

Attention **Committee Secretary**
Standing Committee on Family and Community Affairs
Child Custody Arrangements Inquiry
Department of the House of Representatives
Parliament House
Canberra ACT 2600
Australia

House of Representatives Standing Committee on Family and Community Affairs	
Submission No:	1433
Date Received:	15-8-03
Secretary:	

**Re Submissions for Inquiry into child custody arrangements in
the event of family separation.**

Please accept my submission. I am very sorry it is late. On Thursday
last I emailed, requesting an extension of time although I did not
receive a reply. I am hoping my submission is accepted, as a sole
parent, studying and committed to community advocacy, it was
almost impossible to find time to write, please count my voice,
Sincerely

[REDACTED]
[REDACTED]
[REDACTED]

I am posting hard copy and disc today in a 'next day delivery'
envelope.

[Faint circular stamp]

I am compelled to write the following submission to the committee because on the eve of my own separation, 1996, I believed in the ideal of joint or shared parenting and have worked hard to reach this ideal. However my subsequent experience with contact and parental responsibility arrangements have expelled such a naive understanding of what is required of families in present economic and social circumstances, as simple, foolhardy and unworkable.

Should there be a presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption could be rebutted?

I am a 37-year-old sole parent of two boy's aged 10 and 11. After separating in 1996 a consent order was agreed to in 1997 for, what is generally considered as the base minimum contact, second weekends and half of holidays. Although the contact between the boy's and their father was agreed to by consent, their father feels he was forced to sign because he didn't have any choice.

Pertinent to the current debate about presumptions of parental rights he believed that there was a presumption in my favour, which he could not fight. In truth he had no accommodation or no plans for the future and had just detoxed for the first time, he was not capable of taking on parental responsibilities.

However, a continued emotional focus on the lack of equality between parents has been used to excuse abusive behaviour because essentially he is in a struggle to assert his rights. The contact order became the source of numerous threats and excuses for violent

behaviour. It was not until 2000, restrained from contacting me under an apprehended violence order (AVO), that he exercised contact according to the terms of the order.

The impact on the children has been enormous, they have been witness to so much anger and hatred. They have been threatened, punished and made to keep secrets on numerous occasions. Last year my eldest became extremely depressed and suicidal during and after a weekend at Dad's. Contact has an added expensive of seeking professional help to deal with the ongoing conflict.

Conflict over parental rights has totally overshadowed the best interests of my children. A consent order carries a presumption that the parents can agree, as they have already shown agreement. If that agreement isn't sincere then the order is open to abuse. An analogy may be drawn with the 'joint custody' presumption, a blanket presumption, (whereas agreement by consent is created personally). I submit that before any presumption of 'joint custody' is legislated it should accord with the ordinary arrangements of families. For if a presumption and reality are in disagreement a window for dispute is opened.

An argument that a presumption of equal-time parenting would remove the trigger for equality battles complained of above. However, in my experience that argument is merely an excuse to continue acrimonious, controlling behaviour or in other words, asserting rights. It is a cover not to be responsible and put aside the past for the sake of the kids. It will not be resolved by a presumption of equality.

The present understanding of what arrangements ought to be made is based on the best interests of the child and not on the rights of the

parents. A child has a right to regular contact with significant people in their lives and to know and be cared for by either parent. It is correct to maintain the children's relationships however it seems to be drawing a long bow to suppose that 50/50 contact ought to be presumed, especially considering that only a tiny number of families living separately *or together* manage their lives this way. The better position is what, in the circumstances of each child, is in their best interests. It is my understanding that this is the current position at law and I submit it should remain so focused. The notion of 'joint custody' shifts the focus away from the needs of the most vulnerable party in favour of adults, who have many possible avenues of recourse and are not necessarily agreeable in the midst of emotion and irrationality, which accompanies relationship breakdown.

The child-centred focus of the Family Court means that parents who work co-operatively have better contact arrangements. Unfortunately unco-operative parents fare worse and their children suffer.

A presumption of equal shared care will create more problems than it might presume to solve. The proverbial floodgates will be opened as applications to rebut the presumption proliferate simply because family responsibilities are not presumed equal in society generally. The economic impact will be severe on families that cannot find work to suit their responsibilities. Parents with young children will find the burden especially difficult and restricted to available childcare. This dilemma shows that a focus on the individual needs of the child comprehensively takes economic and social factors into consideration. Assuming a general rule for all that need by proved otherwise will put those who do not conform to an artificial norm at risk and is bound to have unsatisfactory results.

I had enormous faith in equal parenting ideals at the time of separation and was encouraged by the Family Court through mediation and a 'parenting after separation' course, to strive for shared care as a best outcome for the boy's. Hope that some co-operation would be forthcoming, ('after he gets over his anger') turned to despair when every step taken was the next skirmish in this battle to assert his 'rights'. Ending in a five year AVO and a hard lesson learned in expectations that simply do not accord with reality. I should have listened when he rejected my attempts to get him to see the boy's in that first year with "I'm not your babysitter". A presumption that each parent is equally willing or capable to parent in their child's best interests is a fantastic expectation to hold and ought not to be considered normative.

In my opinion the present concentration on the needs of the child is a safety net for children, highlighting the important role of child protection in the Family Court. It would be criminal to lose this in a hopeless attempt to placate self-interested adults. Parliament has been wise to adopt the present focus on child-centred rights showing enlightened awareness of their role in meeting the needs of children of separated parents. Thus I submit that no presumption should be made of parental rights to contact and residence, a presumption would require a high level of co-operation between parents in meeting their children's needs, a situation which is currently not commonly occurring among separated parents.

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

The 'best interests of the child' is readily applicable here and I believe is the current yardstick in cases such as these. I submit that if this not the case then, following the discussion above ought to be so.

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

The present child support formula is not working fairly for both parents. There is a current debt of 617 million dollars owed to families in Australia. To assume that each parent's contribution is measured by the time spent caring for his or her child is too narrow. The quality of the contribution in each case ought to be the measure, as this will have best outcomes for children. An assessment of needs met by each parent should be basic where there is disagreement over contribution. The present assumption of willing compliance belies the real state of affairs, which is rabid avoidance of and non-compliance with parental responsibilities.

A high level of co-operation is needed to minimise costs between separated households. Once again where there is an unwillingness to share an expectation of 50/50 becomes a need for double of everything. As argued above such an expectation is too great for parents that continue to be disgruntled over the breakdown of the relationship. Parental contribution becomes an object for channelling acrimony and violence and in these cases should be recognised

although this is a difficult issue as recognition may have the consequence of encouraging violence to avoid contribution.

Linking care and contribution is not as simple as counting nights at Dads or Mums. I submit a 'best interests of the child' model is a relevant model for assessing parental contributions. However, as demonstrated by the discussion above, greater effort needs to be made in educating and directing separated parents to focus on the needs and interests of their children whatever configuration of relationships they are dependent on.