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**Sent:** Tuesday, 12 August 2003 7:22 AM  
**To:** Committee, FCA (REPS)  
**Subject:** Submission from NACLCL

House of Representatives Standing Committee  
on Family and Community Affairs

Submission No: 836

Date Received: 12-8-03

Secretary: .....



Sub to Joint  
Custody.doc (471 ...)

Please find attached the submission to the Inquiry from the National Association of Community Legal Centres.

Thank you

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## SUBMISSION TO THE STANDING COMMITTEE ON COMMUNITY AFFAIRS INQUIRY INTO CHILD CUSTODY ARRANGEMENTS IN THE EVENT OF FAMILY SEPARATION

### Introduction

NACLC is an association of 207 Community Legal Centres throughout Australia, which provide advice to more than 350,000 disadvantaged men and women around Australia every year. The centres are located in metropolitan areas and throughout rural, regional and remote Australia. Some centres deal with a range of legal issues and other centres specialise in child support issues for carer and liable parents, or in social security issues or women's legal issues. We are well qualified to address the terms of reference as follows:

- (a) Given that the best interests of the child are the paramount consideration:**
- (i) what other factors should be taken into account in deciding the respective time each parent should spend with their children post separation, in particular whether there should be a presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption could be rebutted**

NACLC opposes the proposal for a rebuttable presumption that a child should spend equal time with each parent after separation because:

1. It seems to have arisen from a small number of disaffected parents and confuses parents' rights with children's rights
2. It will lead to an increase in litigation as parents pursue their "rights"
3. The vast majority of parents carry out shared responsibilities reasonably, even after separation, but reasonableness is not judged by the numbers of hours and minutes each parent has with a child
4. Most families have an imbalance in the amount of time each parent spends with a child from time to time- there is no one formula for good parenting
5. Research shows that where parents live together, the majority of parenting time is provided by mothers<sup>1</sup>. After separation children generally require stability, which means this situation should continue
6. After separation, most parents make arrangements about their children without going to court. Cases which do go to court often involve violence or abuse and are exactly the wrong cases to be decided in the light of a presumption of equal time<sup>2</sup>
7. The current factors set out in the *Family Law Act 1975* provide sufficient guidance for courts, which have to decide how much time children should spend with each parent if there is a dispute. There is no need for other factors to be considered.
8. The presumption would have significant implications for Centrelink payments to separated parents. At present, both parents are not able to claim Parenting Payment. The parent who claims

<sup>1</sup> Australian Bureau of Statistics, *Labour Force Status and Other Characteristics of Families*, AGPS, Canberra, 2000

<sup>2</sup> Hunter, R "Family Law Case Profiles", *Justice Research Centre*, June 1999

it first receives it and the other parent then has to claim Newstart, which is paid at a lower rate and has a more stringent income test. If this parent has the care of a child every second week, he or she will find it extremely difficult to fulfil the consequent obligations to Centrelink or the Job Network.

9. The presumption would also have significant implications for the child support payments. The CSA guide provides rules about where a child is in the care of a parent for more or less time than that provided by an order or parenting plan. If the presumption of 50% with each parent applied but a parent actually had the child for 80% of the time, they would still only get child support for the "lawful care" of 50%. They would have to go to court to have the presumption rebutted but would then only receive the child support appropriate for them having the child 80% of the time from the date of that order.

***ii) in what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents***

Courts already make orders that children have contact with other persons, who have been significant in their lives, including grandparents. In doing so, they consider the best interests of the children as determined by the wide ranging factors set out in the *Family Law Act 1975*. These factors are sufficient to cover all the circumstances in which children should have contact with other persons.

***(b) whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children***

We have many concerns about the existing child support formula and system working fairly, particularly for payee parents:

1. The formula has already been reviewed several times and has been made very complicated to account for various circumstances. It was initially based on the relative costs of raising children and that basis should not be watered down.
2. The Child Support Agency failed to collect \$669.7M in child support in 200/01, an increase of \$35M on the previous year. Payees are forced into private collection either by not being properly informed that the Agency can collect or through Registrar Initiated Private Collection. The Agency is responsible for collecting only 52% of all liabilities and that rate is falling<sup>3</sup>.
3. The Child Support Agency frequently chooses to write off debts and ceases pursuing the payer, particularly after 12 months.
4. Even if the Agency does not write off a debt, it often enters into arrangements for the liable parent to pay at a lower rate per month, without informing the payee of these negotiations. The debt continues to mount and then it is easier for the payer parent to have it written off.

**Conclusion**

NACLC opposes the proposal for a rebuttable presumption that a child should spend equal time with each parent after separation. There is no need for other factors to be taken into account in deciding the respective time each parent should spend with children post separation. There is also no need to specify particular circumstances in which courts should order contact with other persons, including grandparents.

<sup>3</sup> Attorney-General's Dept, *Child Support Scheme Facts and Figures 2000/01*, Canberra 2002

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The existing principles and factors set out in the *Family Law Act 1975* provide enough guidance for the exercise of judicial discretion.

There are significant problems with the child support formula having lost its focus on the real cost of raising children. There are also problems with the way that child support and child support arrears are collected by the Child Support Agency.

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