

Submission No: 1353

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Secretary:

This note is a submission to the Standing Committee on Family and Community Affairs Inquiry into Joint Custody Arrangements in the event of Family Separation.

- (a) In relation to the principle that the best interests of the child are the paramount consideration I am opposed to the proposal in the Family Law Amendment (Joint Residency) Bill 2002 (Amendment) for rebuttable presumption of a joint residence orders. As a single parent and a parent who has experienced the implications of a Court Order on Access and Orders against Relocation I am of the opinion that the best interests of the child can only be paramount when each child is given unique consideration and all circumstances considered. Shortcomings have occurred in practice.. Even the High Court of Australia failed to take into consideration domestic violence in a recent relocation case.. In the event that the proposal for rebuttable presumption of a joint residence orders is successful it will inevitably produce many shortcomings, and possibly serious breaches of Australia's international legal undertakings under The United Nations Convention on the Rights of the Child (Convention) and other Human Rights Declarations. The Convention in its Preamble recognizes that for harmonious development a child should grow up in a family environment and in an atmosphere of happiness, love and understanding. Parents that are mutually mature enough to reach an agreement that is suitable for their child's harmonious development and their own realistic needs will no doubt do so. The fact is that great many separating parents are faced with such inner turmoil, anxiety and other negative emotions that reaching an agreement is well outside their capacity. In most instances prior to separation the mother was the primary caregiver and mothers are granted Residency Orders more often than fathers. A great number of mothers forfeit their change to join the workforce either fully or partly to be able to create a harmonious environment for their child. It is a choice they make and most are fully aware of the effects of current and future financial implications and hardship that such a choice creates. The question arises in my mind in relation to the proposed Amendment. Is it assumed that most fathers will forfeit their full time employment to be able to care for their child or is it assumed that to create a harmonious environment for the child whilst residing with its father a full time help, de facto, friends and relatives are to care for the child instead of the mother?. There is no doubt that some fathers will create the time to care for their child and accept the social and financial consequences. However in the second scenario, where a child, that is highly traumatized by separation is taken from its mother's care and placed into another persons care, a person that the child may not even slightly know, becomes a long lasting, disturbing and frightening experience.

The safety factor of a child is of paramount consideration and in cases where violence is established on the balance of probabilities I would like to see a rebuttable presumption of no contact until the parent who has used violence has been able to establish without a reasonable doubt that the child is safe in his or her care.

We live in a very diverse society and we live in times where we are exposed to continual changes. Financial hardship is rife for many a family and seems to be on the increase. A significant number of the population is finding it hard to cope with their life situation, and inner turmoil is ever present. Many do not know how to set boundaries in their relationships, hence lack of self esteem and self worth is experienced often manifesting in negative emotions and even violence. There is lack of know how to communicate ones feelings, wants and needs. It is a hard task to create an environment for harmonious development for a child unless experiencing inner harmony. It is a hard task to create harmonious relationships without experiencing inner harmony. At this point in time it would benefit all if measures would be considered how to assist children through educational means and indeed Society at large to become aware of such concepts as Emotional Intelligence and Communication Skills relating to feelings and alike.

- (b) whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children. The fact is that the majority of single mothers are financially worse off in a matter of few years after divorce whereas in most cases the opposite applies to fathers. I find it extraordinary that there is a capping on incomes in excess of c.a. \$ 119,000.00 in regard to the child support formula. It is unfair on a child whose parent, in most instances the father, is earning many times over that amount. This capping is also unfair on low income earners who are at times criticized for avoiding payment, whereas no criticism is heard in relation to a parent who is paying a lot lower percentage than 18% of his or her wages. The percentage formula does not reflect the actual cost of raising a child by far. The percentages of payer contact used to calculate changes in the formula should not fall below the current definition of substantial care as there is no proportionate reduction in costs to the primary carer parent.

Yours faithfully

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