

**Leigh Wallis**  
**P.O.Box 131**  
Newcastle  
2300  
Australia  
[REDACTED]

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| House of Representatives Standing Committee<br>on Family and Community Affairs |                |
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| Secretary:                                                                     |                |

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Committee Secretary  
Standing Committee on Family and Community Affairs  
House of Representatives  
Parliament House  
CANBERRA ACT 2600

Submission to:  
**Inquiry into Child Custody Arrangements in the Event of Family  
Separation**

*(i) 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, what circumstances such a presumption could be rebutted*

(1) The presumption in the event of a court deciding on contact should be that the that children have a right to have equal time with both parents and anything that would prevent that would have to be produced in evidence to rebut the rule

Court orders involving contact with children, presently seem to be decided on as a matter of convenience rather than what is best for the children

In most cases following separation the decision as to where the children will go, is made in the light of where they are living at that time.

The courts outcome should be to get as close as possible to what was the natural balance within the family prior to separation. To *outpost* one parent from the children is unnatural as it is unjust to that parent and the children.

Contact arrangements alter time factors and therefore alter influence in the children's' lives dramatically.

In an intact family children see each parent more or less equally, negotiate with each individually and equally are supported by each parent individually and equally.

On separation the children focus on the custodial parent and become far more dependant and demanding of that parent simply because they spend a far more time with them.

The other parent becomes a part time influence and seeks to establish a *good time* influence because of its limited duration. It is often a trying time for all

concerned in that the custodial parent has far greater influence in education, life style, discipline and general life matters.

The decisions are made by one party (the custodial parent) on behalf of all the others, including the contact parent.

The contact parent consequently loses influence and tends to go along as life is adjusted around them. The contact parent has a limited and valuable time frame and does not want to make it a disciplinary time.

The custodial parent can, if they wish, exert enormous influence over the children and subsequently the former partner, in that they make the decisions because they are in control of the children's lives and the contact parent either accepts those decisions or is seen as a disruptive influence, not someone who is sharing in the children's development.

The parent with custody can gradually wean the children from the influence of their former partner by creating conditions of contact, and creating a new home environment with a new partner, who, by default, spends more time with the children than the separated parent. This can develop a very serious alliance issue where a child feels they have to choose or take sides.

No one enters into parent-hood thinking they will be told when and where they can see their children.

It must be a basic right for a child to have equal access to its parents.

In all cases, equal contact should be seen as the starting point and a point to which a parent can return at any time. There are circumstances in which parents cannot have equal access, because of work commitments, financial resources or incapability, but as a rule it should be the first consideration and then whatever circumstances require less than equal contact should be explored.

If children knew they could spend their time equally it would remove undue influence, pressure to prefer one to the other and take away the power of a custodial parent to dictate terms.

The situation where children are awarded to one parent and contact is gained by the other parent only by the agreement of the custodial parent, creates an unintended punishment and powerless situation for the non-custodial parent.

(ii) *In what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents.*

(ii) A court could order that children have access with other persons if it is seen to be a detriment to the child by not having access and that the person has had a continuous relationship with the child only interrupted by the separation of the parents. However that access should not be such that it becomes a significant factor in the time allowed for equal contact by the parents.

*(b) whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children.*

(b)

The existing child support formula has several very fundamental flaws that appear to be in place for the convenience of administration rather than for fairness of the parties.

1/ The main concern of the child support formula is that it takes no account of the costs of contact for the paying parent.

A paying parent pays double for contact with their children.

While the children are with the custodial parent, the paying parent pays a set amount deemed to cater for the needs of the children and according to the means of the paying parent.

When the situation is reversed and the paying parent has contact with the children, the payments continue to the custodial parent.

The paying parent receives nothing for the cost of the children from the custodial parent while the children are with them.

The custodial parent not only doesn't have to pay for the cost of supporting the children during that time but they get a bonus payment.

The paying parent continues the regular payment and also pays for the children's needs during the contact.

Every time a paying parent has contact they pay double and the custodial parent gets the bonus.

If the system considers that the custodial parent also contributes financially then the penalty is even greater for the paying parent because they pay for all costs of contact, there is no supplement from the custodial parent and no refund of the child support.

The paying parent has to establish a minimum of 110 nights of contact before there is a small reduction in the monthly payments to the custodial parent. Days do not count in the formula, so a paying parent can have contact with their children from early morning to late evening and the child support formula calculates that as a day with the custodial parent because the child did not sleep that night at the paying parent's house.

The custodial parent has the power to dictate when the children return and if the children can stay overnight, so they can manipulate the system to keep their bonus payment in tact.

In my case I had contact with the children for 114 days in a year (16 weeks) including 90 overnight stays but because there were 26 Sundays in the year and the children returned home at 7.30 pm it was not considered to be substantial contact.

A non custodial parent who is allowed by the custodial parent to have up to but not more than 109 nights contact per year pays a substantial financial penalty to have that contact (15 weeks of extra payments) while the payee reaps a 109 night child support bonus.

2/ The child support formula has no accountability.

The paying parent pays a sum for necessities to support of his or her children.

The parent receiving the money can spend it in any way they wish.

The receiving parent also has no accountability as to what they contribute.

If a child is considered to cost \$100 per week to maintain, it would be a reasonable assumption that each parent contributed \$50 per week to that cost according to their means.

A non-custodial parent should not as a principle be expected to contribute more than the child's costs.

The Child support formula suggests a paying parent should contribute to the life style (as well as the maintenance) the children would have had if the family remained in tact. (This presumes the paying parent has removed that lifestyle.)

This means the paying parent contributes to the children's lifestyle with the former partner, but there is no contribution to the children's life style from the former partner when they are with the paying parent.

3/ The child support formula is at odds with the taxation system in at least two regards...

The Taxation laws allow rentable property to be negatively geared so that property outgoings may exceed income and the difference can be used as a tax deduction. However the child support formula suggests that all rental losses should be counted back so that there is no allowance for loss. The ruling has some merit in that it was introduced to stop separated partners going into deliberate debt so as to avoid child support obligations. However it takes no account of negative gearing in place before separation. The ruling can mean a separated partner finds themselves in a very difficult financial situation where the Child Support Agency says the payee has a large income judging from returns alone when in reality there can be little or no actual income.

The second CSA ruling at odds with the taxation system is that in a property settlement it is often necessary for a former partner to sell assets to pay the other party.

The sale involves agents and solicitor's costs, mortgage payouts and penalties and capital gains tax. All this is born by the seller and the proceeds of the sale goes to the former partner before any residue gets to the seller. This is a problem for the seller in taxation in that they have to pay a capital gains tax on money they do not have, but it becomes even more onerous when child support calculate it.

The sale attracts capital gains, which is added to the other income of the seller.

The Child Support Agency calculates its support formula on the total income and therefore calculates the seller has earned substantially more in the financial year and increases the child support amount accordingly.

Where the reality is that the former partner has received the income from the sale not the seller.

The seller has had to pay all the costs and is liable for the capital gains tax. The former partner gets the proceeds of the sale tax-free and gets a bonus from an increase in child support because of the perceived increase income of the seller.

#### Summary:

If the child support formula has differing rules from the taxation system they must be such that they don't create unintended consequences that deliver unfair outcomes.

To begin on a presumption of equal access would go a long way to remedying these anomalies, for at present the system creates more heartbreak distress and power struggles by the way it works than it does to provide support to those most affected by parents separation.

Sincerely

Leigh Wallis