

House of Representatives Standing Committee
on Family and Community Affairs

Submission No: **1521**

Date Received: **11-8-03**

Secretary:

Submission to
Standing Committee on
Family and Community Affairs
On
Inquiry into Child Custody Arrangements in the Event
of Family Separation

By

Terms of Reference

On 25 June 2003 the Minister for Children and Youth Affairs, the Hon Larry Anthony MP, and the Attorney-General, the Hon Daryl Williams AM QC MP, asked the committee to inquire into child custody arrangements in the event of family separation.

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, 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
- (ii) 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 their care of, and contact with, their children.

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I would like to address parts (a) (i) and (b) of this enquiry.

Please note:

I would like the section entitled "*My Background and Experience with dealing with Family Law in Australia*" regarded as **Confidential**.

SUMMARY POINTS

In terms of child custody and access the current family laws in Australia clearly favour women.

Non-shared custody provides strong incentives (particular financially) for women to fight any attempts by their ex-partner to gain anything more than limited access (less than 30%).

Custody/property disputes often escalate to the courts as men attempt (with almost no success) to gain more access to their children. This in turn provides financial incentives for family law lawyers to maintain the existing inequitous family laws regarding access because it leads to more work /profits for lawyers.

The current system of child support takes no account of the very significant fixed costs involved in having children between 10% and 30% of nights and opposed to no access (0%). This also provides incentives to dispute custody and therefore generates work for lawyers. It also provides another disincentive for fathers to maintain contact with their children because there is no financial incentive to maintain any contact up to 30%.

The standing committee should consider making automatic shared custody retrospective.

INTRODUCTION

It is well documented that children, and in particular boys, require significant access with their fathers to development as nurturing men and fathers (Stephen Biddulph's book 'Raising Boys' highlight and documents this). When parents live in the same city the slight inconvenience of changing residents is a very minor problem for most children compared to not having reasonable access to their fathers. Long term problems such as teenage suicide for boys and later alienation as men are a direct result of boys not being raised by their fathers. In my experience with many children from separated parents children readily learn to cope with (and enjoy) shared arrangements with both parents.

With regard to shared custody, fathers are often maligned and categorised as paedophiles and violent. There is no robust evidence of this. Society has a strong reluctance to admit to and document women's violence. If there is any evidence of men's propensity for violence (which is highly doubtful) it is probably as a direct result of the current inequities of custody. Despite the complete change in women's roles in the family and the workforce, their nurturing abilities are rarely questioned in this society, while men's abilities are constantly maligned. Only documentation relating to men's violence (as opposed to women's' violence) is readily available for researchers to access and promulgate. Women's violence is very difficult to obtain because it is not documented by society and not admitted to by men, women or authorities.

Women's' lobby groups and family law lawyers' representatives have huge incentives to maintain the current system of inequitable custody and to use the false arguments of children's needs, children in poverty and children's supposed best interests to win their case to maintain the current inequities of custody.

Women's increasing entry into the workforce (since the 1940s) has not been taken into account in granting custody. Similarly family friendly workplaces for men (and women) have not been taken into account by the family courts.

An automatic shared custody arrangement would change the social fabric of Australian families wherein adults would no longer have the financial and social incentives to separate. This is surely in the best interest of children, so long as families are given the means to resolve relationship issues.

The money spent on the family law courts and the associated lawyers' costs would surely be better directed to helping and teaching existing families to resolve issues of child care and finances. Existing family law lawyers would strongly resist this by arguing to maintain the current inequitable laws as many, many family law firms would go out of business and/or would need to be retrained to completely change their careers.

WHY NON SHARED CUSTODY IS A MAJOR PROBLEM FOR MOST MEN AND ALL CHILDREN.

It is well documented that men and women in relationships with children have two significant pressures on their relationship;

1. The style and effort that each adult in the relationship puts into raising of their children and the associated housework, and
2. The usage and access to the family income, which is particularly an issue of disempowerment for non-working mothers.

In the past (prior to 1975) women have had to deal with these two pressures by:

1. Negotiating with their husbands with regard to their husbands input into child care and associated housework

2. Negotiating with their husbands on how the family income will be spent and how much will be available for a woman (particularly without her own income) to spend on herself or on the children.

The current family laws regarding child access provide many disincentives for men to care for their children, including the following:

- With limited access men are marginalised from any real involvement with their children.
- The fixed costs required for limited access provides a financial disincentive to maintain access at anything less than 30% of time (nights) with children so most men drop back to 0% access.
- After losing significant contact with their children many men attempt to give their lives meaning through taking on more work. Unfortunately this further works against them by limiting their chances of eventually gaining greater access (or emotional bond) to their children and in the eyes of the family court their ability to care for their children.
- Many men make a rational decision to stop all access with their children in an attempt to avoid the emotional pain and heartache of having limited access to their children and having long periods of separation from their children. Society often incorrectly interprets this as men being disinterested in their children.

WHY MANY WOMEN DON'T WANT SHARED CUSTODY.

Since 1975 the number of single mothers has grown and any social stigma associated with being a single mother has been removed by the sheer numbers of single mothers, along with changing moral attitudes. Many, but certainly not all, single mothers are now financially independent and in many cases actually better off financially without their partners.

Currently the benefits of being a single mother with primary custody of children are;

- They can raise their children in the manner and style they see fit without having to negotiate any of the huge range of decisions and aspects of child rearing with their husbands.
- They are financially independent of their husbands because they are automatically entitled through the child support system to get a large proportion of their husband's income.

- For many mothers they typically get at least every second weekend and half the school holidays completely free of their children and all parenting responsibilities.
- They can pursue new relationships without the social and moral stigma of last century.
- With all the difficulties women with children face in the workforce, many women will choose to separate and get the single parent pension (which holds far less stigma than the dole) and can then pursue a life at home with the company of their many peers (single mothers) and no longer feel alienated by being a stay-at-home mother. However many single mothers also have school-aged children and still choose not to work because there is simply no financial incentive.
- They can usually retain the family assets eg the family home and family car and so have very little disruption to their lives.

For many women, not actually living with their husbands is a very small price to pay given the above advantages and empowerment that the independence of separation and divorce brings. The rapid increase in numbers of divorces since 1975 gives evidence to this.

For example I have personally heard a number of single mothers chatting over coffee with married women who complain specifically about the husbands' lack of input into the care of their children and more particularly her difficulties and disempowerment by having to rely solely on financial handouts from her husband's income.

Under the current family laws any well informed woman who finds she has to negotiate the spending of her partners' income or has limited access to his income and /or finds that her partner spends little time with their children is faced with a choice of either working on the marriage such that the father is more involved with the children and negotiating with her partner for greater access to his income and to spend this money in ways she sees fit.

However I also understand that for those women whose ex partner never take the children and who pay no child support, poverty levels are clearly going to be high. However for those women whose ex partners have a reasonable income and who take the children up to 30% of the nights these women appear to have far more disposable income than their ex partners even after taking into account the time each parent take the children. There is vast difference in the poverty levels of single mothers and this should not be mixed in into one group of less those who have less than 30% access.

WHY CHILDREN SUFFER WITH NON SHARED CUSTODY - PARTICULARLY BOYS

There has been a huge financial incentive for women (or the primary caregiver) to seek out to separate from their partner rather than negotiate the issues outlined above.

WHY MOST LAWYERS WILL WANT TO MAINTAIN NON SHARED CUSTODY LAWS

Most lawyers seem to favour the current family law system because it has clear winners and losers and this provided incentives to contest custody in the family law courts. This in turn keeps many lawyers employed.

I do not know any lawyers who have been trained in understanding the psychological or emotional needs of children nor do I know any lawyers who have actually spoken to children going through the divorce system. In particular lawyers have no personal follow up to ascertain what actually happens to children after divorce and in particular how children cope with shared custody.

Yet the opinions and submissions on this topic from legal groups such as the Law Society or the Law Council of Australia abound. These groups' opinions should be regarded as highly self-serving. Seeking the opinions of any groups, which represent the legal profession, is paramount to asking the fox who should be in charge of the chicken pen!

Lawyers have a great deal to gain by promulgating that Australia maintain the current equitable family laws of custody and they have a great deal to lose if the current system is made fairer through shared custody such that in most cases little or no litigation is required. If parents were given automatic shared custody there would no longer be potential winners and losers and therefore no need for either party to seek court action, except in exceptional circumstances.

THE REAL COSTS OF RAISING CHILDREN

From my experience of caring four days a fortnight for three children there is an enormous cost difference between not having children at all to being a parent at least every second weekend and for half the school holidays.

The fixed costs of the infrastructure required such as a house with enough bedrooms to accommodate children, a motor car which will carry all the children, etc is far greater than the actual variable costs of food, clothing etc.

I spent all my available income (which is very limited due to paying the full rate of child support) on providing a very comfortable, entertaining, educational and interesting home for my children including bedrooms, toys, games, musical instruments etc. Yet my children are only allowed to stay and utilise this while they are with me 3 nights a fortnight. The actual variable costs of food and clothes for my children are possibly only 10% of the total cost of having children. Yet I pay the same child support rate as a father who has no involvement or makes no investments in providing a family home for his children.

WHY WE SHOULD HAVE AUTOMATIC SHARED CUSTODY

Automatic shared custody will remove the financial incentive to seek out divorce, which will in turn remove the incentive to fight through the courts.

I am happy to attend any public hearings and to give oral evidence on this matter.

Thank you for your consideration of my submission

[REDACTED]

8 August 2003