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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE  
ON FAMILY AND COMMUNITY AFFAIRS

Submission to the Standing Committee on Joint Residence

Sutherland Shire Family Support Service (SSFSS) is funded by NSW Dept. of Community Services. It is a service, which assists financially or socially disadvantaged families in Sutherland Shire.

During the past 16 years we have supported 20,000 families in the Sutherland Shire. Although families seek assistance on many and varied obstacles to parenting effectively, 60% of referrals to this service are calls for assistance in relation to domestic violence or child protection. This service works with many separating families, prior, during and post family break down.

This submission focuses on the 20% of parents who have to negotiate separation, divorce and parenting arrangements in the Family Court, in the hope that it will prioritise children's safety, health and welfare.

This submission is based on many 'worst case scenario' cases, which illustrates injustices when legislation fails to protect the most vulnerable. Legislation which, opens legal loopholes for abusive partners to maintain patterns of dangerous or abusive behaviours or gain custody of children for proprietary or ownership, financial or vindictive purposes.

Recent changes in the Family Court which enshrined 'fathers rights' have increased power imbalances between perpetrators of domestic violence and given parents with financial and legal advantage power over victims of violence and their children (95% of victims of DV are women)

The wisdom of King Solomon

Current policy and the proposed changes pose a dilemma for judges in the Family Court, similar to King Solomon, who had to decide which mother was the 'natural' mother. He tested the love of the 'mothers' by suggesting that he cut the baby in half. The mother, trying to protect her child, sacrificed her needs and proved that she was the mother.

- Our service has contact with many mothers who have experienced long term emotionally abusive relationships and been forced to give up their children to protect themselves, or their children have gone with their father to protect their mothers. These children are often treated

as 'things', bargaining chips or as hostages. As emotional abuse can be hard to prove these cases are particularly destructive for children.

Are these changes being made in the best interests of parents?

This proposed legislation diminishes the primary principle of the Family Court, "in the best interests of children" and will tend towards meeting the needs of immature or needy parents.

Children thrive when they are secure, unconditionally loved, encouraged and know that there are consistent rules which are designed to protect them, this legislation does none of these things.

There are many practical reasons why joint custody/residence arrangement cannot work.

Areas of concern for future conflict

- Children's right to be heard
- Shift work
- Executive work hours
- Disabled/special needs children
- Cost sharing
- Parenting style
- Religion
- Cultural education
- Sporting commitments
- Child stability and continuity
- Safety and nutrition
- Consistent approach to parenting
- Discipline
- Reciprocal revenge
- Divorce and property settlement
- Child support
- Breastfeeding

Violent or manipulative parents will use this opportunity to continue to control 'family life' post separation, by demanding decision making power around parenting, manipulating the situation and using the children as hostages. Recent research has shown that perpetrators of dv are idiosyncratic personalities, and are therefore self centred and totally self-focussed people who cannot feel empathy or the consequences of their actions.

For breastfeeding babies will this legislation take away the choice of how long a mother may continue to feed her child or will she be instructed to stop feeding her child so that the father can have overnight contact with this baby/young child?

How can this be justified to be in the best interests of the child?

Many children will find it emotionally straining to upset the balance between their parents and keep quiet about their own needs or problems.

Children will feel responsible to ensure fairness between their parents and in fact, pit their own interests below the interests of their parents for shared care.

This legislation has the capability to breakdown what is working now for families who are managing to share the parenting role on an mature but informal basis, by placing additional responsibilities and entitlements on parents around decisions in the day-to-day care of children, which could inflame conflict.

Is the best interest of the child only achieved by half time in each house? For example, each parent could be responsible for a different aspect in the child's upbringing such as, sport, schooling, after school care, homework or any activity the child is involved in.

Many abusive fathers unfortunately, have little experience of parenting, cooking and household management, and more importantly, an understanding of child development, which is considered to lead to child abuse through unreal expectations of children's abilities and behaviours. Another area of concern is that many abusive fathers have a revulsion for housework and believe that is 'women's work', and say that is beneath them, it is the most repetitive, unpaid in money or acknowledgement, and yet it is essential for child rearing. It has been the experience of many mothers who report that children take on the mother's role when they are on contact visits or in the care of their fathers.

There will have to be a generational change in sharing of all aspects of parenting prior to any joint residence/ custody changes.

Research shows, that mothers spend twice as long caring for their children and develop a close lifelong attachment bond within the first days of life. This attachment bond is essential for the survival of all children and this aspect is not considered in this 50/50 split.

Mothers generally, are more in tune with the children's emotional and physical needs, as it has been since the day they were conceived, as they have been the primary carer and have developed their skills as a parent in a parallel process with the child's development.

Will there be an assessment process to determine a fathers ability to care, protect and parent their children?

Many experienced social researchers, judiciary and community workers believe that abusive parents should loose rights as custodial parents.

The long-term results we have observed for children effected by **complex post traumatic stress reaction** as a consequence of domestic violence is a serious handicap and can effect their future life in many ways. The situation is far more serious for children who experience a protracted and contested Family Court case, who are then placed in the care, or forced to have ongoing

contact with a parent, who has been violent, emotionally manipulative or abusive to them or their mother. This outcome can compound and continue the symptoms of this disorder.

#### *Case study*

*I am writing to express my grave concerns regarding the implementation of legislation to recommend joint residence arrangements in the event of Family Separation. I don't believe that such arrangements are in the best interest of the child and would be a "Fence sitting" recommendation making it "Fair" for both parents.*

*I separated from my husband when my children were 9, 5 and 3 years old. This was after years of his emotional and verbal abuse on the children and myself and physical abuse on the children in the form of "discipline". I believed removing the children from that environment was in their best interest.*

*However, the recommendations of the court meant that my children now went to their fathers house every other weekend (Friday after school to Monday) and every alternate Tuesday to Thursday; in essence shared care.*

*This was based around his shift pattern not what was best for the children. This meant that the children had to face up to the same abuse as previously but without me there to protect or stand up for them. How had my leaving the situation protected my children? I had believed that this was only supposed to be a trial but by the time it took to get it back in court the response was "It's been this way now for so long why change it".*

*This is what shared care has meant for my children:*

- \* They have been used as pawns to relay messages from Dad, often abusive.*
- \* Once 'Dad's' shift pattern changed or he worked overtime the kids were then looked after by a new girl friend or someone else, so the kids were being raised by someone who is neither parent.*
- \* He plays with their emotions rejecting them when he's angry.*
- \* He uses his love for them as a weapon so they feel insecure.*
- \* They have not been able to go to after school activities, as Dad believes it cuts in to "His Time"*
- \* They have had to carry alternate uniforms and shoes to and from Dads.*
- \* They have had to bring extra school books to and from each house.*
- \* They have forgotten things that they require for school on numerous occasions and if I'm not available to drop it off they have to "get in trouble" at school as Dad refuses to come over and collect things.*
- \* My kids have come back with their hair shaved because he has the "right to do so".*
- \* My kids have been enrolled in different schools because he has the "right to do so".*
- \* My son has had a broken leg and a broken arm in Dads supervision*
- \* My daughter has had a broken arm in Dad's supervision.*
- \* My daughter has had body piercing because Dad allowed it.*
- \* My kids now have two religions because Dad changed his beliefs.*
- \* I have had child support deducted from his pay at the shared care rate but yet I have to pay all the bills (School fees, medical expenses, uniform costs).*

*\*If my children need anything extra eg a present to go to Birthday party's whilst at their Dad's unless I supply them they don't go.*

*If I had taken every dispute we had to court we would have been there constantly. Ultimately whatever Dad says is what happens. The kids know it is easier for them to let Mum down than to face Dad's scorn. I have been separated from this man for 8 years now but I still live under his control.*

*I believe that the incentive for Fathers to have a reduction in the child support payments based on how many nights they spend in their care is why my ex-husband fought for shared care not because it was in the best interest of the children. Surely children can benefit from spending time with a parent without having to live with them for half the time?*

*My oldest daughter actually lived with her father full time for two years. When she started high school she wasn't coping with the moving around, so after having my many suggestions dismissed, not because I felt it was the best for her but it eased her burden, she moved in.*

*There was no way that her father would change arrangements that might mean he would have to pay more child support (not looking at what's best for the child). After two years she moved out, she's now 17 and at her own choice, doesn't see her father at all. I watch my son now 13 and I can see the same thing happening to him.*

*Shared care has placed a heavy burden on the shoulders of young children. To keep things fair and to keep the peace should not be their responsibility.*

*We are the parents, not them.*

*Olivia*

This proposed legislation could be used for financial gain for property settlement, to access Centrelink payments or avoid child support obligations, as happens now.

When women lose the custody of children the consequences can be life long. Grief and constant anxiety cause emotional and social problems, which lead to suicide, depression, drug and alcohol abuse, gambling addictions and a sense of failure as a woman or mother.

Who has final authority in the care and welfare of children?

Who pays all bills?

This service believes that this proposal will lead to more protracted litigation for disputes and therefore will be more expensive for government.

### Recommendations

- That the Family Court implement the Canadian Family Court model to protect victims of violence or abuse, when families seek assistance in the Family Court. This model streams parents into 2 different categories prior to any court action and an assessment of the family's history or allegations are dealt with in an efficient and fair manner. This systems protects victims of violence, and prioritises children's safety.
- Prior to any changes research needs to be conducted into the outcomes of children and families who have utilised joint residence and worked together in the best interests of the child, successfully post separation or divorce,
- Research into parents who achieve a working parenting plan without the intervention of the Family Court or legal assistance.
- Investigate the long term outcomes of children who are placed in joint custody which is disputed

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