

Equal Parenting is the
Right of Every Child

DAD's AUSTRALIA Inc.

House of Representatives Standing Committee
on Family and Community Affairs

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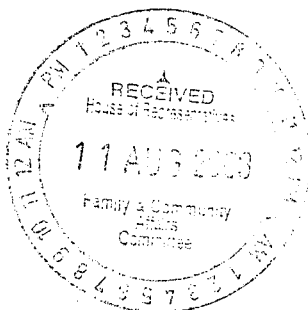
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7th August 2003.

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

Re: Parliamentary Inquiry into child custody arrangements in the event of family separation.

We refer to the above-mentioned Inquiry and wish to lodge this enclosed submission as part of the public input into recommended changes to the Family Law and Child Support Agency.



Yours truly,

Signed for and on behalf of:
DADs Australia Inc.
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Right of Every Child

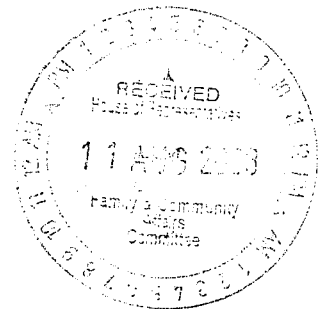
DAD's AUSTRALIA Inc.

PARLIAMENTARY INQUIRY

“INTO CHILD CUSTODY

ARRANGEMENTS IN THE

EVENT OF FAMILY SEPARATION.”



Prepared by and on behalf of:

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Overview of DADs Australia Inc

DADs Australia Inc is a non-profit community organisation that provides support and assistance to both men and women, affected by Divorce, Separation, Child Residency and Contact, Child Support Agency, Domestic Violence and Suicide.

DADs Australia Inc provides support through our meetings and resources to assist people to deal with the above issues.

DADs Australia is operated by both men and women for the benefit of our children.

All members of the Executive Committee are volunteers who provide their time and energy for a better outcome for children in relation to the above issues.

Our motto is: **"Equal Parenting is the Right of Every Child"**

Goals of DADs Australia Inc.

The primary goals of DADs Australia Inc are:

- a) Educating parents of their legal rights in relation to maintaining contact with their children after separation,
- b) Educating parents in their "common law" rights.
- c) Providing a support group for parents who are having problems dealing with the various Government Agencies including The Family Court of Australia, The Child Support Agency, DOCs and Apprehensive Domestic Violence Orders.
- d) Lobbying for legislative reform to The Family Court of Australia and The Child Support Agency.
- e) Suicide prevention.



Introduction.

“to make public one of the most incongruous and unjust pieces of legislation ever devised by parliament” (*Page 11 Crises in the Family Court 1984*)

This statement was made by Dr Harper in 1984 regarding the Family Court of Australia (FCA), nine years after the FCA legislation came into place. Nearly twenty years later, and after over 30 different inquiries, reports and amendments into family law nothing has changed. The situation and problems facing separated families in contemporary Australian society have gone from unfair to bad to “hellish”.

With the introduction of the “Child Support Agency”(C\$A) which is colloquially known as the “**Collection and Suicide Agency**” the situation has deteriorated to the point where contemporary Australian society has one of the highest suicide rates in the world for males aged between 21 to 40 years of age. Statistical information indicates that on average up to 7 men a day commit suicide this amount to 2100 men each year.

DADs Australia believes that this high suicide rate is directly influenced by the gender biased and discriminative legislation which is enforced by the FCA and the C\$A. Due to the unwillingness of previous Federal Labor Governments to tackle these unpopular issues there is a distinct lack of funded research into the damage that the FCA and C\$A are doing to our children and our society.

The unwillingness of previous Labor Federal Governments to tackle these issues no doubt stems from the fact that the FCA and C\$A legislation were both Labor Party initiatives. One only has to look at the Joint Select Committee Report of 1994 into Child Support and out of the 164 recommendations, only a small handful of these recommendations have been implemented to date. Any attempt to reform this system by the current Federal Government is blocked in the Senate by the Labor Party and its ‘mates’.

DADs Australia believes one of the greatest obstacles in obtaining equal parenting is the known bias of the judiciary and we look forward to the upcoming retirement of the current Chief Justice on his 65th Birthday on the 18th August 2003, the Chief Justice was appointed by the Labor Party and at one stage ran as a Labor Party candidate in the seat of Chisholm.

When one considers the quickness and the deliberately manner in which the Chief Justice of the Family Court, Nicholson J, made his statements publicly condemning and rebutting the Prime Ministers initiative before the inquiry has had even had a chance to consider all the relevant information, our beliefs are well grounded.

DADs Australia believes that Equal Parenting produces by far the best outcomes for children and separated parents. However we hold grave fears that any changes recommending ‘Equal Parenting’ as a result of this inquiry will not be supported by the legal profession, the judiciary and certain departments of the executive Government.

The Howard Government needs to be congratulated on behalf of separated families and in particular our children for taking this bold and visionary approach to family separation in Australian society with regards to Equal Parenting.

Terms of Reference:

- (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;
 - (ii) in what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents.
- (b) whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children.

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DADs Australia believes that “Equal Parenting” should be the automatic default in the case of separation due to the following:

What is EQUAL PARENTING ?

EQUAL PARENTING is a world wide accepted approach which allows each parent ‘equal’ substantial time with their child. Under this arrangement children do not lose their relationship with either parent, this eliminates many issues associated with “single parents”.

EQUAL Parenting makes sense now because the old model of a “stay-at-home mother” has been replaced by the 1990's reality that most children have two parents who work, both before and after separation and divorce.

EQUAL parenting after separation and divorce benefits mothers. By dividing the parental time commitment, EQUAL parenting gives mothers more time off to further their education, work late to advance in their career, or to enjoy some leisure. Mothers with EQUAL parenting are less stressed and therefore better parents and workers. Above all EQUAL parenting is the best solution for children after separation and divorce. Children enjoy, continued love and interaction with both parents and the extended families of both parents, and a lessening of emotional trauma due to separation and divorce. Children in EQUAL parenting spend more time with a parent and less time with costly paid babysitters.

Children also benefit from geographic stability. Because the separated and divorced parents do not move away, the children are more likely to remain in one school and to maintain their circle of friends. When neither parent is lost to a child, relationships with step-parents are enhanced, because the step-parent is not expected to take the place of a parent.

EQUAL parenting is premised on the fact that most parents were good enough to parent before divorce proceedings began.

Why EQUAL parenting ?

Most countries have already tried to use the regime we currently have in Australia, that is to say, where one parent has total custody and the other parent only has visiting and tenuous rights. These countries have found, without exception, that the day to day practicalities of implementation militate against the system. They have found attempts at enforcement costly in court time and in legal aid bills. They have also found from research studies that it is the sole custody regime that damages children the most. This has led them to seek out the alternative of EQUAL parenting.

Which countries have adopted EQUAL parenting ?

Many countries have implemented shared parenting over the last few decades. Sweden has adopted the system for many years. The same is true of Denmark. Other countries are also actively considering it. For instance, some provinces in Canada have adopted EQUAL parenting and others are thinking about introducing it. America is

now overhauling its post divorce custody regime. Legally, each US state has the sovereignty to define its own marriage, divorce and custody regimes. Many states have now done so.

Approximately 36 states have adopted EQUAL parenting as the most humane, ethical and egalitarian method of ensuring all rights, those of the mother, father and child, are met. Those countries that have previous and ongoing experience of EQUAL parenting have devised their own versions of EQUAL parenting. Some are complicated but others are very straight forwards.

What are the advantages of EQUAL parenting ?

The advantages are not only comprehensive, but long lasting and advantageous to all parties. EQUAL parenting provides a "win – win" situation for the two protagonists - not a "win or lose" scenario.

The trend toward EQUAL parenting is premised on the understanding that most parents are simply ordinary people who love their children. The typical contested custody determination involves a choice between two parents who are both fit and eager to provide for the care of their children.

Australian courts are more usually accustomed to adversarial presentations that are resolved by the selection of a winner and a loser. The court picks a winner and the loser is then ordered to pay the winner's expenses.

There is no doubt that this system works well in commercial disputes but in divorce cases involving domestic relations cases, it is wholly destructive.

Neither of these parents deserves to be the outright "winner." Nor does the other parent deserve to be totally routed and become the "loser".

In a society that has been largely uneducated as to the importance of parenting by parents, courts and legislatures have slowly come to realise that their overriding obligation is to encourage and preserve the maximum level of two-parent involvement. Court intervention and the picking of a winner and a loser is increasingly seen as counter-productive. Joint custody is a recognition that the child needs a substantial relationship with both parents and that both parents have important contributions to make to the child's growth and development. It is something, as we show later, that used to be more common in England.

When two divorcing parents love their children equally it can make for the bitterest of all battles. Neither can bear to be permanently parted from them for a long length of time. So custody battles between two loving parents can become more bitter and more acrimonious than ones where one parent cares rather less for the children than the other parent.

The establishment of EQUAL parenting can therefore be expected to reduce litigation, particularly in "close cases", because neither parent stands to become the total winner nor the complete loser. They can expect simply to remain as joint custodians.

Between two fit and loving parents, it is most difficult for judges to decide which parent is marginally "better" and there should be no need to try. A judge should not have to face making a 'Judgement of Solomon' every day. His task should be made as

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have to face making a 'Judgement of Solomon' every day. His task should be made as easy as possible and he should be able, in all but the exceptional case, to order EQUAL parenting.

What is unique about EQUAL parenting ?

The present law in Australia requires that the child's interests are paramount. Judges must weigh this consideration in coming to any conclusion. But for over 2 decades there have no definitive criteria for what is "in the best interest of the child." Our present regime means that every day judges are faced with making a *Judgement of Solomon*.

This is not a criticism of just Australia. Many countries in the past, who have used a regime similar to ours, have also had to wrestle with the problem and the definition. Because it is ill defined, it becomes subjective and susceptible to fashions or fads. Consequently, its advocates find it hard to defend and judges can, all too frequently, find themselves pilloried in certain cases.

A system that seeks to prove that one parent should have custody because the other parent will, in some way, be detrimental to the child (in the absence of conviction of abuse, neglect, etc) is very frustrating.

Judges who are driven to awarding sole custody are, in effect, being asked to pick a winner. The judiciary then finds it hard to defend the indefensible – particularly when modern research is readily available.

EQUAL parenting provides the solution to these problems on two levels. Firstly, it treats all parties as equals, including the child or children. Much is said about children rights in the run up to and during legislative reforms but when the dust settles it is clear children have been used merely as a vehicle and are not better off,

The second solution level that EQUAL parenting provides is in supplying an objective measure, using common standards and criteria. For decades custody awards have been made on the basis of certain assumptions that certain things are essential for a child. Today, we can be less vague. We have the range of properly researched data able to provide professionals with the means to ensure that "the best interest of the child." can be met in full.

EQUAL parenting also obliges the court to state, on the public record, the reasons for making the award and enumerating all of the factors applicable.

Is EQUAL parenting complicated ?

No. EQUAL parenting is infinitely flexible. It can be as complicated or as straightforward as government departments or legislators want to make it. For example, take the format used in the state of Oklahoma. Its EQUAL parenting model is one of the simplest and most easily comprehensible for the ordinary citizen.

It simply requires judges to order EQUAL parenting in all cases involving divorce or separation. It also applies to couples who are not legally married. The order for EQUAL parenting made by the judge must be as near equal as possible in the individual case and is acceptable to both parties.

Oklahoma law covers separation and divorce as well as out-of-wedlock births. Oklahoma requires judges to order equal parenting time at the request of either parent for temporary custody, or what in Australia would be called an Interim Order, pending the divorce proceeding hearings.

This is important because most parents (fathers) lose both contact and custody at this stage, ie when one parent is initially made the 'Parent with Care'. The period immediately following the matrimonial breakdown is when children are most impacted by the loss of one parent.

For the other parent, establishing some sort of contact or dialogue with their children, or simply being able to visit them, is sometimes made impossible by the acrimony engendered by the current legal process (when the tactical advantage of temporary custody has to be safeguarded). The tactical use of obstruction and non-compliance, common in our present custody system, and used prior to any divorce absolute, later becomes a *modus operandi*.

For the non-resident parent endeavouring to establish 'contact' it can take many years even though the divorce hearings may have ended. Indeed, many parents (over 90% are fathers) give up the unequal struggle and figures confirm the fact that after divorce or separation around 40% of children lose all contact with their fathers after a few years. With EQUAL parenting these facets disappears. Any 'sole custody' request, from either parent, has to rigorously prove to a judge that joint custody would be positively detrimental to the child.

Oklahoma's simple formula has a presumption that a 'parenting plan' is lodged with the court by the divorcing parents. This emphasises that the children still belong to both parents.

This is also the first step to making automatic sole custody a thing of the past. From this stems the elimination for the race for matrimonial assets or the child's affections. It eliminates the need to 'snatch' children, paint the other parent in a bad light or for any one party to act precipitately in the hope that it will give them a tactical advantage in any subsequent settlement. It also avoids emotional and psychological manipulation by one, or both, parents because it will gain them nothing.

The right of parents to parent, under a parenting plan, in an Interim hearing, is temporary. It is up to both parents to either retain or lose custody through their actions during the following several months.

This is how the state of Oklahoma encapsulated those ideals when it adopted EQUAL parenting in 1999:-

It is the policy of this state to assure that minor children have frequent and continuing contact with parents who have shown the ability to act in the best interests of their children and to encourage parents to share in the rights and responsibilities of rearing their children after the parents have separated or dissolved their marriage. To effectuate this policy, if requested by a parent, the court shall provide substantially equal access to the minor children to both parents at a temporary order hearing, unless the court finds that such EQUAL parenting would be detrimental to such child. The burden of proof that such EQUAL parenting would be detrimental to such child shall be upon the parent requesting sole custody.

Why is EQUAL parenting so special ?

Most, if not all, child legislation claims to have the children best interests at heart. Worldwide, treaties and conventions dealing with human and children's rights all aspire to give children better protection and advance their individual rights. Yet even the most universal of these, the UN Declaration of Human Rights, is not as sure a guarantee of those liberties as most people believe.

No where in any Act or Convention is the child's access to its parents unassailably enshrined. The UN Convention, which is the most quoted, falls short in the practicalities of giving children meaningful rights. The UN clause providing children's rights actually allows for national laws, or local customs and traditions to override these sacrosanct rights. Thus it is that countries such as Saudi Arabia and the former Afghanistan can legitimately sign-up and endorse the UN rights for children without fear of contradiction or hypocrisy when cutting off a mother's right to access her children after divorce.

EQUAL parenting disposes of the inhabiting caveats and gives to children what they have always been promised. EQUAL parenting boldly states that a child has the inalienable right to a family and to have unfettered access to its parent.

How does EQUAL parenting vary ?

Today, in at least 36 American states, there exists a presumption or preference for joint custody. This obligatory and legally enforceable presumption for joint custody typically takes more than one form. Not unnaturally, over the years different terminology has arisen for the same status which sometimes indicates one state's individual preference or which can signify a subtle difference of emphasis.

For instance, the following are common phrases in the US : – "Visitation" meaning access or contact visits (where one parent is given sole custody). Joint legal custody, Joint physical custody, shared physical custody, shared physical custody responsibility and shared parenting. The UK also used the term 'joint custody' until the confusion engendered by the Children Act 1989 when it was replaced by the terms 'resident' and 'absent' parent.

States were naturally cautious in the pioneering days of EQUAL parenting and adopted a less presumptive stance than later converts, who, having seen the success accruing to those pioneering states have bettered the provisions. Recently passed legislation has tended to favour stronger presumptions that protect the child's right to both parents. Wisconsin, Oklahoma and Maine have since passed much stronger laws and the early pioneers may well soon reinforce their original laws.

Does EQUAL parenting protect children ?

Yes.

EQUAL parenting is only allowed where there is no substantial evidence or conviction of abuse, neglect, or other forms of maltreatment or delinquency that are

directly detrimental to the child. EQUAL parenting objectively weighs the factors. It deviates from the present regime, where mere allegations used purely for tactical advantage are allowed to be used without the false accuser suffering the penalty of contact rather than EQUAL parenting. Statistically, children are less likely to come to harm where there are two parents actively involved.

Stability for the child

EQUAL parenting only becomes operative after a marriage breaks down. Prior to that event the children of the family would have had uninterrupted access to both parents.

Children from intact marriages, ie where both parents stay together to raise children, are given a head start by this free access when compared with children from broken marriages or from *non-family households*, ie single mothers. Their enhanced skill acquisition, educational attainments and overall 'life chances' are due not to the lack of poverty or absence of low incomes but to *socialisation* by their father or permanent male role model. The biological father is the best of the possible father role model variables. The other key distinguishing feature of intact families compared to children from other family forms is stability of their home routine, location and stability within their circle of friends.

EQUAL parenting addresses these issues not from the point of view of either parent but from the child's perspective. The responsibility of the court is not to ensure who gets the children as prizes but that the physical custody and location of the child is disturbed as little as possible.

EQUAL parenting legislation provides that when the order is made the court may include a restriction prohibiting either parent from relocating if that relocation would unreasonably interfere with the relationship that the children have with the other parent.

The intention of EQUAL parenting is to promote a public policy of ensuring that custody of a minor child is awarded jointly to both parents. That policy includes provision for EQUAL residential arrangements so that the child resides with each parent in accordance with the needs of the child and the parent, and to make provisions for consultation between the parents in making major decisions regarding the child's health, education and general welfare.

Most EQUAL parenting measures do not have a presumption in favour of or against, one parent's request for relocation. However, it is up to the petitioning parent to demonstrate a benefit to the child, that it will not be detrimental in any way and / or prove an overriding need to consider relocation.

EQUAL parenting refers to a post-separation and divorce parenting arrangement that attempts to approximate the parent-child relationships in the original two-parent home, in which both parents have not only equal rights and responsibilities for their children's welfare and upbringing but have an active role to play in the daily routines of their children's care and development, and in which each other remain salient attachment figures in their children's lives.

It is intended that both parents continue their role in the actual day-to-day care of children with equal authority regarding children's education, medical care, and religious upbringing.

How EQUAL parenting helps the courts

EQUAL Parenting will help the court by reducing the number of cases that will be required to go to a hearing. This will be due to the fact that both parents will be aware that EQUAL Parenting is the default and only in extreme cases where one parent wants to rebut the others right to EQUAL Parenting and prove to the court that it would be in the child's best interest otherwise, will a hearing be required thus saving the court time and resources.

Furthermore, there would be a reduction in the number of incidents of litigation over the matrimonial assets as there will no longer be the presumption that whichever parent has custody of the children, gets the lions share of the assets.

How is it good for Government ?

By adopting EQUAL parenting the government would pre-empt any legal entanglements. Adopting EQUAL parenting immediately places custody practice in line with human rights legislation and avoids the possibility of lengthy, costly and humiliating court action future years. It also assists in preventing the law from falling into disrepute.

How is EQUAL parenting good for Government policy

EQUAL parenting enables several ideals encapsulated in the concept of "joined-up government" to be realised. With both parents sharing in the duties and care of the child, mothers would become economically independent. The vicious cycle of poverty and the 'dependency culture' deplored by ministers would be broken.

EQUAL parenting has been shown to reduce the likelihood of welfare dependency by providing that the child receives substantial, direct support in each of the two households and by reducing child care burdens such that both parents are better able to participate in the paid work force.

The esteem and self-confidence of mothers would increase. Working mothers would be able to portray a more positive role model of women to their children and society. The Women's Unit would be able to point to the many benefits working women were now bestowing on everyday life. The Government would begin to see the expected return on its investment in the benefits paid to full-time and part-time working mothers in the form of a reduction in the number of mothers on the Single parent pension.

The Government would see over the years a reduction in overall crime figures particularly in vandalism, petty and juvenile crime. The Department of Health would see its budgets going further as the nations health first stabilised and then improved as more fathers became more involved with their children's development. The Government would also gain from more voluntary superannuation being paid and the

ability of more people of working age to provide a pension for themselves in their retirement years.

In those jurisdictions where EQUAL parenting has been introduced the level of monetary support for anti-poverty programmes has fallen. This factor recognises that a parent who is allowed to be a parent and to maintain a substantial relationship with his or her child is likely to function better with respect to a variety of responsibilities, particularly child support payments.

For example, the US Bureau of Census has reported that child support compliance is 90.2% in cases of EQUAL parenting but drops to 79.1 % where only visitation is ordered. It drops to 44.5% where no EQUAL parenting or only contact (visitation) is ordered. Evidence to hand shows that Australia could expect a similar compliance rate should a change to EQUAL parenting be adopted.

CSA implications of EQUAL parenting

Studies in Britain and the US show that there is a correlation between fathers seeing their children regularly and child support payments. There is also a further correlation between payments and the quality and quantity of time fathers spend with their children.

In the US, Gov't figures show that where EQUAL Parenting is awarded mothers can expect to receive regular payments of child support in over 90% of cases. Where fathers are awarded only 'contact' (Visitation rights) this payment reliability falls to 79%. In those cases where no contact has been awarded payments levels plummet to 45%.

Figures from the US Bureau of the Census records show the "Compliance Rate" for US fathers paying child support as ordered by the courts to be as follows :-

- | | |
|----------------------------|--|
| a) Joint custody | 90.2% |
| b) Visitations rights only | 79% (equiv. Contact/Access in UK) |
| c) Fathers with no rights | 45% (ie where the court orders 'no order') |

What is truly remarkable from the above figures is that even in the worst case scenario, where one parents has no visitation rights whatsoever, the tenacious bond that binds fathers to their children is still so apparent that 45% still make payments. With a little encouragement - rather than always penalising and denying access - fathers in that 45% category could be 'incentivised' to pay more regularly.

With EQUAL parenting there is no reason why the above two categorises, ie b) and c), could not also approach 90% compliance level. The savings for Gov't would be enormous.

EQUAL Parenting is good for children's development

Research show that the active participation of a father in a child's life has innumerable and diverse benefits. Research also shows that its absence, far from having only a neutral effect, has many adverse and damaging affects. The reason for this can be demonstrated in simple form by an analysis of the 1997 University of

York study. They found that fathers spent the following amount of time with their children in the following ways: -

- 36% attended parent evenings at schools
- 35% helped with homework
- 25% dropped off or picked up the children from school
- 24% taxied their children around
- 23% babysat their children
- 39% were involved in none of these

From the sample the University of York team found that the fathers' biggest grievance (bigger even than the CSA) is the difficulty in trying to see their children. Contact was made in 47% of cases with only 21% of Non-Resident Fathers not seeing their children within the last year.

Good for mothers' health

Looking after children can frequently be tiring and draining on the parent with sole responsibility. A parent who is constantly both tired and irritable can not parent as well as someone with time and patience. They cannot give the child the attention they deserve. The present regime of awarding sole custody can easily overload many mothers.

The potential for overload is not restricted to physical characteristics. Women have a significantly higher admittance rate for psychiatric disorders and psychological treatment.

In a summary, on page 12, the York study found that of the sample of Non-Resident Fathers:-

- 54% had their children to stay overnight, 2 or more nights.
- 60% had their children to stay for longer at holidays.
- 46% who did not stay, of which 15% of fathers said they had nowhere for the children to sleep
- 6% of those who saw their children had fully EQUAL care (EQUAL residence ?) If at least 104 nights.
- 44% said they didn't see their children enough.
- 66% said their children would like to see more of them.
- 55% said they did not have enough control over when they saw their children

In the above survey subsection, only 6 men said their children had caused them problems with their partner. EQUAL parenting would address the 44% of fathers who said they didn't see their children enough. It would also address the 66% of children who said they would like to see more of their father. It would also tackle the problems faced by children and fathers who felt they had no control over when they saw one another.

EQUAL parenting minimises disruption

The potential disruption to a child's social and school life is minimised by EQUAL parenting. It ensures that the geographical proximity of the parental homes is taken into consideration with regard the parenting plan and other schedules. Where the parents live close to one another, particularly in the same school district, there is little to be weighed under this factor since joint physical custody will normally maintain the child's social and school life.

If one parent chooses to relocate to a distant point, the court must evaluate the impact of the move upon social and school life. In such situations, joint physical custody is normally maintained by providing longer periods of physical custody with fewer exchanges, for example, school year in the unmoved household with winter break, spring break and summer vacation in the moved household.

The child's opportunity to spend time with either parent may be impacted by each parent's employment commitments. For example, if one parent has extensive out-of-town travel commitments, the court may find it necessary to structure the physical custody schedule to account for these commitments. This may arise from a pre-divorce employment scenario or occur when a change of careers is undertaken. One obvious accommodation is to provide less weeknight time and more weekend time with the parent whose work requires travel.

Research indicates that younger children have less highly developed long-term memories with the result that frequent contact with each parent is important to prevent regression in the relationship. Frequent contact is particularly important during the nursery years to allow bonding with both parents. Since younger children are also home-centred rather than peer-centred, frequent exchanges of custody are also more easily accommodated.

A parent who seeks sole custody of a child, even with a child support order, is generally less able to provide for the child's needs than is the case when both parents are providing direct support to the child through substantial periods of residence in each household.

Any arrangement for the custody schedule should therefore have regard to the parents' ability to financially support custody. The custody schedule should not make paid workforce participation unduly difficult for either parent. EQUAL physical custody shares the burden of child care and allows both parents to have significant workforce participation thereby increasing total family income.

EQUAL parenting in Sweden

Sweden has had a joint custody presumption for married and cohabiting couples for quite some time. In the past, mother's had a veto power over the joint custody presumption. Literally, the law instructed judges to ask the mother if she approved of joint custody. If she said "no," she got sole custody. Recently the mother's veto power over the joint custody presumption was abolished for married (divorcing) couples. The current discussion in Sweden revolves around extending the joint custody presumption to never-married parents.

Good for Grandparents and extended families.

An oft forgotten factor in custody disputes is the extended family. Sole custody has the tendency to sever all contact between the child and its grandparents, uncles and aunts on one side of the family (the side without contact).

EQUAL parenting allows the wider family to remain involved in the child's rearing and the child's development is enhanced. As a consequence the child has a real sense of purpose, a sense of belonging, an identity and a sense of inheritance.

Issues with the Child Support Agency.

In regards to part (b) of the "terms of reference" for the inquiry, DADs Australia wishes to bring to the attention of the committee the following parts of the report completed by the "Joint Select Committee" (JSC) into certain family issues in November 1994.

To the best of our knowledge only a very small number (if any at all) of the 164 recommendations passed down by the JSC have been acted upon by the Child Support Agency.

This can only be described as a total disgrace and serious inquiries need to be made to ascertain why these recommendations have been total disregarded.

The Joint Select Committee (JSC) found, and we quote from page 8, that:

'complaints about the CSA included inconsistent advice, administrative errors and refusal to verify data or amend assessments when requested. The inaction or lack of service is inexcusable and in many instances is attributable to the CSA not giving full effect to people's rights and entitlements under the legislation. In these instances it is not a fault of the legislation but is the fault of the CSA in not fully implementing the legislation. In part this is due to a lack of explanation of clients' rights by the CSA or people being unaware of their rights. The end result is an often appalling client service delivery by the Registrar and the CSA which often appears to reflect an expectation that the problems clients have, and the clients, will go away if their rights are not explained.'

The JSC was concerned that the objective that non-custodial parents (or Fathers) share in the cost of supporting their children according to their capacity to pay may encourage the perception that the scheme is biased against fathers as it focussed solely on the contribution and capacity to pay of the non-custodial parent without mentioning the custodial parent's role in the support of the children.¹

¹ Child Support Scheme – Joint Select Committee on certain family issues – November 1994 p.5

Recommendation 4

The Joint Select Committee recommends that the objective of the Child Support Scheme that non custodial parents share in the cost of supporting their children according to their capacity to pay be redrafted so that it reads as follows:

- parents share in the cost of supporting their children according to their respective capacities to pay.

In May 1994 one third of the CSA's active caseload were private collect arrangements between parents. That left two thirds of registered liabilities as direct collect through the CSA collection function. The JSC considered that the collection rate would be a more accurate reflection of the CSA's performance if the child support paid pursuant to private collection cases was excluded from the calculation of the CSA's reported collection rate.²

Recommendation 9

The Joint Select Committee recommends that the child support debts paid pursuant to private collection cases registered with the CSA be excluded from the calculation of CSA's collection rate.

The JSC was concerned that the first contact a non custodial parent had with the CSA was computer generated letter written in a bureaucratic and overbearing manner – developed in ton and content from ATO practice. Combined with the poor level of information provided by the CSA to clients over the telephone the JSC found it easy to understand why many non custodial parents felt alienated by the CSA.³

Recommendation 32

The Joint Committee recommends that the CSA re-writes computer generated correspondence to provide clients with the information they require in a clear, concise and user friendly fashion.

The JSC had serious concerns that the CSA did not verify the accuracy of the information it obtained prior to acting on same.⁴

Recommendation 36

The Joint Committee recommends that the CSA staff be trained in the requirements of the *Privacy Act 1988*.

² Child Support Scheme – Joint Select Committee on certain family issues – November 1994 p.10

³ Child Support Scheme – Joint Select Committee on certain family issues – November 1994 p.24

⁴ Child Support Scheme – Joint Select Committee on certain family issues – November 1994 p.25

The JSC strongly believed that the CSA must comply with the statutory requirements of, and time frames set by, the child support legislation.⁵

Recommendation 42

The Joint Committee recommends that the CSA complies with the statutory requirements of the Child Support (Registration and Collection) Act 1988 and the Child Support (Assessment) Act 1989 and allows the prospective liable parents the statutory time to exercise their rights under the Acts.

The CSA advised the JSC that it did not have a national guideline on the use of the Child Support Registrar's powers to amend a formula assessment under Section 75 of the Child Support (Assessment) Act 1989. The JSC considered that the CSA should develop a national guideline and advise both parents in accordance with Section 76 of the registrar's powers to correct factual errors and false or misleading statements in a formula assessment.⁶

Recommendation 54


The Joint Committee recommends that the CSA develops a national guidelines on the use of the Child Support Registrar's power under section of the Child Support (Assessment) Act.

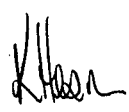
The JSC considered it important to minimise the CSA's intrusive practices by enabling parents to be given the choice as to how child support liabilities were paid. The JSC claimed it would avoid the necessity of unnecessary disclosure of personal information to non-custodial parents' employers and offer an incentive to non-custodial parents to comply voluntarily with their obligations.⁷

Recommendation 55

The Joint Committee recommends that section 43 of the Child Support (Registration and Collection) Act 1988 be amended to require the Child Support Agency to give non custodial parents the option of voluntarily paying their child support liabilities, rather than being automatically place on autowithholding.

There were 163 recommendations from the November 1994 Joint Select Committee in relation to the Child Support Agency. There has not been any parliamentary scrutiny to ensure compliance.


P. Townsend.


R. Hearn.

⁵ Child Support Scheme – Joint Select Committee on certain family issues – November 1994 p.30

⁶ Child Support Scheme – Joint Select Committee on certain family issues – November 1994 p.38

⁷ Child Support Scheme – Joint Select Committee on certain family issues – November 1994 p.39