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House of Representatives Standing Committee on Family and Community Affairs
Submission No: 21
Date Received: 25-7-03
Secretary:

18 July 2003

Mrs Joanna Gash MP
Member for Gilmore
24 Berry Street
NOWRA NSW 2541

Dear Mrs Gash

RE: INQUIRY INTO CHILD RESIDENCE ARRANGEMENTS IN THE EVENT OF FAMILY SEPARATION

We write on behalf of Shoalcoast Community Legal Centre (SCLC) in response to the current inquiry into child residence arrangements in the event of family breakdown. SCLC provides legal services to disadvantaged people of the Shoalhaven, Eurobodalla and Bega Valley Shires on the South Coast of NSW.

As a Centre which advises both men and women in family law matters, we believe we are well placed to understand the legal dynamics and realities of parenting post separation for both mothers and fathers.

There is no doubt that separation is a time of great distress and upheaval for everyone involved, particularly children who do not choose separation and are powerless to control the actions of their parents. Most children feel torn, displaced and insecure about what will happen to them once their parents have separated.

It is with the best interests of children in mind that we believe it is imperative that the government takes an honest and measured look at any such proposal which involves a presumption of joint residence. We do not believe that such a presumption is genuinely consistent with our international obligations, domestic aspirations and the social reality of children and parenting pre and post-separation.

We are opposed to the introduction of a legal presumption of joint residence for the following reasons:

It is contrary to the "child's best interests" principle

Introducing a legal presumption of joint residence is contrary to the principle entrenched in the *Family Law Act*, namely that all decisions made in relation to the care of children must be made in their best interests.

A presumption of joint residence places the rights of parents over the rights of children to have decisions made which are based on what is in their best interests. It ignores the Family Court's obligation to protect children's interests.

We also note the detrimental effects that the presumption in favour of contact, which was introduced in the *Family Law Reform Act* in 1996, has had on the protection of children. We now see a presumption that a child will have contact with a parent regardless of abuse or violence. Surely such a position cannot seriously be said to be in the best interests of children?

It places women and children at further risk of violence

A significant number of women and children experience violence.

Data from a 1996 ABS study showed that one in five Australian women have experienced family violence by their current or former partner, representing a total of 1.4 million women. The numbers and diversity of women seeking advice from Shoalcoast Community Legal Centre reflects this frightening reality. We have many hundreds of women and their children seeking assistance in family law matters who are trying to protect themselves from domestic violence. In many instances, we find that the children are used by violent fathers to keep the family in a continuing cycle of violence. In circumstances like these, a presumption of shared residence places violent fathers at an advantage and women and children at increased risk.

Such a presumption will also force women to privately litigate in the absence of readily available legal aid funds to protect their children. Children will be forced to live with violent fathers and mother's will be forced have to regularly negotiate and be in the presence of violent ex-partners.

The concerns raised by us in no way seek to diminish the role of men and fathers in children's lives. On the contrary, healthy male role models are important for children. What we do strongly oppose is a culture of acceptance of violence and a refusal to truly acknowledge the impact of violence on children and on our broader society. Rewarding violent men will be the outcome of a presumption of joint residence.

Shared residence is already possible

The current *Family Law Act* already provides mechanisms for shared residence where it is considered in the child's best interests.

Section 61C(2) of the Family Law Act provides that each parent has parental responsibility for their child. This is unaffected by separation and will remain with both parents except in exceptional circumstances. When the Court is approached to make decisions about where children should live after separation, the Court must have regard to the paramount principle of what is in "the best interests of the child" and the matters set out in s65F, including:

- Any expressed wishes of the children (depending on maturity or level of understanding)
- Nature of relationship of the child with each parent
- Likely effect of any changes in the child's circumstances (status quo)
- Practical difficulty and expense of child having contact with a parent
- The capacity of each parent to provide for the needs of the child
- Child's maturity, sex and background
- Need to protect the child from physical or psychological harm
- The attitude to the child and to the responsibilities of parenthood
- Any family violence order that applies to the child or a member of the child's family
- Any other relevant fact or circumstance.

The *Family Law Act* and its focus on Personal Dispute Resolution, already heavily encourages parents to share duties and responsibilities for their children's care. It is our experience that shared residence is the least common post-separation arrangement; not because mothers are trying to stop fathers from meaningful contact; but most often because of relationship conflict, violence and abuse, re-partnering of parents and, on many occasions, fathers' lack of interest.

It is essential in protecting the best interests of the child, that if parents cannot agree, then it is the Court's role to keep the children's best interests central to any and all decisions about their care.

It ignores family complexities and needs

A presumption of joint residence is a far to simplistic a response to the complexities of families. Separating families have many needs and operate in a variety of ways.

Parents do not always live near each other or have different parenting patterns which do not promote consistency for children. It reduces families right to make their own decisions about parenting arrangements depending on children's needs, parents capacities, geographical distance between them, parent's work patterns, finances and housing.

It is contrary to evidence and research about parenting pre and post separation

Research continues to show that women in relationships do the bulk of parenting and domestic work. We consider that a presumption of joint residence is contrary to evidence that shared residence works for some families where there has been a history of cooperation and shared care pre-separation and where parents voluntarily enter these arrangements after separation.[1]

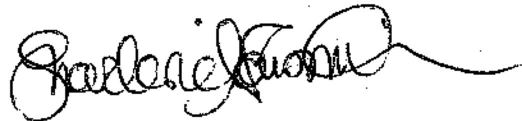
It remains true that single mothers are amongst the most impoverished group in the community and such an arrangement will further plunge them into poverty and consequently increase the number of children also living in poverty.

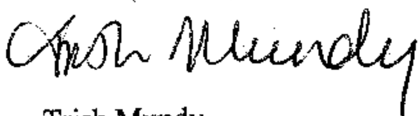
We refer you to a survey conducted of Child Support Agency clients in 2000 which revealed that only 28% of payees reported always receiving payments on time, while 40% reported that payment was never received. In June 2000, 66% of payers did not make a payment of child support at all.[2]

This is consistent with our experience that many payees do not receive child support payments, receive inadequate payments or the payer has been able to effectively hide their income and assets to reduce or avoid liability to pay. The level of physical and financial responsibility that is assumed by many non-resident parents to date must lead us to question the reality of joint residence arrangements.

We would welcome the opportunity to meet with you to discuss these matter furthers.

Yours faithfully





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[1] See Rhoades & Graycar *The First years of the Family Law Reform Act* 1995; and Bauserman R, *Child Adjustment in Joint-custody Versus Sole-Custody Arrangements* in Journal of Family Psychology, 2002.

[2] Wolffs and Shallcross, *Low Income Parents Paying Child Support: Evaluation of the Introduction of a $260.00 Minimum Child Support Assessment* 2000 57 Family Matters