



House of Representatives Standing Committee on Family and Community Affairs	
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Ms Bev Forbes
Committee Secretary
House of Representatives Standing Committee on Community
Affairs, Child Custody Arrangements Inquiry
Parliament House
Canberra ACT 2600

Email: FCA.REPS@aph.gov.au



Dear Ms Forbes

The National Welfare Rights Network (NWRN) welcomes the opportunity to provide comment to the *Inquiry into child custody arrangements in the event of family separation*. The Committee's important deliberations could have a significant impact on the families of large numbers of Australians.

Our submission, as you will note, does not focus on the vexed and complex issues surrounding joint rebuttable care in itself - rather it explores the current impact of shared residential care on a variety of Social Security payments. It is the contention of the NWRN that there are a significant number of anomalies and inconsistencies under the current arrangements.

Indeed, recent correspondence (11 July 2003) to the NWRN on behalf of the Minister for Family and Community Services, Senator Amanda Vanstone agrees with this, stating that "(t)he government understands that the current policy means that separated families in very similar circumstances can be treated inequitably".

If these inequities are not addressed, any increased incidence in joint residency would lead to a much larger number of separated parents and their children facing financial hardship and being unfairly treated under Social Security legislation.

Please do not hesitate to contact either myself or Julia Priest (4276 2534) if the Committee would like further elaboration of the issues raised in our written submission at the time of public hearings.

Yours sincerely

Michael Raper
President

The NWRN is a network of services throughout Australia that provide free and independent information, advice and representation to individuals about Social Security law and its administration through Centrelink. For member details, services and information visit: www.welfarerights.org.au



**Submission prepared by the Illawarra Legal
Centre on behalf of the National Welfare Rights
Network**

**Inquiry into child custody arrangements in the
event of family separation**

1. Introduction

The National Welfare Rights Network (NWRN) is a collection of Welfare Rights Centres and Services from around Australia: a contact list is enclosed for your information at Appendix A. We consist of specialist service agencies and community legal centres that advise and advocate on behalf of clients about issues relating to the Social Security Act, Family Assistance Act and administrative law.

The presumption of joint residence would have a major impact on a significant number of people reliant on income support payments and a comprehensive revision of Centrelink payments would be required in order to prevent significant inequities.

We welcome the opportunity to contribute to the inquiry and our submission will focus on how a presumption of children spending equal time with each parent post separation would impact upon:

- eligibility for Parenting Payment ;
- ability to comply with requirements to satisfy payability conditions for Newstart Allowance;
- eligibility for Carer Payment;
- payability of Youth Allowance; and
- the payment of Family Tax Benefit.

2. Parenting Payment

In order to qualify for Parenting Payment, there is a requirement that the claimant has at least one dependent child in their care. Under present Social Security legislation, a child can only be dependent upon one person at a time, and this effectively restricts eligibility for Parenting Payment to only one parent. It is often a matter of luck as to which parent claims Parenting Payment first. This means that separated parents in very similar circumstances can be treated inequitably and resulting in significant appeals to Centrelink and tribunals over the issue of parental responsibility. This directly contributes to unwanted disputes between parents.

This limitation affects not just Parenting Payment Single (PPS) claimants (sole parents), but also Parenting Payment Partnered (PPP) claimants (generally partnered women who have dependent children). If a child were to spend fifty percent of his or her time with each parent – only one would be eligible for PPS. The other parent if single would need to claim Newstart Allowance and even if partnered, neither they nor their partner would be able to claim PPP unless there were other dependent children.

In joint residency cases, children's welfare will depend upon the financial welfare of both parents. Newstart Allowance for a single person with dependent children is \$30 per fortnight less than the rate of Parenting Payment Single. A parent with considerable parenting responsibilities faces significant costs associated with raising their children. It is often unfair to expect young children to move their possessions from one house to another on a weekly basis and for this reason many parents provide their own set of items in terms of clothing and toys. Each parent needs to provide a room where children can feel at home and be able to house their possessions. This means that both parents often have similar costs in providing nurturing environments for their children. This situation will become more widespread if a presumption in favour of joint residence is introduced as it will oblige more single parents to provide well established accommodation for their children. Social security payments must recognise these costs in the provision of adequate payments.

Recommendation: Parents who care for their children at least 40% of the time should be entitled to Parenting Payment even where the other parent is in receipt of the same payment.

3. Newstart Allowance

Joint residence arrangements would see many more parents in receipt of Newstart Allowance with significant caring responsibilities. If a person has full time care of their child every second week they would find it nearly impossible to fill in their Job Seeker Diary, obtain Employer Contact Certificates, engage in "Work for the Dole" programs, continue in intensive assistance or attend to other activities as required by either Centrelink or their Job Network provider.

It has been our experience that parents in such situations experience considerable difficulties in negotiating flexible Preparing for Work Agreements so that they are able to provide the care and support for their children who live with them on a rotating basis.

If a parent on Newstart Allowance is unable to fulfil their duties to Centrelink or their Job Network Provider they risk being breached, with penalties ranging from loss of 18% to 24% of their income for six months or total loss of income for 8 weeks if they fall foul of Centrelink rules for a third time. It is evident that fulfilling "mutual obligations" imposes a considerable burden on Australia's unemployed – which will place a greater toll on children who live with parents who are breached.

Any increase in parenting responsibilities will impact upon parent's ability to not only look for employment, but also to secure employment flexible enough to accommodate their caring responsibilities and to remain in the workforce on a full time basis.

Case study:

Angela and Ian separate and their two pre – school children spend four days a week with their mother and three days a week their father. Ian is unemployed and receiving NSA. Angela was receiving Parenting Payment Partnered but following the separation claims Parenting Payment Single. Ian finds it increasingly difficult to comply with his job search requirements on the days he has the children and he claims Parenting Payment Single but is ineligible because Angela is already receiving the payment.

Ian is breached when he is unable to satisfactorily complete his job seeker diary resulting in a loss of 18% of his income for six months, a penalty equivalent to \$889.43.¹ Despite wanting to spend time with his children, he ends up booking them into long day care so that he can comply with his job seeking obligations.

Recommendation: That labour market participation requirements for people on NSA recognise differences in individual circumstances and caring responsibilities.

4. Carer Payment

It is a qualification for Carer Payment in respect of a child with a disability that a person is providing constant care. Generally, a parent is limited to 63 days respite from these caring responsibilities per year. A presumption of joint residency would mean that neither parent may qualify for Carer Payment when looking after their child with a disability and would be required instead to claim Newstart Allowance and face the difficulties associated with looking for work while at the same time caring for a child with a disability.

5. Youth Allowance

For Youth Allowance purposes, Centrelink has regard to whether a person is 'dependent' on a parent. If so, the parental means test is applied to determine a rate. In considering which parent's income is to be taken into account, social security law specifies that it is generally the parent with whom the young person normally lives.

Youth Allowance payments for dependent 16 or 17 year olds is usually paid to the parent. It cannot be split between separated parents. Centrelink guidelines state that where custody is shared, Youth Allowance is paid to the parent nominated by the young person as the main carer. This will be problematic where the young person spends equal time with each parent and is another example of where the presumption exists that residence is primarily with one parent.

¹ The value of an activity test breach for a Newstart Allowance recipient. Rates current at June 2003.

6. Family Tax Benefit

Separated parents are able to split Family Tax Benefit (FTB) according to the percentage of time each parent has the care of their children. Levels of care often change throughout the year depending upon family dynamics. Disputes about the level of care are the subject of many appeals to Centrelink and tribunals and result in numerous complaints to members of parliament and the Ombudsman.

The Commonwealth Ombudsman has found that disputed care was the second highest subject of complaints received (after FTB debts overall).² It was noted that since the introduction of FTB, the number of disputes has been significantly broadened. One could anticipate that this would escalate where there was a presumption of children spending equal time with each parent.

Since the introduction of FTB, a parent can retrospectively claim entitlement to FTB at the time a tax return is lodged. Where this happens, a debt to the resident parent can result.

Case study:

Sue had the care of her four children 75% of the time, with her ex-husband Eric caring for them the remainder. Sue was in receipt of PPS and was receiving FTB each fortnight. Eric claimed FTB for the 2001/02 financial year when he lodged his tax return in February 2003. In May 2003 Centrelink determined he was qualified for payment and he received an arrears payment of \$1,060 for the financial year. Eric was only entitled to the minimum rate of FTB as he had remarried and his combined family income was high.

Sue's FTB rate was reduced in May 2003 to 75% of the maximum rate and she was notified that she had a debt of \$3,300 for the 2001/02 financial year and a further debt of \$2800 for the period July 2002 to May 2003.

Sue did not dispute that she was only entitled to 75% of FTB, however thought it unfair that even though Eric was only entitled to \$1,060, she had to repay \$3,300 for the 2001/02 financial year with the \$2,240 balance a windfall to the government. Sue is waiting to hear the extent of her debt for the 2002/03 financial year where again the government will benefit from the disparity between her debt and her ex-husband's entitlement.

Recommendation: That parents who claim FTB under the shared care rules should not be able to claim retrospectively.

Recommendation: That parents who wish to claim FTB at the end of the financial year due to shared care should be required to register their intention

² Commonwealth Ombudsman, *Own motion investigation into Family assistance administration and impacts on Family Assistance Office customers*, February 2003, par. 84 and 85.

to claim and have it accepted by Centrelink at the beginning of the relevant tax year.³

Recommendation: That the amount of a debt as a result of shared care should be limited to the entitlement of the other parent.

7. Conclusion

Social Security and family assistance payments are determined in part by principles associated with households, family income and dependency. In most families it is the norm that one parent is the primary carer of the children. Joint residence will impact in the following ways:

- arrangements for some children post separation would be significantly different from pre-separation arrangements;
- it will present practical difficulties for many separated parents to meet their obligations to continue to receive Newstart Allowance, or undertake training or study;
- it will require extensive changes to the criteria for a number of Social Security payments and add to the complexity of determining eligibility;
- there will be an increase in the number of disputes that Centrelink and tribunals will have to mediate and resolve; and
- it will necessitate an increase in social security expenditure to adequately compensate parents for the additional costs associated with caring for their children to such a significant degree. Failure to do this would mean that children whose welfare depends upon the financial welfare of both of their parents would be placed at risk of poverty.

Shared residence is an area fraught with emotion and disagreement. The presumption that children will spend equal time with each parent following separation will be a critical issue determining eligibility for receipt of income support. It will result in, at best, added complexity to an already complex system and, at worst, in considerable inequities between parents seeking to share in the care and support of their children.

³ This is in line with recommendation 7 of the Ombudsman's report. See above.

Attachment A Welfare Rights Centres and Services

Welfare Rights Centre Inc
PO Box 97
STONES CORNER QLD 4120

Townsville Community Legal Service
PO Box 807
TOWNSVILLE QLD 4810

Welfare Rights Centre
220 Victoria Square
ADELAIDE SA 5000

Hobart Welfare Rights Advocacy Service
166 Macquarie St
HOBART TAS 7000

Launceston Community Legal Centre
PO Box 1582
LAUNCESTON TAS 7250

Darwin Community Legal Service
GPO Box 3180
DARWIN NT 0810

Welfare Rights Centre
5B 414 Elizabeth St
SURRY HILLS NSW 2010

Illawarra Legal Centre
PO Box 139
WARRAWONG NSW 2502

Welfare Rights and Legal Centre
PO Box 337
CIVIC SQUARE ACT 2608

Welfare Rights Unit
155 Easy Street
COLLINGWOOD VIC 3066

Geelong Welfare Rights Centre
257 Moorabool St
GEELONG VIC 3220

Sussex Street Community Law Service
29 Sussex St
EAST VICTORIA PARK WA 6101

Community Legal & Advocacy Centre
Cnr 24 Parry & High Streets
FREMANTLE WA 6160

Welfare Rights and Advocacy Service
98 Edward St
PERTH WA 6000