Committee Secretary
Standing Committee on Family and community Affairs
Child Custody Arrangements Inquiry
Dept of the House of Representatives
Parliament House
Canberra ACT 2600

RE: SUBMISSION INQUIRY INTO CHILD CUSTODY ARRANGEMENTS IN THE EVENT OF FAMILY SEPARATION.

Response to: Part (a) given that the best interests of the child are of paramount importance...((i) equal time presumption)

I am putting forward a submission in favour of a presumption of Joint Custody (rebuttable) of children following Family Separation.

1. The major benefit of a presumption of joint custody is that it allows children to have an equal relationship with both parents following a marital breakdown. This is not the current position where one parent (91% = father) is usually given 'standard contact' of every second weekend and half school holidays. This leads to the non-resident parent by default having a more distant relationship with the children, perhaps more akin to a close uncle or aunt or grandparent.

2. It sends a message to parents that both are to be regarded as equal in their children's lives, and should prove a disincentive to parental disengagement as a coping mechanism by the non-residential parent.

3. A 50:50 arrangement should only be seen as a starting point, perhaps in the same way property splits are dealt with following separation. Such a split is a mathematical arrangement rather than a parenting one. The perceived starting and ending point is seen by many as being 78-22 (every second weekend / half holidays) at present. The outcome should be a healthy parenting pattern, rather than a number.

4. Shared care is relatively rare in Australia at present, with only 4% registered as such with the Child Support Agency (CSA) in 2003[1]. The ABS estimated in 1997 that more than 1,000,000 children live in one parent households. Only 5% of separating couples are said to seek intervention by the family court systems to decide their outcomes and this has been cited as evidence that:
   a. the current system is working well; and
   b. parents are able to amicably agree their outcomes amongst themselves satisfactorily.

   A better indicator of how well separating parents sort out their problems would be the number who seek legal advice and the length of time legal representatives are

[1] CSA 2003

engaged. The legal system intervenes extensively into the lives of separating couples, suggesting adversarial positions following family breakdown between most couples. It is a furphy to suggest 95% of separated parents happily negotiate post-separation outcomes. They do so with extensive intervention by the legal system. Only 5% however are unable to reach a legal resolution without court intervention. And much legal advice is simply given that the 'standard access' of every second weekend and half school holidays is all that is likely to be awarded to a non-resident parent. Who can afford to spend tens of thousand of dollars to try for a 4% probability outcome of joint custody? Only those blessed with the greatest determination and resources. So we have a million children today living primarily with one parent only.

5. Physical joint custody can work well under certain parameters, Arabanel put forward the following:

    a. commitment;
    b. flexibility;
    c. mutual co-parental support;
    d. the ability to reach agreement on implicit rules; and
    e. close physical proximity. (Abaranel 1979)

    Interestingly these parameters can also describe how well any post-separation arrangement can work! The percentages of time spent with each parent are a secondary consideration, be they 22:78 or 50:50 or other. I would suggest joint custody can work equally as well as the present skewed arrangements, with geographical proximity to key points such as schools / friends / sporting and other interests of children being the key additional ingredient. This simply requires that separated parents live close together.

6. In a recent comprehensive review of joint residence, Bauserman (2002) found that children in joint custody were better adjusted than children in sole custody settings, but no different from those in intact families...The results were consistent with the hypothesis that joint custody can be advantageous for children...by facilitating ongoing positive involvement with both parents (Bauserman 2002:91)

Response to Part 2: Whether the child support formula works fairly:

7. The current child support formula appears to be a form of taxation levied upon non-resident parents (mostly fathers) at excessive rates, in that there is no cap reflecting and limiting it to the total costs of raising children. Any excess over the total cost of child raising is simply spousal maintenance. Not only is it excessive taxation, it is also double taxation! The family court system makes adjustments in dividing up marital asset pools of some 15%-30% in favour of the resident parent, ostensibly to reflect the cost of raising children over a period of time. Yet, through the operation of the Child Support Act the cost of raising children is primarily borne by the non-resident parent. It is a difficult position to reconcile on a fairness basis.

8. A simple analysis of child support payer statistics shows how the system is perceived by payers. CSA's 2000/1 official figures show 39% are regarded as unemployed and have an administrative assessment made by the CSA to pay either nothing, or the minimum of $260 per annum. It is both an astonishing and damning statistic, when the national average unemployment rate ranges between 6%-7%. It is a sign of just how many have given up. This amounts to 206,000 CSA clients (91% men) and accounts for approximately 76% (!) of all unemployed Australian males aged 20 and over.

9. Why is the rate perceived as excessive? Firstly the percentages appear somewhat arbitrary and poorly researched (the basis of their calculation is unknown). One child is assumed to cost 18% of a payer's pre-tax salary (above $12,281) with a second child assumed to cost an extra 50% of the cost of the first at 27% (ie 18% + 18% x .5). The non-resident parent is allowed to earn the amount of average weekly earnings before any off-setting adjustment is made. Most payers have access to their children for less than 30% of the time at which the maximum rate of payment starts to reduce.

   How then does this impact on the earnings of a non-resident parent with two children? The following table refers:

Pre-tax income	Tax and Medicare Levy	CSA – 27% above threshold	Take home pay
10,000	nil	nil	10,000
30,000	$ 5,532	$4,784	$19,684
40,000	$ 8,682	$7,484	$23,834
50,000	$11,832	$10,184	$27,984
60,000	$15,942	$12,884	$31,174
70,000	$20,450	$15,584	$33,966

   This demonstrates there is little incentive for CSA payers at any point to seek higher paying employment. A payer on $40,000 will find himself retaining only one third of his incremental earnings should they gain a $70,000 job. A CSA payer with 2 children on the highest marginal rate will find themselves taxed at a marginal rate of 75.5% (48.5+27). Why bother? This is reflected in the CSA's own figures which show 45% or 261,000 of CSA payers earn less than half of average weekly earnings. There is little systematic financial incentive for them to earn more.

   The (Henderson) poverty line as at September quarter for 2002 was:
   - Single person (housing) $15,292
   - Single parent + 2 children (housing) $20,870 (incremental $5,578)

   Our CSA payer with two children and standard access of 22% of nights will find themselves facing difficulties in providing a comfortable lifestyle for the children. Whilst they will not incur the same child care costs as a resident parent, they nevertheless have to incur duplicated costs of housing (despite the lower actual use –

eg empty bedrooms 78% of the time) and further (albeit lower than residential parent) costs of food, entertainment and clothing. *Our payer earning $30,000 per annum will not be able to do so at a standard which is significantly different from that at the poverty line.* Our payer earning $40,000 per annum fares little better. If nothing else they are what has been termed 'the working poor'. Is this fair? The family tax benefit A&B of some $1,300 per annum (for 22% of nights, two children) offers little relief.

10. How well does the resident parent fare under the current system?

    If unemployed and with two children (78% of the time) a resident parent will receive:

Parenting Payment:	$11,164	
Family tax Benefit A (min)	$ 5,152	
Family tax Benefit B (min)	$ 1,543	
	$17,859	which is below the poverty line. (though by relatively less than the unemployed single non-resident parent)

    There does however exist incentives to earn more income:

    - Some parenting payment and full FTB is paid, plus health care card provided until an income point of just over $30,000 is reached; and
    - any child support received does not taper off until some $37,000 per annum (average weekly earnings) is earned.

    There are therefore incentives in place for a non-resident parent to earn up to $30,000 per annum, though fewer incentives to earn more as at that point benefits will taper off materially, with:

    - parenting payment lost; and
    - FTB A tapering down at 30c per dollar.

    Below $30,000 earnings, the only impact is a taper rate of –40c in the dollar for parenting payment above earnings of $4,295 p.a. Any Child Support received is also added to Income to determine the amount of FTB A payable.

    It would be an exhaustive, though worthwhile, analysis to calculate the income received by the resident parent under various monte-carlo analysis scenarios and the exact incremental incentives in place. It is readily evident however that presently there are systematic incentives to earn up to the $30,000 mark. Hence perhaps the attraction as well as practicality of part-time work for separated mothers (91% payees).

11. In conclusion the current system offers little for non-resident parents (91% male), and has contributed to a 'sticky' level of unemployment with 76% (or 206,000) of all unemployed people also being CSA clients who face little financial incentive to advance themselves. Not to mention the psychological impact of their situation upon their emotional well-being and perception as role-models for their children. The

incentives for resident parents to earn income, at least up to some $30,000 per annum are far more positive.

12. Possible solutions:

- A fairer system would cap forced payments made by non-resident parents to a level commensurate with the total cost of raising children, with such a cost determined by a rigorous study conducted impartially. This of course does not preclude further voluntary payments should parents so agree for private schooling or the like;
- A fairer system would take into account the time children spend with non-resident parents and recognise that there is a cost associated with such time that represents supporting the child, such costs do not start magically appearing at the 30% of nights care mark that presently exists under the CSA formula;
- a fairer system would have payment rates assessed on after tax income, which is the only amounts parents ever have available to spend on their children, and themselves. Not pre-tax income. The British child support system's payment rate is based on payment rates of 15% one child; 20% two children; 25% three children assessed on *after tax income.* Such a system could be introduced here, without any exempted income applying, the only condition perhaps being a point at which a payer must have a certain level of income before any level of payment is made, such as operates for HECS (i.e. threshold of say $10,000 – if $9,999 earned after tax - payer pays nothing, if $10,001 payment is assessed at $10,001 x applicable % rate). This system would provide greater incentives for payers to seek extra income, a situation that does not exist at present. Whilst initially actual payments would slightly reduce, over time they would increase in line with the additional incentive to earn more. Particularly for our 39% of payers who currently pay $260 per annum or less.

Yours faithfully,

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6/8/03