

# Relationships Australia Tasmania

House of Representatives Standing Committee on Family and Community Affairs	
Submission No:	435
Date Received:	11-8-03
Secretary:	

## Submission to the House of Representatives Inquiry into Child Custody Arrangements in the Event of Family Separation



August 7 2003

## **Inquiry Terms of Reference**

The framework for the House of Representatives *Inquiry into Child Custody Arrangements in the Event of Family Separation* is:

“Having regard to the Government’s recent response to the Report of the Family Law Pathways Advisory Group, the committee should inquire into, report on and make recommendations for action:

- a) given that the best interests of the child are the paramount consideration:
  - 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
  - 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 the care of, and contact with, their children.”

## **Response from Relationships Australia Tasmania**

Relationships Australia, Tasmania is a community-based organization which started operation in Tasmania in 1948 as the Marriage Guidance Council. Relationships Australia, Tasmania is an approved organization under the provision of the Family Law Act (1975).

Since inception we have been providing services related to family formation, separation, dissolution and relationships post separation and divorce. Since 1996 we have provided services specifically developed to assist children to have contact with both parents. In some cases these services also facilitate contact with other key

people including grandparents or siblings. The services are provided through two Children's Contact Services (in Hobart and Launceston) and a Contact Orders Program. The three services are funded by the Commonwealth Attorney General's Department. In addition we also provide Family & Relationship Counselling services, a Men and Family Relationships program, Relationship Education, Separation Mediation and a Reconnect program (aimed at reducing youth homelessness).

In the twelve months to 30 June 2003 the three services which specifically facilitate children's contact have worked with 305 cases, and 320 children, facilitated 2766 changeovers and 1244 hours of supervised visits.

At an early stage in the work with child contact cases both parents are assessed on five criteria :

- their ability to separate their own needs from their child's
- their flexibility and ability to negotiate
- the level of conflict with the ex-partner
- the level of family violence and
- their willingness to use the service

These assessments are used to give the case a complexity rating. Typically cases have a high complexity rating. These assessments are done to determine the level of vigilance the case requires which in turn determines a number of other issues including staff levels.

The foregoing background information is given to illustrate both the experience of Relationships Australia, Tasmania and our knowledge the features of families where there are problems self managing the children's contact with both parents.

These cases are characterized by inability to agree on what is considered to be in a child's best interest or adults who are unable to put the child's needs above their own needs or to implement what is in the child's best interest.

Relationships Australia, Tasmania strongly argues against the introduction through legislation of a presumption that children will spend equal time with each parent. We consider that the act as amended in 1995 already provides a strong indication that this is an aspirational position and should apply when it is in a child's best interest. For a great variety of reasons the children of intact families seldom spend equal time with each parent so to introduce such a presumption for the children of separated parents would be likely to increase the conflict and dissatisfaction.

Is likely to be counterproductive for the children whose parents cannot agree on or are incapable of implementing what is in the child's best interest. The legislation would contribute to increased dissatisfaction, conflict and sense of failure for those cases where the presumption is successfully rebutted.

These comments are apply to all parties who may wish to have contact with children after separation. The child's needs must be put before any person's sense of entitlement to contact with the child.

The work with parents who are not successful in achieving the level of contact to which they believe they are entitled is highly skilled and complex as in most cases there is a danger that anger and frustration may lead to further reducing the child's likelihood of having a good relationship with both parents. The changes as proposed have the potential of increasing anger, despair, destructive behavior and at worst harm of self and others.

As it is recognized that there is pressure from extremely dissatisfied users of the Australian Family Law system as it currently operates some changes may need to occur and to occur in a visible and tangible way. If this pressure is deemed to require legislative change we would argue strongly that such changes should be made in areas that are not so closely related to the long term psychological health of children of separated parents. It is suggested that it would be less dangerous to test a legislated 50/50 entitlement, rebuttable presumption approach to property matters. Whilst it is understood that property settlements impact in very real ways on the quality of life of all parents, including children it is a belief that this impact has less capacity to cause long term psychological damage to children which may impair their functioning in adult life.

Relationships Australia Tasmania does not submit any comments in relation to the application of the child support formula.

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