



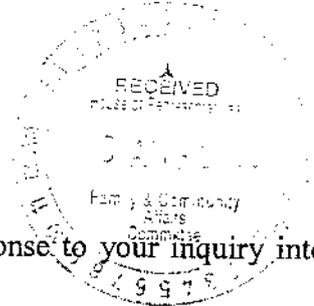
House of Representatives Standing Committee  
on Family and Community Affairs

Submission No: 1166

Date received: 8-8-03

6<sup>th</sup> August 2003

Committee Secretary



Thank you for the opportunity to offer this submission in response to your inquiry into child custody arrangements in the event of separation.

My interest in this matter stems from my work as a pastor at Paradise Community Church, which has a congregation of about 4000 people. I am the Director of Thirty Something, which consists of over 400 people who meet on a weekly basis. Of the people that attend Thirty Something, 70% are either divorced or separated. I also work in a consultative capacity with divorced couples in the broader community. The issues raised in this inquiry are ones which I see on a daily basis, affecting not only the members of Thirty Something, and the congregation, but also impact the wider community of South Australia.

I am only too aware of the fact that it may be difficult to achieve a fully satisfactory outcome given that family breakdown and its consequences are matters which primarily affect the heart, while recommendations and subsequent legislation need to be formulated through logical means and application of common sense. It is also to be noted that an infinite number of variables could come into the equation when it comes to the affairs of a family in such circumstances. I wish you all the best in your undertaking and humbly submit my thoughts.

#### TERMS OF REFERENCE

*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:*
  - (i) *what other factors should be taken into account in deciding the respective time each parent should spend with their children post-separation,*

1. The parents' ability to provide for the children, psychologically, emotionally, mentally and physically should be foremost in any consideration.

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2. Children who are able to decide should be given the opportunity to decide. A child's ability to decide could be determined by psychological assessment, or another appropriately qualified professional.
3. Both parents should have their ability to cope with the task of looking after children properly determined by psychological assessment, or another appropriately qualified professional.
4. Psychologists who are divorced or separated should be precluded from undertaking such assessments as their own personal experience may mar their ability to be objective.
5. Apart from the parents, other people significantly involved in the lives of the children should be able to make submissions, in regard to custody issues.
6. The impact of new partners on the children should be considered, both positive and negative.
7. The desires of both parents should carry equal weight.
8. The ability of other significant adults in the child's life to undertake care should be considered. E.g. if the non-custodial parent is working, child care or grandparents' abilities to look after the children should be taken into consideration.

*in particular whether there should be a presumption that children will spend equal time with each parent,*

The answer is a resounding "yes", given that:

1. Having equal time with both father and mother increases the probability of a well-balanced and well-rounded upbringing.
2. A child's self-esteem and identity is proven to be closely linked with the relationship with the father.
3. Having equal time with both father and mother enables a child to have two equal role models.
4. Having equal time with both father and mother enables financial equity and a share of the financial burden. This addresses the heart of many of the supporting parents' concerns.
5. Having equal time with both father and mother shares the responsibility of parenting more equally.

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6. Having equal time with both father and mother bolsters the confidence of the child.
7. The parent with less involvement in the care of the children often becomes depressed and feels hopeless.
8. Too many lawyers are benefiting financially in the process of making adversaries of people, and children become pawns in the bargaining process.

*and if so, in what particular circumstances such a presumption could be rebutted; and*

1. **Proven** sexual, physical or emotional abuse or neglect needs to have taken place.
2. **Proven** emotional, psychological or physical dysfunction needs to exist.
3. New partners of separated parents and their effect on the children need to be monitored.
4. In the case of unproven allegations, there needs to be a process whereby immediate assessment of the claims by an appointed, qualified and empowered panel can take place. Currently, too many parents are missing out on their children because of the inordinate amount of time it takes to investigate the allegations. By the end of the process, the claims and counterclaims made by both parents often result in the child having distorted views of the parents or feeling abandoned by the parent under accusation. In my opinion, this is one of the major areas that need urgent overhauling. My experience tells me that these occurrences are commonplace and it seems that one parent only has to make an allegation to unfairly and severely disadvantage the other. Once an apprehended violence order has been issued against a party, then that person has no chance of gaining custody of his/her child, even if the allegations are unsubstantiated and based on hearsay.
5. One partner does not want custody of the children.

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

This should occur:

1. When a child requests to see the extended family.
2. When grandparents or extended family make an application to see the children.

In the event of a parent **not** wanting contact to occur by the other, there needs to be further investigation and assessment of the motives involved.

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

1. The current system provides disincentive to work for both parties.
2. The current system makes the non-custodial parent a bill-payer not a parent.
3. The current system fosters a welfare mentality.
4. Under the current arrangement, all the government support goes to the custodial parent. In the event of discrepancies, the non-custodial parent is treated like a criminal and fined 15%.
5. The current system places all the accountability on the non-custodial parent. The non-custodial parents' expenses should be considered in the overall child support equation.
6. Child support should be paid on the nett, not the gross, pay for PAYE taxpayers. A non-custodial parent with two children is set to lose almost half their income before they start to pay one bill. This is a great disincentive to continue working.
7. The CSA puts money on overnight money markets and makes money out of other people's misery. This practice needs to be stopped.
8. Currently, in cases where there is a change in the non-custodial parent's circumstances, the CSA is far too slow to react, often leaving the affected person sliding down into dire straits.
9. The partner of the custodial parent's income should be assessed.
10. The child support payment should be calculated according to the amount required to raise a child, not as a percentage of income.
11. Assets given at the time of settlement should be taken into consideration, i.e. a parent should be able to give assets to the child and expect them to be included in the child support equation.
12. Child handovers should take place in non-threatening locations, if troublesome. Police Stations and the like are perceived as adversarial places. Well-lit and pleasant venues, as well as the presence of a qualified person to help answer questions, would greatly help the process.
13. Apart from the Federal Police, local government agencies, such as the State Police, should be able to enforce Court Orders.

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14. Non-compliance of visitation orders should be harshly dealt with. An agency should be set up to deal with this, without it needing formal court proceedings.

Thank you for your consideration of my submission. I very much understand the difficulties you face in undertaking an inquiry of this nature and I hope my submission gives you food for thought. It comes after spending countless hours with many hundreds of people who are trying to navigate the minefield of divorce and separation. While some of the propositions may end up being unworkable, I believe what I've submitted presents a picture of what many people are feeling and experiencing in the current system.

Should you have any questions please do not hesitate to call me on 0410 618 365. Would you please let me know where and when the public meetings will be held in Adelaide.

Once again thank you and I look forward to hearing from you soon.

A handwritten signature in black ink that reads 'M. Elmendorf'.

Ps Mark Elmendorf  
30 Something Director

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