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on Family and Community Affairs

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Submission To

Standing Committee on Family and Community Affairs

Inquiry into Child Custody Arrangements in the event of Family Separation

Anthony Farr
41A The Boulevard
Cammeray. NSW 2062



Introduction

This submission has a relatively narrow focus on financial issues. The following sections deal with only two topics:

- Equity and Child Support; and
- Financial aspects of shared parenting.

This submission does not address whether shared parenting is desirable or how it could be encouraged in Family Law. Having said that, the second section below assumes that shared parenting is, at least, not to be discouraged.

Equity and Child Support

A copy of a paper is attached for the Committee's consideration. That paper (Farr and Buurman, 2003) was jointly written by Gary Buurman and myself and recently published in the journal *Agenda* - <http://agenda.anu.edu.au/>. The paper examines the Child Support formula against threshold tests of fairness (generally referred to as equity in economics). We conclude that the formula is not equitable.

The paper uses the terminology of equity borrowed from economics. However I submit that the concept aligns well with popular perceptions of fairness.

The scope of the attached paper is limited to situations where children reside with their non-resident parent between 10% and 30% of the time. These bounds are set by the published data on child costs - there is no published data on the costs of children where children share their time between parents approximately equally.

In view of the Committee's brief I have performed some exploratory analysis of situations in which children reside with their non-resident parent more than 30% of the time. This analysis required assumptions as to the cost of children in cases of shared parenting:

- The costs derived by Henman and Mitchell (2001) can be viewed as a fixed cost (mainly housing) and a *per diem* cost (food, leisure etc). I have extrapolated these *per diem* costs beyond 30% contact and consequently beyond the scope of the Henman and Mitchell paper.
- I have assumed that the costs of children to the Resident Parent will decrease as their contact with the non-resident parent increases. In particular I have assumed that they will decrease in line with the *per diem* costs just described. Put simply, if the non-resident parent provides \$100 of food to the children, then that is \$100 less for the resident parent to spend.

The results of this analysis can be summarised as follows:

- When children have between 30% and 40% of time with the non-resident parent our results broadly hold - the formula is overly onerous to non-resident parents and overly generous to resident parents when compared against equity principles. While the extent of the inequity is reduced it remains significant.
- When children share their time approximately equally between households the formula is overly onerous to the parent with higher earnings and overly generous to the parent with lower earnings.

Financial Aspects of Shared Parenting

Parenting Payment

In the past it has been fair to say that Government benefits and taxation assume that after separation only one parent continues parenting while the other is merely a single person. In recent years this has been largely wound back with one important exception - Parenting Payment.

Parenting Payment is only available to one parent even if care of the children is shared equally. Carberry (1998) has analysed the issue in some depth and points out that it advantages one parent:

- A parent who does not receive Parenting Payment but is not in paid employment will only have Newstart available. This brings with it a number of obligations and constraints that do not apply to the parent receiving Parenting Payment. In contrast, the parent who receives the Parenting Payment is not obliged to seek work to qualify for payment and has access to special employment and education assistance on a voluntary basis.
- The parent who receives Parenting Payment is at a significant financial advantage to the other parent. Figure 1 shows the extent of the advantage for varying levels of earnings.
- As well as the direct financial advantages identified by Carberry there are also indirect advantages. The most significant is that the payment carries with it entitlement to concessions and discounts (e.g. pharmaceuticals, transport and energy) that (in many circumstances) will not be available to the other parent. Also Family Tax Benefit is more generous in some circumstances due to differences in the treatment of income excess.

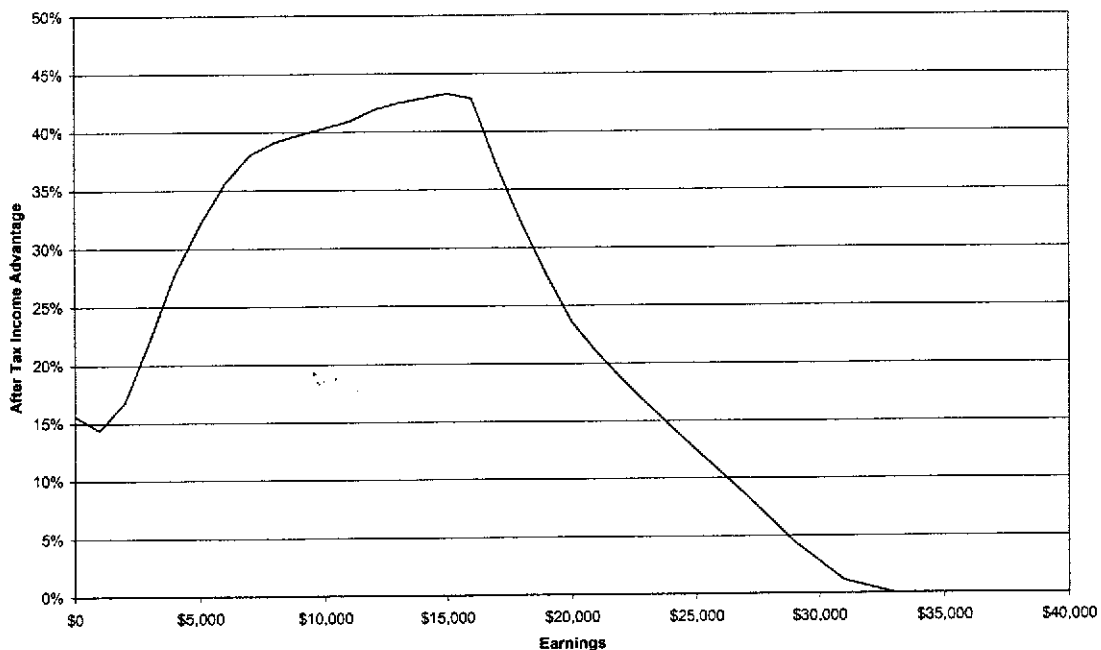


Figure 1 - After tax income advantage from Parenting Payment.

The situation is problematic for a number of reasons:

- It is inequitable. Two parents in the same situation will be treated differently.
- As Carberry points out, the parenting role of one parent is denied:
"Where both parents need income support, under the Social Security legislation and the way in which it is administered, one parent is a parent foremost and the other is unemployed and their role as a parent is secondary."
- To quote Carberry again:
"... family law and Social Security provisions are at odds with one another in relation to the treatment of separated parents who share care of their children"
This dichotomy would be exacerbated if family law was amended to (further) encourage shared parenting.

Financial Barriers to Shared Parenting

Affordability

Many non-resident parents do not have contact with their children because they simply cannot afford it (Smyth & Parkinson; 2003). This is particularly an issue where the non-resident parent cannot afford sleeping accommodation for the children (Woods; 1999). Because a non-resident parent's Child Support burden contributes significantly to their expenses, the situation represents a significant concern in respect of Child Support.

The model I constructed with Gary Buurman shows that a non-resident parent needs to earn \$33,000 per annum to be able to afford contact with two children 23% of the time (which equates to every second weekend and half the school holidays). Even then, only the "low cost" budget standard is attainable - the "modest but adequate" standard is out of reach. In contrast the resident parent need earn only \$4,500 per annum (in addition to Social Security) to attain the same standard of living.

Where care is shared 35%/65% the earnings needed by the non-resident parent drops only slightly to \$30,000. The resident parent needs to earn \$6,500 per annum to attain the same standard of living.

Where care is shared 50%/50% the parent not receiving Parenting Payment must earn \$26,000. In this situation, the parent receiving Parenting Payment needs to earn \$11,000 per annum to attain the same standard of living.

Financial Disincentives to Shared Parenting

In at least two respects there are financial disincentives to shared parenting.

The first issue is demonstrated by the scenarios described in the previous section. As the proportion of time that children spend with the non-resident parent increases, the resident parent needs higher earnings to achieve the same standard of living. In other words, the resident parent has a financial incentive to restrict the time that children spend with the non-resident parent.

The second issue arises because non-resident parents face significant costs of contact (Henman 2001) - in excess of \$5,000 per year to provide basic infrastructure (Henman and Mitchell; 2001). Our model indicates that non-resident parents would maximise their financial position by having no contact with their children.

Of course choices about contact are not made solely on financial grounds. Other factors also play a part - presumably a powerful part. Nevertheless financial disincentives to shared parenting should be avoided if such an arrangement is to be effectively encouraged.

Summary

My submission can be summarised as follows:

- The Child Support formula is not equitable.
- Parenting Payment is problematic because it is inequitable and at odds with shared parenting.
- Parents moving from the current standard residence/contact regime to shared parenting face financial disincentives and problems with affordability.

References

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- Smyth B & Parkinson P (2003) "When the difference is night & day: Insights from HILDA into patterns of parent-child contact after separation" *HILDA Conference 2003*, The University of Melbourne, Melbourne, Australia, 13th March 2003.
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