than other young people to experience unemployment, teenage parenthood and income support receipt during early childhood. Statistics show that around 30% of such young people when they turned 18 are reliant on some form of income support (excluding student payments) compared with only 18% of young people from low income working families and 8% for those young people from so called middle income families.

These statistics not only provide a powerful argument for revamping the current custody arrangements in the event of family breakdown but also revamping the current welfare system that encourages dependency and irresponsibility. This view may well be greeted with horror and indignation from some quarters but the facts speak for themselves. We desperately need to encourage self-reliance, independence and responsibility amongst young existing parents and young people considering parenthood. At the present time, it is all too easy for one parent, usually in practice the mother, to opt for what amounts to a lifestyle choice where they can rely almost indefinitely on community payments without any strings attached. This situation is really quite untenable and imposes huge costs on the other parent, grandparents, children and the community as a whole. Urgent action is required to bring sanity and fairness to what is currently an unacceptably cruel and unjust situation. If we were to sit down and

design from scratch legislative provisions for the Family Court and the welfare and tax systems we would struggle to design a system more inequitable and more corrosive to our community than the current system.

Not only does the present system encourage people (who are not yet ready financially) to opt for parenthood too lightly, it is particularly encouraging for women to do so as the costs for them under various scenarios are relatively low in relation to the potential costs for fathers, children and the community as a whole. Fairer custodial arrangements based on the principle of 'equal time' would go some way to rectifying this situation by encouraging a greater sense of responsibility, including financial responsibility, with beneficial effects for all parties - especially children who would not only have good access to both sides of the family but would also be less likely to be dependent on welfare as adults. Legally, at the present time, parents, at least in theory, have joint responsibility for their children. However, in practice, the system heavily mitigates against this responsibility being properly exercised in the interests of all but especially the child. Changed custodial arrangements would then act as a catalyst to changes in our tax and welfare systems to further encourage self – reliance and responsibility.

Thank you for considering this submission.