

6 August 03

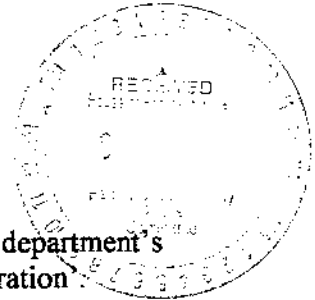
Committee Secretary
Standing Committee on Family and Community Affairs
House of Representatives
Parliament House
CANBERRA
ACT
2600

House of Representatives Standing Committee
on Family and Community Affairs

Submission No: **990**

Date Received: **8-8-03**

Secretary:



Dear Sir or Madam, ..

Please find enclosed my submission regarding your department's inquiry into 'Child Custody Arrangements in the Event of Family Separation'.

As I have experienced being Non-custodial, Joint/ Equal custodian and am currently Sole custodian, I feel that my response will be balanced and focused on the best interests of the child.

I have confidence that this submission will acquaint those charged with preparing the report for the Government, with further insight into the failings of the existing system of dealing with 'Child Custody' issues and offer a viable alternative for consideration.

Furthermore, I am willing to give testimony before your committee if requested.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'A. A. Hardy'.

A. A. Hardy
167 Barolin Street
Bundaberg
QLD
4670

Ph. [REDACTED]

OVERVIEW

The existing system of dealing with the residency of children post divorce/ separation fails fundamentally because of the negligence of the Family Court to protect the child's right to Joint Custody.

This failure filters through the legal and social systems, effecting the expectations of parents and influences those charged with assisting parents to arrive at an amicable solution to child residency arrangements post divorce / separation. Consequently, children, parents, grandparents and extended family suffer.

Furthermore, children, parents, Government and the taxpayer are financially penalised by the existing system. This financial punishment is inflicted via both the Family Court process and the Child Support Agency

I, the author of this submission, have experienced being Non-custodial, Joint/ Equal custodian and am currently Sole custodian.

Sole-custodianship has been forced upon me, against my wishes and against the best interests of my children, by the failure of the Family Law and associated systems in this country.

Although deemed to receive Child Support, I have refused to collect monies 'owed' to me on principle.

Rather, I consider that I have been emotionally, professionally and financially devastated because of the archaic attitudes towards Equal Custody and have had to endure seeing my children suffer years of abuse and neglect due to this antiquated perspective.

A (i) (1) The only other factor that should be taken into account in deciding the respective time a parent should spend with their children post separation should be the willingness of the parent to undertake this role.

It is paramount that the presumption of Equal Custody be both the preferred and deferred option for the following reasons:

(R1) Failure to adopt the presumption of Equal Custody allows a parent to exploit the existing Family Law Court process to obtain Sole Custody.

The practice usually involves keeping the children in the short term from the other parent, effectually blackmailing them into signing away custody or alternatively; keeping the children from that parent until a Court representative makes a decision.

The effect in either scenario is harmful to children. Indeed, the period immediately following parental separation is traumatic enough for the children, however; this is precisely the time when the existing Family Law system fails to protect children.

Remove the 'right' of a parent to 'win' Sole Custody and you remove the incentive to withhold contact.

Furthermore, any parent attempting to gain Sole Custody should be viewed as the uncooperative parent and advised accordingly by all professionals responsible for assisting parents to create a workable care plan for their children.

(R2) Adopting the presumption of Equal Custody would accord children of divorce the example of 'caring and sharing' as opposed to the current system that sends a 'selfishness, lies, betrayal, conflict and win at any cost' message.

(R3) Children emotionally thrive in a Joint Custody situation. They get to receive the love and care of both parents and each parent has the opportunity for time out to 'recharge'. Children also receive a more varied experience of life in Joint Custody.

(R4) The adoption of Equal Custody, along with the willingness of Family Law Solicitors, Counsellors, Magistrates and Judges to uphold this principle would assist in the protection of children from a parent instilling an unnatural belief system in to the child.

A child naturally loves both parents; however, the adversarial nature of the existing family law often leaves children in a situation whereby they are exposed to an indoctrination by the initial 'primary' carer to reject Joint Custody and persuaded to align themselves with the views of that parent.

Family Law Solicitors, Counsellors, Magistrates and Judges should immediately and meticulously challenge the reasoning behind any application for Sole Custody.

(R5) Failing to adopt the principle of Equal Custody will ensure that children and parents will continue to be displaced of the financial assets of the marriage. This is currently the scenario as parents fund the 'custody battle' in the adversarial Family Law system. The Government and taxpayers via Legal Aid often fund this 'battle'; therefore, many hundreds of millions of dollars could be saved by abolishing the 'Sole Custody' preference.

(R6) Young children should be stringently protected by the Equal Custody presumption. The early years are especially important to the bonding process. Unfortunately, the Courts adopt a sexist attitude towards fathering of young children. EG: My young children had their father as primary carer on numerous occasions and yet Family Law Solicitors and Mediators used gender to refute Joint Custody.

A (i) (2) A circumstance requiring the rebuttal of the Equal Custody scenario would include cases where there is a history of or suspected child abuse. Extreme caution needs to be exercised by the professionals responding to claims of abuse against the child, because the existing Family Law system tends to reward those willing to make malicious claims with Sole Custody. Indeed, it is extremely easy to make accusations of violence against another in a domestic situation. Because the courts err on the side of caution (rightly so), safeguards need to be in place to protect the child from exploitation by a parent seeking to use the system, as well as to safeguard the child.

Factors that need to be considered include:

(R1) Always make protection of the child paramount and exclude any perceived threat until the threat can be evaluated.

(R2) Do not reward those making malicious accusations with Sole Custody as they, by their actions, have harmed the child by denial of the child's rights. In cases whereby a child has been denied Equal Access due to a malicious allegation, the child and the parent denied should receive the compassion of the court. At a minimal, Equal Access should be restored, whilst the abusive parent who made the false accusation should be required to undertake counselling and have their right to Equal Custody questioned.

(R3) Children love both parents and have the right to love both parents equally. Where a parent has harmed a child as referred to above (R 1 or R2), the Court should order counselling and evaluate the appropriateness and type of contact. This could include supervised contact, gradually increasing contact etc. with the ultimate aim to be Equal Custody where appropriate.

(R4) Domestic violence between spouses should not be considered a reason to inhibit Joint Custody unless the Court and Counselling Professionals have exhausted all avenues to resolve the problem.

A (ii) Children have the right to, and are enriched emotionally and spiritually by the love and care provided by contact with grandparents.

By enforcing the Joint Custody doctrine, it would be rare that the Courts would be requested to consider an application from grandparents or other interested persons. Primarily, because the Joint Custody option negates the need for a parent to withdraw access to grandparents as a way of punishing their ex-spouse or for fear of losing custody to their ex-spouse.

Irrespective of the agreed access arrangements between the parents, the agreement should have been consented without prejudice. Consequently, little or no animosity should exist between the parents, and each parent should respect the others right to enrich their children's lives by contact with their grandparents.

However, should both parents agree to refuse to expose their children to a grandparent, then the parental rights should be respected, as they would be in an intact relationship.

This matter could still be brought to the Court although it is reasonable to expect the matter to be resolved in counselling.

B The existing Child Support formula does not work fairly for parents, is an unnecessary imposition on the rights of each parent to progress independently post separation and most importantly, fails to deal with accountability and the best interests of the child. Notably, with the implementation of the Equal Custody doctrine, the Child Support Agency would become redundant thus saving the Federal Government and taxpayers many millions of dollars.

The case against the Child Support Agency and its formula is as follows:

- (1) It is a financial incentive for a parent to abuse the rights of the children by avoiding Equal Custody.
- (2) Fails to make the payee financially responsible for the cost of the children that they chose to bring into this world.
- (3) Impedes the rights of each parent to financial independence post separation.
- (4) Fails accountability to the paying parent.
Money collected may be used for drugs, alcohol, gambling etc.
- (5) Disadvantages second families.
- (6) Encourages people to leave the workforce.
- (7) Is viewed as double taxation.
- (8) Is viewed as a ransom, for visitation rights to which there is no guarantee.
- (9) Is viewed as a punishment for losing custody.
- (10) Does not take into account individual circumstances.