

Committee Secretary  
Standing Committee on Family and Community Affairs  
Child Custody Arrangements Inquiry  
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I would like to lodge the following submission with regard to Child Custody arrangements in the event of family separation.

I support the notion of equal shared care of children between both parents following relationship breakdown. Of course there may be circumstances where such an arrangement would not be in the best interests of the child(ren) and therefore processes must be in place for these issues to be dealt with in the best possible way.

**Brief background.**

I married my wife in 1996. She already had two children from a previous marriage. I took those children on as my own, and their natural father has had no input to their lives whatsoever and has not paid Child Support for them either. This was by agreement between himself and my wife. We had our own child together in 1998. My wife left me for her own reasons in January this year and took the children. She said I can never see the step children again ever, and I would only see my daughter whenever the court said I could. She refused to let me have my daughter for overnight contact at all. After a few weeks of trying to convince my wife to let me have the children overnight she continued to refuse, so I lodged an application with the FMS for interim orders to get overnight contact established with all 3 children. This was granted and I now have 33% residency of all 3 children awaiting a final hearing.

## Response to part (a) i

I believe that a starting point of equal shared care is the best for the following reasons.

1. Children have the right to the love and care of both their parents. This is indisputable. No child should be removed from the love of both parents without good reason. Equal shared care is the best starting point for this as it does not promote one parent above the other in the child's eyes.
2. Children need the balance and input of both parents to allow them to develop into mature, balanced and well rounded adults. If children see both parents regularly and equally it helps them to receive the best that both parents have to offer. This includes education, outlook on life, life experience, exposure to a wider view of the world and the ability to develop and maintain friendships. Two parents can achieve these ends better than one alone can. This would also help remove the 'weekend fun Dad' situation.
3. Children need the ability to understand how to relate in a loving family situation to adults of both sexes. At present many boys do not have a close male role model in their lives, and many girls do not know how to relate to men. This leaves the boys ( young men ) open to unsocial behavioural tendencies, and many girls may seek male attention in ways that are unhealthy or inappropriate.
4. The present system gives the custodial parent more power and control over the child which can be abused, and used against the non-custodial parent. Equal residency will put both parents on an equal footing where cooperation and understanding will be necessary. Decisions will then be made that really are in the best interests of the child as neither parent will be able to gain anything for themselves out of the decision making process.
5. The present system is expensive, time consuming, adversarial and is perceived to be biased. This in itself promotes a climate of hostility which can adversely affect the children. Most men want more involvement in their children's lives but simply cannot afford to keep going through the court system. The wife ( usually ) on the other hand, gains legal aid at a much lower rate and only has to pay a small percentage of what the man pays.
6. Shared care will help save the Government money. Most fathers who want shared residency will continue to work full time and not drain Government coffers. A presumption of shared care will help many single parents get back into the workforce. Of course workplace re-entry assistance may be needed. This assistance is already available and is nothing new as Centrelink are doing this now, as part of the Australians Working Together initiative. Many married couples both work, even when they have children, why can't single parents?
7. The notion of 'primary caregiver' must be abolished. It is sexist and biased. This notion of 'primary care' is what leads to sole residency orders being given. When it comes to property, the law states that any contributions made as homemaker and parent are considered equal to financial contributions made by the bread winner. Therefore both parties start off on an equal footing. Why doesn't the reverse happen? In most cases the man, as a matter of necessity

goes to work and the mother stays home ( when the children are young anyway ). All contributions to the family and the children must be taken into account. Surely the provision of money is caregiving also, as no family can exist without it. Couple this with the fact that many men have a big share in the physical, social, emotional and educational upbringing of their children, then we should start off with 'equal caregiving'. The only time you will have a 'primary caregiver' is where one parent has been neglectful of, or incapable of performing their responsibilities. The burden of proof will be on the parent who feels they truly are a primary caregiver.

8. Children need stability in their lives. Having a week about shared care regime or something similar that is regular and routine helps create stability. There is no difference between shared care and any other routine access regime in this regard. If it is repeatable and foreseeable then that makes stability. Everyone will know a long time in advance which home the children will be in at any one time. Plans can be made, appointments kept etc... because the regime in place is easily projectable into the future.

### **When rebuttable -**

There are of course many reasons when this should be rebuttable.

1. Domestic violence, sexual abuse, physical abuse and emotional abuse are intolerable. The court system already has ways to deal with these issues no matter what the presumed starting point for custody is. Starting at a presumption of 50/50 shared care does not in any way hinder the process of protecting the spouse and/or the children being exposed to these problems. If there is a problem it should be dealt with in the same way as it is now. The victim should take the children ( as usually happens now ) and approach the court to show due reason why the offender should not have shared care, or indeed any care. Any serious allegations must be proved.

2. Where one spouse cannot provide shared care. Whether because of work commitments, physical or mental inability, or simply because they do not want it. In this case the care arrangements could be worked out outside of the court system through mediation.

3. Where there is a danger the child will be or is being exposed to behaviour, activities and/or entertainment that is illegal or improper for the child's age. Any such accusations must be proved.

4. If the logistics of shared care make it too hard, or impossible, either by distance or other reason. If distance is the argument against shared care then due reason must be given as to why one partner moved so far away. i.e. you must not be able to move away just to make shared care impossible. The separating couple usually lived together right before separation.

5. If one party believes the other does not deserve, or cannot provide proper shared care then the burden of proof must be on the applicant. The present system leaves the burden of proof on whichever parent does not 'seize' custody following the relationship breakdown. ■■■

6. If the parents do not have an amicable relationship post separation, this should not be able to be used as a rebuttal against a presumption of shared care. If it were able to be used, all one party would have to do to upset the shared regime would be to make it an un-amicable situation purposely.

### **Response to (a) ii - Grandparents**

With regard to Grandparents and other family relatives that the court should be able to grant access orders for children. If the circumstances of the breakup are such that the resident parent will not allow the children to see the grandparents and other close family relatives, then the relatives should be able to be granted orders. This helps children grow and have the extra beneficial input to their lives that only grandparents can give. Usually relatives are excluded from the children's lives as a result of hostility between parents not because of any fault with the relatives. This only limits once again the wider exposure to family life children need. In my case the children only see any of their relatives when they are with me as my ex wife does not have a good relationship with any of her relatives including her own parents, brother and sister. The children would miss out if it were not for me taking them to see their relatives.

### **Response to part (b) - Child Support**

1. I believe we need a system to provide for the needs of children. However this system also needs the power to enforce not only maintenance payments, but also contact orders. It should not simply be a Child Support Agency ( for money ). It should be a Child's Interests Agency with powers to enforce all orders made by the court in the best interests of the child( or lodged by agreement ). Or maybe even the Family Assistance Office can take over the role of the CSA, and apply the same sort of legislation Centrelink has with regard to non-compliance with court orders. If the court makes the orders then they must be enforced both ways. This would include maintenance payments and contact / residency orders. Centrelink, for example, can stop unemployment payments to people who refuse to look for work. Well, in the case of children's matters if one parent fails to comply with orders they should be penalised. Repeated contravention of orders would result in stoppage of payments ( both

Centrelink and CSA ) and prosecution if continued. If the custodial parent refuses to allow court ordered access, then there must be some sort of CSA officers ( or court officer ) appointed who can go along with the contact parent when they are supposed to pick up the children to witness what occurs. If access does not occur then penalties are imposed.

2. The formula must be adjusted to recognise the actual percentage of time the children reside with the parents. There should not be a slot you fit into, just simply apply the actual percentage. For example, I have my child 33% of the time. Therefore I should be paying 33% less than what the maximum I would normally pay. Given that the maximum you pay for one child is 18%, I should be paying 12%, but the formula says I have to pay 14%. Centrelink recognises I have the children exactly 33%, why does not the Child Support Agency? I still need to set up a home for my children, I need to buy clothes, feed them, entertain them, buy medicines etc.... Also my wife took a lot of the household goods and chattels. I gave her money to help set up her new home but I also need to set up another home.

3. Child Support payments should be worked out on the net amount earned not the gross amount. Either that or they should be tax deductible. Every dollar of Child Support paid saves the Government money in social security payments.

4. Presently the Child Support agency will not reduce the payer's income assessment unless it drops by at least 15%. Why? If your income drops so should the assessment. You should pay based on the actual amount of money you earn. If your pay drops ( as mine has ) so should your assessment. In my case I have gained a temporary pay rise. The CSA now works out my assessment based on the higher figure. When the job runs out I will go back to the lower pay. The CSA however will not reduce my assessment as it does not drop by 15%. I will then be paying more than I should be.

5. The exempt income amount should be increased. It costs far more than the current exempt amount for one person to live. Then, when they must also supply food, housing and clothing for children the cost goes up considerably.

## **My ideas about how it might work.**

As soon as couples separate they should approach the court for mediation / counselling. They must then indicate what they propose as for residency. If one or both parents propose something other than shared equal care, they must satisfy the court that the arrangements proposed are beneficial for the children, and are agreed on by both parties. If not agreed on then shared care will be instituted immediately. If there are serious allegations then these must be investigated and acted on immediately. Of course, in the first few weeks the children may have to live more with one or the other parent until arrangements can be made. During this period, allegations can be fully investigated if raised.

Legal aid must be dependant on compulsory mediation and counselling which is reviewed and reported on by the mediator or counsellor. If one parent does not attend or is hostile, or does not participate appropriately then this must be reported to Legal Aid.

Court should be pursued only as a last resort. Mediation, counselling and conciliation must be compulsory. If one parent does not attend or is hostile, or does not participate appropriately then this must be reported to the Court.

There will be people in each court ( maybe the court registrar ) who will decide if the case needs to go to court. They will review all the relevant documentation including reports from the compulsory mediation and counselling sessions. This person ( or group ) will also decide if proper actions have been taken by both parties to achieve a suitable shared care regime. If one party is purposely trying to make shared care too difficult this too must be reported to the court.

If there are, or may be, problems during handover periods, then suitable arrangements can be made by the court. There are many ways to avoid problems during handover times where any underlying relationship problems between the parents can be minimised or supervised. Hopefully with time and education, much hostility can be removed as things settle down. Government programs such as the contact Orders Programme, Children's Contact services and Family Relationship Services Program are better cost efficient ways of helping families through these difficult times.

## **Comments on some views put forward by Chief Justice Alistair Nicholson**

While I realise this part of my submission may be out of scope for this inquiry, I would also like to respond to the Chief Justice Alistair Nicholson's comments on shared care.

Statements by the Family Court and especially Chief Justice Alistair Nicholson that the system is working effectively are misleading. They state that because only a small percentage of cases actually go the whole way to court that the system is working. This is misleading simply because a lot of men give up because they cannot afford it and just accept what they can get. They believe the system is biased against them and feel it is a waste of time to fight for something they have little chance of winning.

I can say this because this is exactly how I felt. After doing a lot of research, reading previous judgements etc.... I felt very downhearted. If I had given up at that time I would have become one more so-called 'success' in the court system.

Statements are also made that only the most difficult of cases go all the way to court. This too is misleading. My case is a clear example. My relationship with my ex wife is not difficult and is not hostile. Of course it is not good, but we do not fight, yell or anything like that. She simply refuses to let me have my children and she wants a large property settlement. Shared parenting will give both parents an equal chance to show they are capable parents, and this will work out best for children as they will get the best of both parents ( and the best of both parent's sets of relatives and friends). There should be no winners or losers as such and shared care will help prevent this.

Justice Nicholson also states 'what is not always understood is that many couples sort out differences over their children between themselves. Most of the remainder achieve resolution with the assistance of court mediators or external counselors. The remaining 5 per cent participate in defended hearings in which decisions about their children are made by a judge, judicial registrar, or federal magistrate. Such cases are totally unrepresentative, generally represent the most difficult of parenting disputes and, I believe, form the basis of the latest campaign.'

So he believes the current campaign has been started by a very small group of disgruntled men who represent the most difficult 5%. So he must feel the other 95% are happy with the arrangements they have. The easiest way to see if the other 95% who apparently work it out themselves are happy with the arrangements is to ask them. Lets do a survey of a representative group of families who have been through the so called successful court mediation/counselling system and see if they are happy. I am sure the mothers will be as they usually get what they want. I am sure you will find most of the fathers and children will not be happy. They simply had to take what they could get.

If we have a new system where shared care is presumed, many more men would have much more input into their children's lives and feel useful, not useless, and there will be much less litigation. The Family Court ( and FMS ) could then concentrate on early investigation of the serious cases.

It is stated that the remaining 5% of cases are unrepresentative! Of what? They are the representative cases. These are the very cases that show a presumption of shared care is necessary. Then the best interest of the children truly will be sought. The only cases that will get to court are those where there really is a serious problem with one or the other parent. Chief Justice Nicholson states he believes these difficult cases form the basis of the latest campaign. Untrue! The basis of the current campaign comes from all parents ( both fathers and mothers ) who feel the present system is not working. It also comes from grandparents and other relatives who are being pushed out of children's lives.

Thank you

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