House of Representatives Standing Committee
on Family and Community Affairs

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Secretary:

GOSNELLS COMMUNITY LEGAL CENTRE
POSITION PAPER ON THE INQUIRY INTO "CHILD CUSTODY ARRANGEMENTS IN THE EVENT OF FAMILY SEPARATION".

House of Representatives Standing Committee on Family and Community Affairs
Child Custody Arrangements Inquiry
Parliament House
CANBERRA ACT 2600

7 August 2003,

Dear Committee members

1. Introduction

The '*terms of reference*' into the inquiry proposing a presumption of shared custody would have the effect of replacing the best interests of the child as the paramount consideration. The concept of a presumption of shared residence of children at family separation would not reflect the existing parenting patterns in majority of families, prior to separation; or reflect type of arrangement that most parents choose, following separation[1].

Research suggests that successful joint residence arrangements are dependent on factors such as:

- a history of cooperation;
- a history of parenting patterns which reflect pre separation shared care;
- low levels of parental conflict;
- parents residing in the same area, allowing children to attend one school;
- parents being able to reduce their working hours and/or have flexible work arrangements;
- parents voluntarily entering into these arrangements irrespective of the law.

[1] Smyth, B., Parkinson, P, 'When the Difference is Night and Day: *Insights from HILDA into Patterns of Parent-Child Contact after Separation.*, Hilda Conference 2003, University of Melbourne, Australia, 13th March 2003

Clearly, these factors are not going to be apparent in the majority of families that separate, and introducing a rebuttable presumption of shared residence may not be appropriate in these families. Imposing a *'one size fits all'* parenting arrangement may be potentially detrimental to children, particularly where there are high levels of conflict between the parents[2].

2. About Gosnells Community Legal Centre (GCLC)

2.1 History Of GCLC

In 1980, a group of local community people arranged for a needs analysis of the local community to be conducted by a social work student. The analysis showed the overwhelming need within the community to be a "one stop shop" of information regarding entitlements and local services and resources.

In March of 1981 GCLC (then incorporated as Gosnells District Information Centre) first opened its doors to the community. The service was staffed entirely by volunteers who had been trained by the organisation. GCLC focused on providing legal services in 1983 after becoming a community legal centre. Other related services followed, with the introduction of a Family / Neighbourhood Mediation Service (the first in Western Australia) in 1986, a full-time Financial Counselling Service in 1987 and a Child Support Scheme Service in 1989.

A significant feature of GCLC has been the involvement of local community members as volunteers in most areas of service delivery. Volunteers have included lawyers, social workers, mediators, welfare workers, law students, articled clerks, library workers and so on.

2.2 Our Community

GCLC maintains fluid geographical boundaries in respect of assistance to clients. This is because many people may choose to attend GCLC for reasons other than where they live.

Having said this however, it is necessary for GCLC to define our community in order to focus our outward efforts of community development, community legal education and our strategic planning.

For this purpose, our community is defined as the geographical area from Canning to Serpentine/Jarrahdale.

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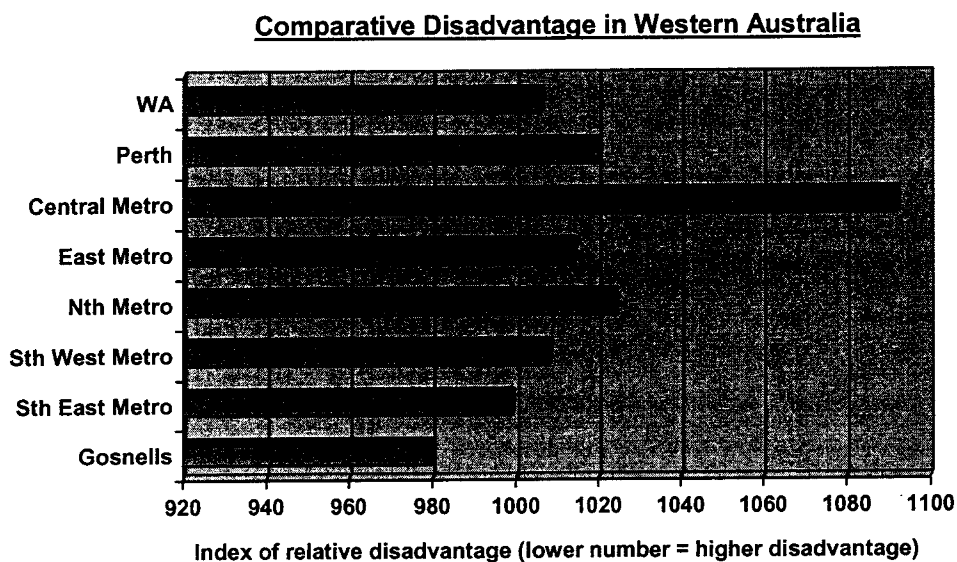
[2] Horin, A *'One Size Does Not Fit All, Especially Kids'* Sydney Morning Herald, 21 June 2003

2.3 Social Indicators[3]

The ABS generates an index of relative disadvantage, which is an overall index of socio-economic status. Areas with the greatest relative disadvantage have high proportions of low-income families, unemployed people, people without educational qualifications, households renting public housing and people in low skilled occupations.

As can be seen from the following graph, which has been prepared using the ABS index of relative disadvantage taken from the 1996 Census, the South East Metropolitan region as a whole is more socially and economically disadvantaged than any of the other Perth metropolitan regions, the collective Perth metropolitan region and the average for the State.



Within the South East Metropolitan region, the City of Gosnells shows a greater level of disadvantage than the region as a whole.

Further, compared to other local government areas, the City of Gosnells is in the highest quartile when ranking areas in terms of their level of disadvantage.

2.4 Our Legal Services

2.4.1 General

[3] Gosnells Community House Inc: Feasibility Study and proposal for Funding Gosnells Lotteries House October 2000

The Legal Service contains a breadth of services. The services provided under this programme include

- Child Support (advice, minor assistance and documentation)
- Domestic Violence Legal Service (advice and representation in domestic violence restraining orders, associated family law matters, criminal injuries compensation applications, care and protections matters for children)
- Family Law
- Volunteer Legal Service (one night per week and one morning per month, initial advice in family and general law matters provided by volunteer solicitors)
- Generalist Para-legal (assisting with completing court documents, legal aid applications and facilitating access to legal advice, information regarding Homeswest and Centrelink, advocacy and representation at appeals).
- Community Legal Education
- Tenancy advocacy and education
- Financial Counselling
- Mediation
- Publications

2.4.2 The Family Law Service

The present Family Law Service was first funded by Legal Aid WA this current financial year. The Service is funded to employ a full time solicitor with associated secretarial support. GCLC also contributes two days of paralegal time to the family law work.

The demand for family law services in the Armadale and Gosnells areas are substantial. This is reinforced by Legal Aid WA's telephone line statistics and the anecdotal information of the telephone line workers as to the subject of the information inquiries.

Our Family Law solicitor provides advice, undertakes negotiation and advocacy, and prepares documents for Court proceedings. Most of the Family Law Service clients will have attended GCLC's volunteer legal service (evening service) or our Family Law Information Session (FLO) initially and have then been referred to the Family Law solicitor. However, where the matter is urgent, or where the client has received legal advice from another source, they would be referred directly to the solicitor.

3. Our Family Law Experience

Since January 2003, GCLC has assisted 175 clients in relation to family law matters. In 96% of cases, domestic violence or substance abuse was prevalent to the extent that "*joint custody*" or shared time would not have

been in the best interests of the child. In other instances, parties claimed to want joint parenting, however in practice, this was not genuinely exercised.

Set out below are two case studies which are illustrative of these two points.

Case Studies

1. Parents reached a verbal agreement that the two boys would live month about with each parent. Mum lived in Thornlie, in the matrimonial home and was pregnant with the third baby. Dad lived in Huntingdale and had remarried, and had 3 step children.

Contrary to the verbal agreement, Dad had not had the children for 6 months, simply because he did not want them. He was however still receiving the Family Tax Benefit. Mum was told by Centrelink she could not change the FTB payments without court orders. Dad refused to sign a consent setting out true arrangement. When mum filed for orders so she could claim her full entitlements, Dad objected and said he wanted to return to month about. Children did not want to. Dad was living in a 3 bedroom rental home with his new wife and 3 children.

Dad offered to Mum she could have the children full time so long as she did not claim full FTB. After initial hearings and conciliation conference consent orders were reached reflecting that the children were living with Mum full time.

2. Parents had been separated 3 years. There are 4 children of the relationship. Mum was still having problems at handover. Dad was a very angry man who always abused mum at handover. Mum had a Violence Restraining Order against Dad.

Many different arrangements had been trialed for handover. When client came to see us initially she was handing over children at a public park. Dad was supposed to wait at swings, but never did and kept approaching mum. Handover was changed to MacDonalds, this did not stop the abuse. Dad would wait for mum in the car park and abuse her while she was still in the car. GCLC then arranged for handover to occur at the local police station, which also failed. Dad, again, always arrived first and abused mum in front of the children.

The eldest child, aged 8 years, displayed signs of stress, began having nightmares and told mum she was scared of dad and did not want to see him. Contact was stopped and the child is still in counselling.

Contact has now temporarily been stopped for the other 3 children. At the last handover dad spat in mum's face and followed her and ran her off the road while she had the children in the car. Two of the other children have now said they do not want to see their dad. The youngest girl, aged 5, says she wants to see dad, but mum and dad have been unable to reach a suitable arrangement, so that mum is protected.

Dad has attended GCLC offices on numerous occasions and threatened to kill mum and mum's brother. He becomes very angry and aggressive. To date, we have been unable to reach suitable arrangements for contact. Subsequently, the eldest child has revealed to her counsellor that dad used to hit her with a wooden spoon when she asked to speak to her mum during contact visits.

4. Response To Inquiry

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Chief Justice Nicholson in a recent paper questions what is motivating the movement for *'joint custody'* and what it might mean for children if they were presumed to be shared by parents[4]. It is interesting to read the newspaper comments and hear the occasional talk back radio session and note how rapidly the discussion turns to gender wars, how quick the commentators are to rely on anecdotes, and how rarely the best interests of children feature.

One headline in The Australia, 18 June 2003 – *PM Backs Dads in Custody Overhaul* – is telling in itself. The sub-editors' focus on fathers, and the omission of any reference to children are unfortunately common features of the discussions about this topic. The reference to '*custody*' indicates a lack of understanding of the very principles of family law, the term '*residence*' having replaced '*custody*' in the Family Law Act 7 years ago (1995).

The presumption that children spend approximately equal portions of time with both parents will work to the detriment of many children for whom such arrangements are inappropriate or impractical. Such a presumption is parent focused, not child focused, and could be seen as placating a parent (of either gender) rather than advancing the welfare of the child.[5]

5. Back to Before – Joint Custody

The Family Court of Australia was established by the *Family Law Act 1975* **(the 1975 Act)** in 1975. The 1975 Act provided a presumption of *"joint custody"* in the absence of any other orders being made. At the outset *"joint custody"* was questioned.

In a judgment delivered just 2 months after the Family Court opened its doors, Demack J considered whether there was a case for joint custody (as was the terminology then) or sole custody and the extent to which the father ought to have access to the child. In his judgment, he said

> *"I find the concept of joint custody a very difficult one to understand, but under sec.61(1) of the Family Law Act, Parliament has enacted that the married parents of a child have joint custody of that child. Whatever this means, it appears to me that it is a state of act and law which can only continue where the parties are in full amicable agreement about all aspects of the care, protection, custody, control, education and welfare of the child. Once there is a disagreement on any of these issues, there must be some source of authority to determine what the resolution of the disagreement is to be. It seems to*

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[4] Nicholson, J *"Rights of Children and Parents"* LAWASIA Conference, Brisbane, Children and the Law: Issues in the Asia Pacific Region; 21 June 2003 found at www.familycourt.gov.au/papers/html/context.html

[5] id 4 above

be, therefore, that in most instances, once the matter comes to Court, there is no place for an order for joint custody. To make such an order once the parties have chose the path of litigation is to either encourage further litigation or to require the parties to achieve some kind of compromise which will almost inevitably have a disturbing effect upon their relationship with the child.

The jurisprudence of the Family Court has been consistent, and very rarely have joint custody orders been made in contested proceedings under the Act in either its original or current forms. Cases such as *Padgen*[6], *H and H-K*[7] and *Forck and Thomas*[8] established that these orders were not appropriate unless the parties were compatible, and were able to cooperate, communicate and trust each other. These factors are incompatible with litigation and are rarely present in contested proceedings.

In April 1992 the Family Law Council published its report, *Patterns of Parenting after Separation.* It embraced "cooperative parenting", recommended parenting plans, and rejected a legal presumption in favour of joint custody. In a much-quoted passage, it wrote that "*The division of post separation parental roles into custody vs access reinforces the win/lose attitude and discourages ongoing parental responsibility*". The Council recommended:

...the words "custody" and "access" should be replaced with the word "care" and to described shared parenting responsibilities in the Family Law Act."

The Family Law Council, later, in its *Letter of Advice to the Attorney-General on the Operation of the (UK) Children Act 1989* recommended that the "*welfare principle*" be renamed the "*best interests*" principle for conformity with the language of the *Convention on the Rights of the Child* (**UNCROC**).

6. United Nations Convention on the Rights of the Child

Australia ratified the UNCROC in 1991. Australia played a significant role in the drafting of that Convention. All signatories to the UNCROC are obliged to follow a number of principles when their courts are making decisions about children[9]. In particular, the UNCROC provides:

Article 3

1. *In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative*

[6] (1991) FLC 92-231
[7] (1990) FLC 92-128
[8] (1993) FamLR 516
[9] Chisholm, J Third World Congress on Family Law and the Rights of Children and Youth; Bath, September 2001 at www.familycourt.gov.au/papers/html/chisholmbath.html

authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. *States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.*

3. *States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children, shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number of suitability of their staff, as well as competent supervision.*

Article 12

1. *State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*

2. *For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.*

7. The Present Law

In a decision delivered on 19 June 2003, the majority of the Full Court of the Family Court expressed the view that the Family Law Reform Act 1995 (**the 1995 amendments**) has the effect of incorporating aspects of the Convention in Australian Law.[10]

These principles are set out in Section 65E following the 1995 amendments (**the present law**). The present law provides '*a court must regard the best interests of the child as the paramount consideration*' in relation to making parenting orders. Before the 1995 amendments, the 1975 Act also focused on the needs of children by declaring that '*the welfare of children*' should inform all decisions.

Under the present law, each parent has "*parental responsibility*" for the children. This includes the power to make decisions relating to the children's daily and long term care welfare and development. It is defined as meaning:

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[10] (*B and B and Minister for Immigration & Multicultural & Indigenous Affairs* [2003] FamCA 451).

All the duties, powers, responsibilities and authority which, by law, parents have in relation to children.

The idea that parents do not have rights in or to their children was important in the thinking behind the amendments in present law.

The overall principles of the present law are described in section 60B(2) of the Family Law Act as

:- *except when it is or would be <u>contrary to a child's best interest</u>:*

(a) *children have the right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together; and*

(b) *children have a right of contact, on a regular basis, with both their parents and with other people significant to their care, welfare and development*

(c) *parents share duties and responsibilities concerning the care, welfare and development of their children; and*

(d) ***parents should agree about the future parenting of their children.***(underlining and bolding added).

The intention of these amendments was not to introduce any presumption as to who would parent children after separation. It was rather to encourage parental responsibility, and exhort both mothers and fathers to focus on their children's future wellbeing rather than their own grief and anger. This concentration on responsibilities rather than rights appears to have been a resounding failure if media reports on *'joint custody'* are accurately being reported.[11].

8. <u>Parenting Patterns and Domestic Arrangements Prior to Separation</u>

Most of the child care prior to family separation is undertaken by women[12]. Chief Justice Nicholson recently wrote,

> *"The fact is that we do live in a society where the mother is the primary care giver in most intact marriages. It is therefore not surprising that parents are most likely to decide that mothers should retain that primary responsibility... it is also not surprising that judges will choose*

[11] Id 10 above

[12] Australian Bureau of Statistics, Time Use Surveys 1992 and 1997,tabularised in *ABS Social Trends Report: Family Functioning: Looking after the Children,* 1999 at www.abs.gov.au

an environment that provides the greatest continuity and least disruption for children".

9. Parenting Patterns Post Separation

Last year 13194 residence orders were made in the Family Court, together with 14150 contact orders. These figures represent both consent orders sanctioned by the Court, and determinations made by judges where parents were unable to agree about the most suitable living arrangements for their children.[13]

Of all applications filed in the Family Court, 95% of parents and families reach arrangements which are flexible and original, sometimes informal and satisfactory, after a normal grieving process has taken place.

Only about 5% of applications result in defended hearings in which a decision about the children is made by a judicial officer. Unfortunately, the disputes the Court is called upon to adjudicate very frequently involve one – (or sometimes two) – parents who, the evidence before the judge suggests, are incapable, for reasons of violence, addiction or temperament, of caring for children. In such cases joint parenting, in any shape or form, is completely out of the question. In a limited number of cases contact is quite inappropriate.

A presumption of joint parenting would have ramifications far beyond the parents who go before the Court. Many parents negotiate in the shadow of the law, whilst others are completely unaffected by its provisions but are able to make workable and sensible arrangements concerning their children. Parents may be pressured into accepting shared arrangements, to the detriment of the children, because they do not have the resources to take the matter to Court. This is more likely to be in circumstances where the pressuring parent is unduly powerful, controlling and overly self focused.

10. Children treated as "*Property*"

The Family Court and the High Court have emphasised that children have rights, and should not be treated as possessions[14], and that parents' rights must be exercised on the basis of the best interests of the children, not of the parents[15]. Many decisions stress the importance of parents acting in a co-operative way. The willingness of a parent to encourage the children to have a positive relationship with the other parents has been a well known factor favouring a grant of custody (now residence) to that parent[16].

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[13] id 4 above

[14] *Gronow v Gronow* (1979) FamLR 719; *M v M* (1988) 12 FamLR 606

[15] *Secretary, Department of Health and Community Services v JWB & SMB* (1992) 15 FamLR 392

[16] id 10 above

A persistent theme in the lead up to the present law was that it was intended to prevent people treating their children as "*property*". Mr Duncan, introducing the legislation and amendments, in the House of Representatives said:

> "*...Surprisingly, some adults still adhere to this 'property' notion in respect of their offspring, particularly as a basis of power vis-à-vis the other parent. Dr Don Browning, Professor of Ethics and Psychological studies at the University of Chicago, in May of this year, whilst addressing an International Year of the Family seminary in Melbourne, said 'parents had become too selfish and tended to put their own needs ahead of those of their children. Many of the representations that parliamentarians receive seem to bear out that view. This bill seeks to redress that proprietorial attitude in a number of important ways...*"

Speaking of the former language of guardianship, custody and access, Mr Duncan said

> *That terminology suffers from connotations of proprietorial rights in children delivering them as the spoils of victory to the parent gaining custody*

The Explanatory Memorandum to the bill said

> *The Bill will replace the concepts of custody and access, which carry ownership notions and may lead to the belief that the child is a possession of the parent who is granted custody.*

The Centre's experience with clients is that parents consistently treat their children as property. Many times the contact parent is frustrated as the resident parent dictates when and where the other parent can see the children. This is usually based on the resident parent's attitude towards the other parent and has nothing to do with the interests of the children. Our lawyers spend much time trying to get parents to look at their children's best interests rather than revenging the other party.

While it is acknowledged that some contact parents need more time with their children, to legally prescribe equal time is a leap into potentially dangerous ground.

9. Research On Joint Parenting

There is much research which supports the view that joint parenting will only work in very exceptional cases. Consideration for joint parenting should only be given in a very limited number of cases and that the best interest of the child should prevail.

A large majority of men who are separated (64%) have contact with their children[17] and almost three quarters of these men have children staying overnight with them.[18] There is no Australian research showing why more contact does not occur. Interestingly, a recent study on contact arrangements shows that 25% of resident mothers believed that there was not enough contact,[19] suggesting that, where fathers have good relationships with the resident mothers and the children, the mothers are keen for contact to occur.

9.1 Joint Residence Arrangements

Joint residence arrangements are not common in Australia with only around 3% of children from separated families in shared care arrangements.[20] This figure correlates with statistics from the Child Support Agency that show only around 4% of families are recorded as having shared care arrangements for children. [21]

9.2 What research tells us about Joint Residence

A recent paper from the Australian Institute of Family Studies which examined the '*...motives and reflections of separated parents who share equally in the care of the children',*[22] summarised the key empirical studies conducted in the United States, that relate directly to joint physical custody. A summary of these studies, as taken from this paper, is outlined below:

One of the earliest studies conducted on joint residence arrangements, found that arrangements for joint residence could work well under certain conditions, these included

(a) commitment;
(b) flexibility;
(c) mutual co-parental support; and
(d) the ability to reach agreement on implicit rules.[23]

Other factors that were relevant to workability of these arrangements, and outcomes for children and families, included geographical proximity between the parents , the age, number and temperament of the children and the presence of step parents and siblings.

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[17] Australian Bureau of Statistics, *Family Characteristics Survey 1997,* Cat No 4442.0, AGPS, Canberra; see also id 1 above
[18] id 1 above
[19] id 1 above
[20] Australian Bureau of Statistics, *Family Characteristics Survey 1997,* Cat No 4442.0, AGPS, Canberra
[21] Attorney General's Department: *Child Support Scheme Facts and Figures* , 2001-2, Canberra 2003
[22] id 1 above
[23] Abaranel A "*Shared Parenting After Separation and Divorce: A Study of Joint Custody*" (1979) 49(2) American Journal of Orthopsychiatry 320.329

9.3 Other research

A Canadian Family Law Committee, initiated at the request of Deputy Ministers responsible for justice in that country, published its final report in November 2002.[24] The report resulted from extensive research and consultations with family law professionals, parents, advocacy groups and interested Canadians, as well as ministers and official from the Federal, provincial and Territorial government.

It recommenced quite substantial amendment to the Divorce Act. However in respect to the option which suggested amendments to introduce shared parenting similar to that contained in the present Act, the report concluded:

> "*Parenting arrangements should be determined on the basis of the best interest of the child in the context of the particular circumstances of each child. There should be no presumptions in law that one parenting arrangement is better than another. It is also a term that seems to focus on parent's rights rather than the child. Its meaning and application is ambiguous and this may itself promote litigation.*"

Research undertaken in the United Kingdom showed that shared care was more likely to be organised to suit parents than to suit children.[25] The research showed that children in shared residence were aware of how important equal allocation of time was for their parents, and felt responsible for ensuring 'fairness' in allocating their time between parents. This often meant that the children would put their own needs behind the interests of their parents. The research argued that being shared on a fifty- fifty basis '*can become uniquely oppressive' for some children.*[26]

It is important that where the Court is asked to make a determination of where children should live, that the Children's best interests remain paramount.

10. <u>When Joint Custody is not feasible</u>

If we are to put the best interest of the child before any rights of parents, then it needs to be agreed that there are situations when a parent is an inappropriate primary carer or obvious other factors which mitigate against shared parenting, such as :

- Where the parents live considerable distances away from each other and consistency of schooling and peer relationships cannot easily be maintained (to say nothing of travel difficulties encountered by the child)

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[24]Final Federal-Provincial Territorial Report on Custody and Access and Child Support "*Putting Children First*" Nov 2002 – cited at id 4 above

[25] Smart, C *Children's Voices* Paper presented at the 25th Anniversary Conference of the Family Court of Australia, July 2001 at www.familycourt.gov.au/papers/html/smart.html

[26] Smart, C "*From Children's Shoes to Children's Voices*" Family Court Review Vol 40 No. 3 July 2002, 307.314

- Where the parents continue to express hostility to each other, are unable to cooperate with each other or are inflexible;
- Where parents cannot ensure that their work patterns and living arrangements can accommodate the demands of the children;
- Where the accommodation and other facilities to meet the needs of children in two households are not financially within the reach of both parents, given that separation frequently results in less resources being available;
- Where prior to separation one parent has had the major role in child care and the other parent does not have the parenting skills necessary to meet the needs of the children.

There is recognition that spousal abuse has a damaging effect on a child. There is a recognition of this both at the legal and social science level as indicated for example by Wyndham (1998). For GCLC, this is a paramount consideration in speaking against the proposal for rebuttable joint custody.

Data from a 1996 Australian Bureau of Statistics national benchmark study showed that 23% of women who have ever been married or in a defacto relationship had experienced violence in that relationship. This equates to one in five Australian women who have experienced family violence representing a total of 1.4 million women.[27]

GCLC services an area which has one of the highest incidences of the domestic violence in the State of Western Australia. In particular,

- In the nine month period to March 2003, police in the Cannington District attended 1895 domestic violence incidents. This figure surpasses all other districts in Western Australia;
- In the previous twelve months, Police in the Cannington District have attended to 13 homicides. Eight of these 13 homicides arose out of domestic violence;
- The Armadale Court reports a workload of 513 restraining order applications (MRO and VRO however predominantly VRO) before the Court in the four month period from 1 January to 30 April 2003.

It is obvious there are situations where even contact is not in the child's best interests, for example where the parent is a danger to the child. These situations may be rare in the general community, but they are not uncommon to our clients or cases that go before the court.

[27] ABS, *Women's Safety Australia*, Canberra 2000, Catalogue No. 4108.9 at page 51 and see Table 6.5 at page 53

11. Summary

It is GCLC's view that the best interests of the child should remain the paramount consideration in family law matters, as is provided by current legislation. GCLC supports the present law's position that parents should retain joint parental responsibility.

Joint residence should only be granted where it is deemed to be in the best interests of the children concerned. These assessments need to be made on a case by case basis. A radical change to legislation such as a rebuttable presumption of joint residence should not be introduced without sufficient evidence/research to suggest it would be appropriate and in the best interests of the children.

Government policy should promote communication and co-operation between parents at separation. Acknowledging that there are a significant number of contact parents who would like to have more contact, GCLC respectfully suggests it is appropriate to investigate what are the obstacles that impact on the contact parent's ability to exercise contact with their children.

Furthermore, the complexity of parental arrangements in the period post separation are often influenced by the degree of shared parenting prior to separation. It would be in the best interests of children and parents alike if there was a greater degree of shared parenting prior to separation. To achieve such an ends would require a broad range of efforts, including further efforts by workplaces to provide more family friendly work hours than exist at present, particularly for fathers, and community education on concepts such as shared parenting in all families.

In essence, there is no one simplistic measure that will achieve the desired outcome of equal parenting responsibilities, particularly not the proposed legislative change to provide "rebuttable presumption of joint residence". If there is genuine interest in promoting equal parenting, it is the view of GCLC that greatest effect will be achieved through efforts outside of the legal system, in particular in providing community education and support for parents.

If you would like any additional information from GCLC please do not hesitate to contact me on (08) 9490 1163 or by email on trish@gosclc.com.au

Thank you for the opportunity to have input into this inquiry.

Yours sincerely

Patricia Blake & Sue Holgate
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