

Submission No: 1009

Date Received: 15-7-03

**From:** [REDACTED]  
**Sent:** Tuesday, 15 July 2003 2:59 PM  
**To:** Committee, FCA (REPS)  
**Subject:** Inquiry into child custody arrangements in the event of family separation

Dear Sirs,

with regards the above Inquiry, I would like to submit the following:

(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; and

My ex-wife and I separated [REDACTED] Our initial agreement on the terms of separation with regards to both the custodial arrangements and financial arrangements was to be a 50:50 split for both. This was prior to my ex-wife discussing her situation with her lawyer. Post the legal discussion, her position was for 60:40 split (in her favour) for the financial arrangements and a 4 days/week (Monday night - Thursday night) custody for herself and 3 nights "significant contact for me. Additionally, although financial arrangements were based on 100% of our assets (including a reasonable amount in superannuation), her legal advice was to not accept any proposal with regards superannuation and hence the financial split was 80:20 (in her favour) based on what I would call current assets i.e. superannuation excluded. My ex-wife also claimed in her legal submission that she did not work in order to look after the children - my ex-wife did not work for three years prior to their birth and in fact has not worked since the separation (the children are now 9 and 7 respectively). The end wash-up of this arrangement was that I was essentially wiped out financially and whilst I have managed to maintain a house (in order to accommodate the children 3 nights per week) I have a substantial mortgage to sustain.

I believe the logic of separation should be based upon a 50:50 split of both the children's time and the financial arrangements. The current belief in the mother as primary care-giver and the father as primary provider is both out-dated and in many cases incorrect. Both parents should be responsible for the care and financial support of their children. I believe that in cases where the parent has demonstrated an inability to support & care for the children (for example, putting the child in moral danger by being a drug user or prostitute) should invalidate the 50:50 rule

\* (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. The existing child support formula is biased in favour of the custodial non-supporting parent. In my situation, I have care of my children for three nights a week (plus long weekend public holidays) and this equates to approximately 43% of nights. My child support payments would normally (if I had significantly less contact) 27% of my gross income (including FBT items). In my situation this equates to about \$18000 per annum. This has been reduced to \$12000 per annum because of the care arrangements. So, for 4 nights per week, my ex-wife receives payments of ~ \$12000 per annum or \$57.69 per night. My reduction in payments of \$6000 equates to a "payment" to myself for caring for my children of \$38.46 per night. Apparently it is cheaper for me to care for my children than it is for my ex-wife. Additionally, due to the terms of the financial settlement (refer above), my costs to maintain my house are significantly more. For essentially the same value house, my mortgage ABOVE that of my ex-wife is about \$60 000 or interest payments of \$3 600 per annum more by me over my ex-wife. This equates to additional costs incurred by me of \$23.08 per night that I have my children. The net effect of both of the financial situations places me at \$42.30 per night worse off than my ex-wife or \$6600 per annum based upon care nights.

Additionally when I started a new family I received a reduction in payments to my ex-wife of approximately \$1414 (based on the exempted amount for paying parent with 1 other child (\$19597) against a paying parent with no other children (\$11740) and using the 18% of income). This equates to a payment to myself for my full time child of \$3.88 per night - hardly fair and equitable when compared to the \$57.69 per night for two part time children or \$28.84 per night per child (payment to ex-wife). This means I must support my full time child on \$24.97 per night LESS than I pay my ex-wife to support my other children.

The final problem are in my opinion is that the payments are based upon gross taxable income plus Fringe Benefits Tax items. In my case, I have a company car - this car is essentially a fleet vehicle and the company policy is that manager have a fully maintained fleet vehicle. Whilst I will not argue that this is obviously a benefit to me, it is a non-cash benefit. For the 2002-03 financial year my FBT total was about \$14000 of NON-CASH benefit and yet I must pay my wife \$2520 of POST tax cash for this.

The current system does not encourage the non-custodial parent to start a new family (as I have) and indeed makes it very difficult to do so. The custodial parent on the other hand can start a new family with no financial penalty.

It is my belief that the system should be changed to:

- a) 50:50 split of ALL care and financial arrangements;
- b) that both parents have a right and responsibility for both the care and financial support of their children (and not one parent favoured over the other)
- c) the child support formula should be based upon a % per night - if for example we retain 27% for two full time children, this equates to 0.07% per night. IF one parent has care for 4 nights, the payment should be 15.4% and the other parent receives 11.6% compared with the current system of 18% and 12% respectively)
- d) the exempted income of a paying parent should be increased substantially to equate the amount retained by that parent for the new child with that paid for the "old" children.
- e) FBT items should either not be included in the calculation OR if they are included, the paying parent should be able to pay with PRE-TAX and not POST-TAX dollars.

I look forward to hearing the changes your inquiry proposes,

Regards,

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