The Senate Legal and Consitutional Legislation
Committee on Family law amendments,
The Senate,
Parliament House,
Canberra, A.C.T., 2600

Friday 4 July 2003.

This submission is in relation to Family law amendments.

As a divorced father who has contact with my child I submit that shared residency, where ever possible by location of the residency of the parents, is necessary for a child to have a life in which both parents are involved at all levels.

The present presumption by the Family Law Court (including the Federal Magistrate's Service) that a child is better off in residing with the mother can not be sustained. A child has a right to know and to have both parents play an active role in their life on a regular basis. In many instances the mother is not the best person to look after the wellbeing of the child. This has been shown by attitudes shown in care of the child. There is a need for a child to have a male figure play an active role in their life.

In many cases the mother seeks residency of the child purely as a means of punishing the father for perceived 'wrong doings' in the former relationship and as a method of receiving money by way of Child Support payments.

In many instances the mother makes unsubstantiated accusations of mistreatment, either physical or sexual, by the father to assist her in her efforts to deny the father residency or contact with the child. This is an area of great concern.

Because of child support payments the resident parent has a strong incentive to request that the Court restrict contact between the non-resident and the child. The Court may well state that there is no link in this issue and the Court does not consider such matters. Those of us who have to live with the consequences of Court Orders even if made by consent are well aware of the link between contact and child support payments.

The resident parent (usually the Mother) regularly breach Family Law Court orders in relation to contact in the knowledge that the non resident parent (usually the Father) must pay to apply to the Court for hearings on breaches of such Orders. The cost of making such applications is such that most non-resident parents cannot afford to make application to the Court. The Court rarely hands down punishment for breaches of

Orders. The court should have the power to, and should, harshly punish the parent who breaches orders.

It is estimated that there is a large proportion of non-resident parents who are paying child support for children who are not theirs. Before any matter is heard under the Family Law Act 1975 either for residency of the child or for maintenance or before any assessment is made for child support it should be necessary for proper proof of the biological parents of the child to be made. This should be by way of firstly of blood testing and if the matter is still in dispute by means of DNA testing.

Child Support payments are currently assessed on a formula that is a blanket formula that attempts to cover all scenarios. It bears no relationship to the actual needs of the child. A child of 1 year of age is assessed as requiring the same amount of support as a 17 year old child who would have vastly different needs. Children and their parents have different expectations of their and their child's life style and what may be right for one family is not necessarily right for another family.

The formula set by legislation is not equitable to both parents who bear an equal obligation to meet the financial needs of their child.

The formula for the Payer parent (usually the father) allows for an amount at present of $12,315 to be deducted from Income before the formula is applied. The amount considered as disregarded income for the Payee parent (usually the mother) is currently $36,213. No Payer parent can consider this equitable. Exempt\disregarded income amounts must be equal for both parents.

At present the resident parent is not assessed as being required to make any financial contribution to child support until either the disregarded income amount is reached or until contact is at the shared care level. Again any exempt\disregarded income needs to be equal for both parents. Both parents should bear a cost of caring for the child at all the levels of contact be it sole, major, substantial or shared care.

The formula also makes no allowance for legitimate costs incurred in earning the income used for assessments e.g. compulsory superannuation, legitimate costs of travel to work etc. These costs must be allowed before any assessment is made.

The formula is based on taxable income. Child support is therefore paid on money that a parent does not actually have or receive. This is ridiculous. If one does not have the money how can one be expected to use a non-existent monetary amount to pay such child support The formula must be based on at least after tax income and preferably with legitimate costs deducted.

Changes in income can only be accepted if the change is more that a 15% loss of income. One can suffer a drop in income of a lesser percentage than 15% but still be

expected to pay child support on the higher sum. This means that the payer parent is paying child support from money that is not actually received.

The number of nights that a non-resident parent has the child in their care is also taken into consideration in making an assessment. Up to 110 nights a year a non-resident parent pays 18% of their assessed child support income for one child. This percentage does not take in to account the fact that a non-resident parent must also have costs in having contact with a child. A non-resident parent must supply appropriate accommodation, food, manchester, clothing etc during periods the child is with them. The cost is ongoing and must be paid if one has contact with their child. There should be a reduction in the formula to reflect these costs

An assessment can be reduced by the number of nights a child is in the care of the non-resident parent but I submit that the number of nights should be reduced in each category. In substantial care by the non resident parent the figure is between 110 and 145 nights. In shared care a non-resident parent must have between 146 and 218 nights. Many non resident parents can not reach the required number of nights because the resident parent opposes any application made under the Family Law Act 1975 for increased contact. Similarly contact outside of or even included in an Order is usually denied for the same reason. The reason is that any increase in contact will mean a reduction in child support payments received by the resident parent. This currently is my situation. The number of nights to allow a reduction must be reduced in each of the categories.

The percentage figures used in assessment in each category also need to be reduced to properly reflect costs to both parents in maintaining the child.

There are many resident parents who control and run a business but do not de any personal income. I have been through the process of applying to the Chil Support Agency in such a case, was able to prove that the residential parent v full time but was not considered by the Child Support Agency as being capal earning more than a 'half" income. One can but wonder at such decisions. I currently going through the process again but have lost all confidence in dec made by the Child Support Agency.

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The agency's administrative procedures are also failing. Documentation is often not listed as having been received, is lost in transit between various office locations etc. Matters may be complicated in many instances but I do not believe that the agency handles matters in a timely or fair manner. It is a commonly perceived by payer parents that the agency is biased towards the parent who has residency of a child.

There needs to be accountability for expenditure of money received in the way of child support. In my case my child is 10 years of age and the mother is receiving a relatively large amount in child support, certainly more than required to give the child

a good life style. The child is not receiving the full benefit of payments made by me for his care. My own personal knowledge is that the major part of this child support is used by the mother in running a retail business and in looking after her own lifestyle. The child comes a very poor third.

An option should be available, especially in the case of younger children, that an amount of money be set aside from child support payments to cover the future education needs of the child. As it stands now the money is spent by the resident parent with no thought for future needs of the child.

I submit that the time has arrived for a complete overhaul of residency and contact matters under the Family Law Act 1975. The presumption that one parent has sole residency of a child is abhorrent to those of us who want to play a proper and active role in our child's upbringing.

Similarly there must be major changes made to Child Support legislation to properly reflect the costs to both parents of keeping a child. These costs must be shared equally between the parents.

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