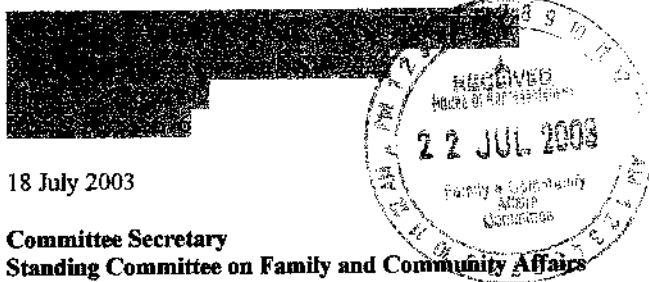


Submission No: 14

Date Received: 22-7-03

Secretary:

Dr Brian Ronthal



18 July 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
Australia

Submission for Child Custody review

I would like to make this submission to the enquiry into child custody arrangements in family separation.

As a medical practitioner working in country general practice I have managed families who have been through all aspects of separation, divorce and custody battles and I have personally experienced a custody case for my own children in the Family Court system.

My main concerns are to ensure that:

a) **Retrospective legislation** for presumed equal custody overrides existing court orders especially for children over seven years old.

b) **The ceiling on the child support formula be lowered** and that custodial parents are accountable for larger payments to ensure child support money is spent on the children. Or simply fix payments at \$100 per child per week for top income earners and reduce the amount dependent on income.

Fathers who want their children in private schools can always subsidise school fees on top of this. And if a father refuses then the child will go to a state school like the children of any unseparated family whose father will not or cannot pay private school fees.

c) **Time spent by parents with children must be unconditional** with respect to monetary gain. It is unwise to equate child support payments too closely to amount of time spent with a parent. This turns children into unwitting hostages.

a] A child needs equal time with both parents

There is already legislation in family law to put children's interests first but it has failed.

An ideology persists at the highest levels to protect the emancipation of women above the interests of children.

The Report of the Family Law Pathways Advisory Group found that some people think there is bias against fathers in the Family Legal system. This especially affects boys who need adequate male role models for normal development.

There should be a presumption that children will spend equal time with both parents.

A retrospective law is needed

A *retrospective* law allowing equal custody needs to be made for the thousands of children who currently already have court orders restricting access with their fathers to fortnightly or less. These children cannot be left out.

Existing court orders restricting paternal access to fortnightly visits need to be annulled without having to go through a court case.

This ought to be achieved by filling out an application form.

Some people feel that the Family Court is biased and highly adversarial so equal custody should not depend on its judgement

The presumption of equal custody needs to be achieved without court judgements because some people feel the Family Court is biased in favour of mothers [Report of Family Law Pathways Advisory Group]. The extreme adversarial nature of the Family Court adds dramatically to family conflict with children being the ultimate casualties. Families, which manage separation with minimal Family Court interaction, fare best. Equal custody needs to be presumed with as little Family Court interaction as possible.

The 50-50 custody arrangements between both parents needs to be made law by default without requiring Family Court assessment first because there is little chance of changing the current mindset of the experienced professionals already running the system.

The Legal professionals of the Family Court do not have adequate formal training in child and adult psychology, which is the basis of judgement if any cause were found for one parent to have less custody. Corporate lawyers have a sound training in economics the equivalent in Family Law is thorough training in psychology. Adversarial Family Court proceedings have a severe impact on the developmental psyche of children, which cannot be blamed on the parents but rather on the system itself.

To overturn the presumption of equal custody will need a court case to show that significant detriment will come to a child if that child does not live with only the one parent.

The problem of distance can be overcome

If distance between parents is so great that travel for the child is unrealistic then the place of the original family home can be regarded as the child's base and the parent living there can stay and the other has to move closer to have equal custody. Other factors in distance such as if one parent lives in isolation in the bush far from school will require the child to live with the other parent. Most already have travel arrangements between parents worked out for access and mostly both parents live in the same vicinity for the child's school and activities. Those cases, which are difficult, will simply require the parent living away from the child's current school to relinquish

equal custody. Some will not want equal custody anyhow. Those fathers that want equal custody will mostly have workable arrangements in place anyway and if not they have to compromise and move or give up equal time with their children. It should not involve much Family Court interaction if firm guidelines are drawn up as they are for child support payments.

The age at which a child can self determine which parent they want to live with should be lowered to ten years.

Rebuttal proceedings may result in false allegations

In dealing with rebuttal of equal custody false allegations against a parent must be punished.

Many false allegations of child abuse occur in the family court and this in itself is a form of child abuse for example with a parent subjecting a child to frequent unnecessary medical examinations after access with the other parent.

It needs to be made known that if a parent deliberately makes serious false allegations such as sexual abuse, which are proven untrue against the other parent they will lose custody and be charged themselves. Already a "cry wolf" situation exists with DOCS inundated with deliberate false allegations by family court lawyers as well as parents. The permanent emotional damage to children from deliberate false accusations of parental child sex abuse is grossly underestimated. Lawyers need to be struck off for participating in false child abuse allegations. DOCS would have substantial records of this practice as proof that it does exist.

An education campaign is needed to put a stop to the practice of false allegations to attack a parent after family separation.

Equal custody should only be rebutted if proved to be significantly detrimental to the child.

De Facto partners must be taken into account for rebuttal

The parent's partner must be taken into account when considering harm to a child.

It has been shown that the biggest risk to a child for abuse is the mother's boyfriend

It is rare for a parent to be harmful to his or her own child and the court needs to be sure beyond any doubt before declaring a child to be at risk from his or her own parent.

Other factors for time allotment

When deciding on how important it is for a child to also live with a father it must be acknowledged how vital a male role model is to the psychological development of a child.

A father who is a good role model with a good career can truly influence the future of his child. More time should be allocated for children to spend with fathers who are good role models.

A parent who lives centrally with good access to school and extra curricular activities for the child should be allocated more time for the child to spend with than a parent who lives in a more isolated environment.

Existing court orders for children over seven should be overridden by presumed equal custody

Over the age of seven a child should definitely be allowed more time with the father.

As a compromise all children over seven should have immediate presumed equal time with both parents regardless of pre existing court orders.

This presumed equal custody could safely override pre existing court orders because the presumed equal custody can be rebutted if there is a real risk to the child.

b) The existing child support formula is a failure and should be replaced.

More equanimity between payers is needed to be fair

Some fathers pay as little as five dollars a week and some pay as much as six hundred a week for three children. This is too wide a spread. Maximum payments should be 100 dollars a child per week and minimum should be thirty dollars a week per child.

The child support money goes to the custodial parent not the children

There is little correlation of the children's lifestyle to how much child support is paid. This is because the money goes directly to the mother who is not answerable to how the money is used.

The children may not benefit at all from child support payments.

In my case I pay six hundred dollars a week and the mother of my children puts the money into a fixed deposit for her own superannuation while the children live in poverty in the bush with their mother who associates with people living on welfare. The child support agency even pays the money directly into her fixed deposit account. I want my children to attend a private school but their mother will not send them.

The money I pay in child support does not reach my children.

The CSA and Family Court counsellors say there is nothing that can ensure the money reaches the children under current legislation. Even with large sums of money there is no accountability.

This needs to be changed and sums of over two hundred a week must be accounted for as to how the money is spent.

Child support payments should not be allowed to be saved for even if the child's name is on the account the mother can still withdraw or transfer the money at will.

Any child support money over two hundred dollars a week total that is not accountably spent on the children should be returned to the payer.

The formula is flawed

The child support formula itself is erroneous.

It is calculated on taxable income.

In any normal situation in unseparated families budgets are calculated on after tax income.

Taxable income is non-existent money; the only real money anyone has is what is left after tax.

The custodial parent receives the money tax-free.

A custodial parent who receives thirty thousand a year in child support is earning the equivalent of a fifty thousand a year taxable income from child support.

In any normal situation money received is taxed from the person receiving it.

Child support payments should be tax deductible for the payer and the custodial parent should pay tax on the money received.

This will give incentive to fathers to work and earn well rather than give up and drop out like so many are doing now.

The income ceiling of maximum payment is too high.

For example someone who earns 110 thousand dollars taxable income a year is in the 49% tax bracket, if he has three children he pays 32% child support which leaves him with only twenty cents in the dollar earned.

The ceiling should be at the level just before the tax bracket moves to the highest percentage.

Already a bill was put forward to this affect but not passed because it was said that this affects only one percent of paying parents but that is because many men drop their earnings out of the higher paying levels deliberately.

Making the child support payment ceiling lower will give incentive for these men to earn more again.

Also not all mothers are spending the child support money excess on their children for private schooling and improved lifestyle but are saving the money for themselves for when the children leave them.

Lowering the ceiling will provide work incentive

A number of men caught up in having to pay child support simply drop out of the workforce altogether because of the unfairness of the current formula.

Australia has the highest child support payment requirements in the world but the children certainly are not benefiting because men are simply dropping out of work.

The fact that only one percent of child support payers are in the top payment bracket says it all.

Divorces in men earning more than 110 thousand a year are more than one percent of the total.

What happens to these high-income earners when they have to pay child support?

That is why the ceiling has to be dropped to about sixty thousand a year to give incentive to child support payers to continue working and earning to full capacity.

The tax department would receive more money from them as well.

Do not put a price on time with children

The problem with reducing child support payments for time spent with fathers is that the mother might then deny extra access because child support payments would drop.

Children should not be used as bargaining chips. Equating time spent with children to money can turn children into unwitting hostages.

It is unwise to put a price on a child's head.

Better to fix payments at a more reasonable level of \$100 per week per child for top income earners and \$30 per week per child for lower income earners. For parent's living on welfare the taxpayer pays the bill anyway.

This will be an incentive for non-custodial parents to work otherwise it is too demoralising to know that the more you earn the more you pay. A fixed payment allows the payer to set a work and earning goal but a sliding scale is totally despairing.

It is remembered that child support payments are a share of the money needed to support a child, the custodial parent should be responsible for the other share and indeed in some cases the taxpayer is responsible for a share through the welfare system.

Child support payments should not be used as a means to reduce the welfare bill because the brunt of child support payments falls onto the working fathers who are the taxpayers as well.

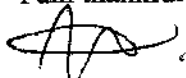
The fathers who are shirking child support are not paying their taxes in most cases either.

The decent fathers who do the right thing and declare their earnings and pay their child support and pay their taxes should not have to suffer for the behaviour of the fathers who cheat and pay no child support.

The top amount of child support payments should be lowered and the bottom amount raised.

Fathers who do not declare incomes or who deliberately manipulate their incomes down with car loans for work etc should have to pay full child support and the already high payers should have the ceiling lowered so that a sensible equanimity and fairness prevails.

I am thankful for the opportunity to make this submission



Brian Ronthal