Committee Secretary
Standing Committee on Family and Community Affairs
Child Custody Arrangements Inquiry
Department of the House of Representatives
Parliament House
Canberra ACT 2600
Australia

05/08/03

Submission by an individual in relation to the 'Child Custody Arrangements" Inquiry

Brief Summary of Main Points contained in this submission:

- High cost/financial burden of Family Court remedies, combined with long delays means the current system of resolving disputes over custody between parents is not proving effective, is inequitable in it's treatment of father's custody rights, and creates further animosity between parents where they cannot agree.

- Inherent gender inequality is evident in the systems within the Family Court and CSA, for example the standard contact arrangements set down by the court more often than not uses as a starting point the situation where fathers are only given "weekend contact" rather than dual parenting roles, this effectively means fathers are already disadvantaged, to get anything beyond this starting point at present requires costly litigation and requires the father to prove themselves worthy or by the same token, the mother needs to be proved unworthy, causing parents to come into further conflict over the issue of custody/contact, rather than there being an expectation of a continuing dual parenting of the children beyond divorce.

- The CSA system supports the 'norm' in that they presume there to be a paying weekend contact type father, with a payee custodial mother arrangement, and see this as the norm and perpetuate these arrangements, this is evident through their policies and procedures.

- Given current reforms are being sought by so many dissatisfied parents, it is up to parliament to ensure that a better way for these matters to be resolved is achieved, one that does not favour either party on the basis of gender.

- Reforms needed to address these imbalances and to ensure all the structures, CSA and Family Court and the support mechanisms, are in line with current community values and norms (eg fathers wanting to be actively involved in dual residency parenting plan arrangements).

- Reforms also need to remove the expectation that mothers will as a matter of course will be the primary care givers and fathers can therefore only have a sidelined and minor 'weekend' parenting role.

- Poor administrative processes, errors and computerised systems of CSA create confusion, and there exists long delays in actioning matters. Reforms required in relation to file management, and also in relation to the CUBA system.

Background:

One cannot examine one area of the debate without being aware of what has been occurring to real people within these systems, hence my submission as an individual who has witnessed 'the way things currently work'.

As the wife of a non-custodial parent (referred to hereafter as the weekend contact father - WCF) I have prepared the following submission. This submission is based upon the experiences I have witnessed through being the partner of the WCF during the past five plus years. These experiences have included working through the formal processes of the Family Court and the less effective arm of the Federal Magistracy (Court), and also experiences dealing with the Child Support Agency (CSA) .

My husband and his former wife have one child, aged seven. During the course of his previous marriage, my husband had on a regular basis been the primary care giver whilst his wife worked. Both parties are now remarried, with my husband's ex-wife granted custody as a matter of course during the custody proceedings. This was taken as a given, and to dispute this 'given' was not recommended by WCF's legal advisor at the time.

This "given" was presented to WCF as the standard arrangement that the Court was likely to rule, due to the (outdated surely?) belief held by the case law of the court that children of this age need to spend more time with their mother. The prohibitive costs of seeking to apply for anything out of the norm than a situation where a child reside with their mother and have contact with their father was spelled out at this time, and it was pointed out that to try to seek anything out of the norm would be near impossible to achieve and could prove damaging for all parties.

Despite WCF's desire to seek a week about arrangement as indicated through counselling sessions to the Custodial Mother (CM), WCF was granted a standard fortnightly contact and half of school holiday regime (I say standard as in Tasmania such arrangements appear to be very much the norm in our home state).

This regime pattern was in the latter stages of proceedings partly dictated by the fact that because of the long delays between the interim and final orders stages (due in part to huge backlogs of cases in Tas meaning long delays are always experienced except for the most urgent and serious Family Court matters) these delays meant that the CM had unilaterally decided to relocate from the Hobart region to the other end of the state to Launceston (some 280 plus kms away) by the time the final orders were finalised for contact arrangements, thereby making WCF's wish for dual residency impossible as an operational reality.

WCF's applications to the Family Court and the Federal Magistracy over the past five plus years have related to applications against the CM for contraventions of the existing contact arrangements. More recently an application seeking to increase contact arrangements beyond a Friday to Sunday fortnightly contact regime was also sought, this being a possibility once the CM once again relocated to the Hobart region, close proximity of the school, child's desire to do so being expressed, and WCF's working arrangements allowing this to be a workable reality.

These forays in the Court have proved a financial burden on our marital household. They also would have proved impossible to have been funded by the WCF without subsidisation by me, as the WCF is a self employed small business operator. In five and a half years our legal fees have exceeded $25000, and we currently pay our lawyer through instalments as we could not afford the money up front. CM with assistance of her partly qualified lawyer husband represented herself, at no cost financially.

Due to the unresolved contact issues between the parties, legal action was the only remedy (although we had sought to amicably settle matters, this offer was rejected by the CM) in order to ensure the most basic of contact occurs between father and child (fortnightly regime and one week of each school holiday period, plus a number of days alternately at Easter and Xmas).

As well as having experience in the Court system, the WCF has also had dealings with the CSA, and these have related to various applications for departures of assessment as applied for and cross-applied for at various times in the past six years by both parents.

The Committee needs to be aware that in the experience of this WCF (and from talking with other fathers we know in similar situations we have learnt that we are not alone in our experiences) it was glaringly obvious during proceedings that the current system is too costly, and means parents (more often fathers) are getting into debt in order to get basic contact with their children, and further there are bigger picture issues in relation to the gender inequalities that are inherent in the systems and policies adopted within both the Court and in the CSA.

Family Court Issues:

Two real life examples that spring to mind out of our experiences are in relation to the fact that despite having orders dictating fortnightly weekend contact regimes, the current Court system provides for no way to uphold orders in the event that one party do not honour this obligation, short of **costly litigation**. In our case, the WCF tried to suggest further counselling as an alternative to Court actions in order to try and resolve issues but suggestions to have mediation were not supported by the current Court system. While the counselling service was happy to facilitate mediation, they had no power to compel the CM to attend UNLESS litigation was in progress and the Court so ordered such counselling to occur. Such offers for informal discussions were refused by the CM, and the counselling service had no authority to seek her cooperation.

The WCF then had no choice but to either ignore contact was not occurring, or to go down the path of proving through Court action that contact did not occur. When this was finally proven after months of delay and at a huge financial cost, only on one count out of some 30 odd occasions was it possible to *prove* the charges, and then where proven, the charge was dismissed by the Court on the basis that the CM could have been "confused" about her obligations to uphold Court orders.

This example shows that the Court does little to remedy situations in the early stages of problems occurring. The lack of alternatives for WCF gives two choices, put up, or shut up, in that the court procedures forces parents to seek legal remedies rather than to resolve issues through other means for example through Court ordered or sanctioned mediation. If a WCF cannot afford to go down the litigation path, then there is no alternative for those who cannot afford the legal representation. Further, this example illustrates that the high cost of such litigation sometimes does not justify the action, in that the results do not provide any real deterrent nor any sense of justice.

The high cost/financial burden of Family Court remedies, combined with long delays means this system of resolving disputes between parties is not proving effective. Indeed, for some parents it is not a possibility to pursue legal remedies at all due to their economic means or socio-cultural backgrounds.

More recently, as another example, this time of **gender inequality**, the WCF sought to increase contact time as the CM had moved back to the Hobart region. WCF sought through the courts to increase his Friday evening to Sunday night

arrangement to a fortnightly Friday after school to Monday start of school arrangement fortnightly to make things easier on the child through the transition from one home to the other.

This was rejected after delays of some months in the Court system (at huge cost once again) on the basis that the child had to be *home* in order for the CM *to settle and prepare her for school*. There was no recognition by the Court that the child could just as easily be delivered to school by her WCF than dropped to a bus stop by her CM. Given that the WCF involved had an earlier history of being the child's primary carer whilst in her infancy when her mother worked, this seems to smack of a subjective evaluation that the CM's routines are the only with any validity. Further the Court made a subjective evaluation that somehow the CM was more qualified to do so, ignoring that the child has *two families, two homes with well established routines of long standing, with two biological and respective step parents* all of whom are capable of fulfilling parental roles.

The WCF was in my belief denied the opportunity to be involved in everyday domestic care of his child on the basis that the Court holds outdated values and beliefs about families and parental roles. In essence, because of gender bias and stereotypes, the Court failed in this instance to recognise that a father can be responsible for day to day parental roles. The Court instead perpetuated a very outdated stereotypical theory that only mothers have the ability to fulfil the caring type roles.

In our experience the high cost/financial burden of Family Court remedies, combined with long delays, and the lack of any real change in status quo after such litigation, means this system of resolving disputes between parties is not proving effective.

Further, fathers are disadvantaged before they even begin down the Court remedy path. Where the system uses as a starting point a CM and WCF means that any changes beyond this arrangement have to be (a) applied for, b) justified by the WCF rather than being a given, c) will prove highly costly to litigate d) could involve huge delays due to the Court backlogs and e) only cause further friction and animosity between the parties. By casting them in the role of adversaries in a Court situation.

Where there is any lack of consensus or common ground between the parents there is also the damage the current system does to the relationship between the child and the WCF. To have telephone contact twice a week and weekend contact fortnightly as a court ordered given does not allow for any semblance of true family relationships to be established. The CM in our case has dictated all the 'rules' and boundaries for the child, any rules in our home are dismissed as not relevant by the CM (and also by virtue of her socialisation by the CM also by the child). If the other parent objects to any contact outside 'court ordered contact' this makes further isolation for non-custodial parents, and only serves to self fulfil the CM's position as primary carer, and further relegates WCF's to the role of a secondary carer, despite their abilities or any genuine value the child make gain from a more balanced relationship with both parents.

Reforms are needed and the first step should be for the Committee to examine the whole gender bias against fathers inherent in the Court system, and to examine the real issues as to why there is such a low percentage of fathers who do have dual parenting plans instead of the current CM, WCF situation when so many fathers are on record as wanting to be more than weekend "Disney-dads" ?

Child Support Issues:

I don't know what the alternatives are, but speaking in general terms, the current system seems to link the custody of the children with money issues, and this provides the potential for further friction between the parties and sees a proprietary attitude emerge where CM feels she has "ownership". Because the norm is for the CM payee, WCF payer, from talking with other WCF it seems that there are a lot of fathers who feel that the system is cheating them, in that they bear the financial burden of their children without being allowed to play any meaningful parental role in their children's lives. There is also often no recognition that even weekend contact and holiday contact involves costs to the non-custodial parent, and often contributions by non-custodial parents do not get factored into CSA formulas.

The fact that child support is linked to whoever has "custody" means that in many cases CMs seek to ensure that WCFs do not get over and above anything but a standard fortnightly weekend contact arrangement. A starting point where dual residency is a reality, and where father's time with their children is factored into the equation would mean that money issues do not become confused with parenting issues. It would mean parents could get down to the real issues of joint responsibility and joint decisions making in an environment where animosity and friction is reduced due to the removal of the highly emotive 'money factor'.

Speaking in more specific terms, the current CSA system as experienced by this WCF displays what I consider to be gender bias in that it operates from the premise that there is a CM payee and a WCF payer in most equations, with the premise seeming to indicate that the CSA expects that in most cases, the CM will be on a lower income and the WCF will be a higher wage earner.

One real life example I can give that has come out of our experiences relates to the matter of the CSA's policy in relation to the whole CM, WCF equation. Because the CSA works on this situation as a norm, in our experience, where this WCF stated that he could not work during extended contact periods the CSA did not accept this as valid reasons for his explanation as to why he was not earning a higher wage.

The written decision by the Senior Case Manager at the CSA related to the fact that the WCF had related to periods where the child is in his care for extended holiday periods beyond weekend contact. As a self-employed operator the WCF stated to CSA he could not earn money for those periods at Xmas, Easter and in the school holidays where he had parental responsibilities, and this was why his income was lower than someone who worked or was paid for a full 52 weeks. This was rejected by the Case Manager as being a valid reason for his lower income projections on the basis that the CSA considered this decision not to work when the child was in the WCF's under a set of Family Court orders as a "lifestyle choice" that the WCF had made, and that in any event, the WCF could simply work more hours in the other weeks of the year to increase his income to the level the CSA considered appropriate. *Being a full time father, even if only for six weeks a year, was not considered to be a valid reason for earning less across any given CSA year.* ***Yet being a mother clearly does constitute valid grounds for not earning an income for the CSA's purposes.***

Interestingly, in our case the CM is the higher wage earner in the CSA equation, and so when the CM in our case took a further 9 months leave without pay (beyond her 3 months paid maternity leave) after the birth of her second child to her current husband, this was not viewed by the CSA Case Manager as being a "lifestyle choice" for the purposes of her CSA assessable income. No-one suggested to the CM that either she or her current husband (who has returned to full time study and therefore does not support either his current family nor his two children from a former marriage) had made a lifestyle choice and that one or other of them should work more hours to provide for their increasing family.

Further, due to the lifestyle choices of the CM and her husband, the WCF in our case ended up bearing a much higher financial burden due to the fact that the 'lifestyle' decision by the CM to start another family with another partner meant that her income for the purposes of the CSA formula reduced. Her assessable income was also further reduced by the CSA formulas as she now had another child to provide for by her second husband. Working on the current CSA formulas this then meant that the WCF was effectively subsidising the new family arrangements of the CM and was ultimately paying more child support due to the birth of child who bore no relationship to him.

One final issue also needs addressing under the heading CSA. Operationally, the WCF (and myself as his authorised representative) have had many problems with the administration of the WCF's CSA case. This has stemmed from when the old system of local Case Managers went by the way side and the whole CSA operations were centralised and local offices vanished.

To make a call to the CSA is a nightmare and needs time set aside to do so, call centre structures mean that you end up talking to literally anywhere up to four or five different people before you get the area you need, or the person who can assist, you never get to talk to the same officers twice unless you ring the Complaints line, the CUBA system has lost information from people's files, there is no longer a local person you can go and talk to and show paperwork to and discuss matters with, and there are huge time delays between lodging forms and having any action taken.

Numerous problems with the CSA administration have been documented on our case file alone. Other parents have relayed similar stories to me re their dealings with the CSA and I know we are not alone, but the system of not having a Case Manager who follows through on actions means confusion and error can then create even larger errors.

Some people must just be completely mystified by what the CSA statement actually even means as it is the most incomprehensible piece of paper ever issued by any government department.

These problems with CSA are in no way the staff's fault, as an agency they are human resources poor and no doubt overworked, the emphasis is on a depersonalised call centre type operation and to fully complicate things, the advent of their new computerised system (CUBA) has played havoc with people's files, ours being just one of those affected.

Conclusion:
While some of the issues raised in this submission may on first reading not appear to fit directly into the scope of the brief for the committee, the situations and observations made in this submission are relevant as they relate to some of the realities that the current systems create.

Many of the committee members may not have first hand experience with these structures and will therefore rely upon anecdotal evidence and the recounting of experiences from those living daily with these structures. I hope that at least one or two points from this submission are able to provide information of use to the committee members and can assist to ensure that the recommendations to come out of the inquiry are made on an informed basis.

The final issue I would hope that the committee could give some thought to relates to remembering that this issue is subjective and emotive, and as the wife of a WCF I can see the damage first hand that the current "CM-WCF" pattern has had and continues to have on our family, emotionally and financially, and we are but one of so many such families. In this particular case alone, if some other way of resolving disputes short of costly and acrimonious legal action could have been pursued, this would

have resolved issues far earlier and everyone could have saved their time, effort, and money, and the child would have benefited far more.

I know that I live with a WCF who every day feels regrets that his child will grow up without knowing the full socialisation of his values. I know his child misses out on the more balanced family foundations that he enjoyed, where two parents make joint decisions together on what might be best for their child.

I live daily with a WCF who feels regret that he cannot be more involved in his child's everyday life and to actually be a hands on parent and experience the full realities and responsibilities of being a parent.

I know the sense of injustice he feels toward the Court, which has relegated him to the role of WCF. This has effectively meant that he has no input into any of the decision-making processes in relation to his child's life, and current systems provide no remedy to alter this situation.

I also live fortnightly with a child who comes into our home with a sense of how her fleeting life in our home is only a short-term deviation from her other 'real' world, the one where she "belongs to her mum".

Saddest of all, despite living daily with the huge burden of debt that Court actions have imposed upon our household, I believe that had the WCF not pursued contact issues through the Court, I have no doubt I would live with a father who never had **any** contact with his child.

Gender bias must account for a large part of this WCF's situation, as it is only by virtue of his gender that this WCF was not afforded equal access in relation to the residency of his child. Decisions such as whether his child would even live close enough to his home to be able to regularly see him were denied by virtue of the fact that residency was automatically granted to a CM, and he was relegated to the minor parenting role of a WCF.

Yours faithfully,

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