House of Representatives Standing Committee
on Family and Community Affairs

Submission No: 484

Date Received: 11-8-03

Secretary: ....

COMMITTEE SECRETARY
STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS
CHILD CUSTODY ARRANGEMENTS INQUIRY
DEPARTMENT OF THE HOUSE OF REPRESENTATIVES
PARLIAMENT HOUSE
CANBERRA ACT 2600

DR.RENATA ALEXANDER
c/- 161 CHAPEL STREET
ST.KILDA 3182 VICTORIA

7th August 2003

Dear Committee Members,

INQUIRY INTO CHILD "CUSTODY" ARRANGEMENTS IN THE EVENT OF FAMILY SEPARATION

I am a senior lecturer in law in the Faculty of Law at Monash University in Melbourne as well as a practising family lawyer for over 20 years.

I make this submission in my own name and on my own behalf only. I do not represent the university or any other organization.

Because of the short time span allocated for submissions, I have not had time to prepare a new submission to your inquiry but I hold very strong views both academically and professionally **against** a presumption of joint or shared "custody" (called "residence" since 1995 amendments to the Family Law Act 1975).

I do however enclose the relevant pages from my PhD in family law which I received in 2001. My thesis looked at the position of women and gender-bias under the Family Law Act. It included a chapter on children's issues and a part of that referred to joint custody. I looked at relevant studies, case law, overseas experiments as well as personal practical experience. In another part of the thesis, I looked at family violence and child abuse and clearly in those situations (which statistically occur in about one in four families with the vast majority of perpetrators being husbands/fathers), joint or shared custody is not merely inappropriate but harmful to the child and the female caregiver.

I would be pleased to elaborate on my views in person if the opportunity is provided.

Yours faithfully,

DR. RENATA ALEXANDER

REFLECTIONS ON GENDER IN FAMILY LAW DECISION MAKING IN AUSTRALIA

by Renata ALEXANDER
Ph.D thesis – awarded 2001
Monash University Faculty of Law
Melbourne, Victoria

ii) *Joint custody[542]/shared residence and specific issues*

In the context of child residence decision making through formal adversarial litigation and adjudication, joint or shared residence or custody is mooted by some commentators and practitioners as a practical alternative to the problem of wide judicial discretion in the interpretation of the best interests of the child.[543] Current family law legislation in Australia and other Anglo-American jurisdictions allows for joint residence or custody orders to be made along with other forms of parenting orders. However, it is suggested by some writers[544] that there be a legal or statutory presumption in favour of joint residence, over and above other types of residence orders. It is this suggestion that is now examined.

---

542 Although different terminology is now in use, the term 'joint custody' in this following section means where children of a marriage or relationship spend more or less equal time with each parent after the marriage or relationship ends. It also means that the parents share the cost and responsibility of the children's daily care and long-term welfare. Much of the research and case law refers to 'joint custody.'

543 For example, Folberg and Kelly are each strong advocates of joint custody after separation. See J Folberg (ed), *Joint Custody and Shared Parenting* (BNA Books, Washington DC, 1984) and Kelly, 'Children's Post-Divorce Adjustment,' op cit, and Kelly, 'Current Research on Children's Post-Divorce Adjustment,' op cit.

544 For example, Folberg proposes such a statutory or legal presumption. See J Folberg, 'Custody Overview' in Folberg (ed), op cit, 9. A presumption in favour of shared parenting is also a common view of men's and fathers' rights groups. See Kaye and Tolmie, op cit, 33.

Arguments for joint custody/shared residence

Arguments in favour of a joint custody or shared residence presumption are similar to the arguments put forward in support of parents privately agreeing to a shared residence arrangement or in support of courts ordering such an arrangement if custody can not be agreed upon. These arguments are premised on a pro-child psychological basis, on an ideological foundation or on a practical and pragmatic approach.

First of all it is argued by psychologists and other social scientists that mothering and fathering offer different bonds and values to children and that children 'need' both their parents.[545] This need should therefore be met within intact families and also after two parents separate, through the 'triadic ideal'[546] of shared custody and if not, through residence with one parent and frequent contact with the other. Some studies support this view that both parents and children benefit from joint physical custody arrangements.[547]

The second basis in favour of joint or shared custody or residence stems from ideological arguments. Joint custody embodies the liberal ideologies of equality and gender-neutrality. Men and women must be treated equally at law and so have equal rights in custody disputes. Gender-preference will be avoided if the primary determinant of what is in the best interests of a child are the child's biological ties rather than relationships of care and nurturance.[548] It is argued that joint residence recognizes and maintains those biological ties. Joint residence therefore ensures that the 'rule equality' of gender-blind family law legislation results in 'result equality' in the outcomes and decisions reached.[549] It recognizes men to be as competent as

---

545 For example, Wallerstein and Kelly, op cit; McCant, op cit and Blankenhorn, op cit.

546 Term used by Czapanskiy, op cit, 1467. At pp 1466-1471 the author considers arguments about joint custody and different roles for mothers and fathers.

547 For example, see Kelly, 'Children's Post-Divorce Adjustment,' op cit, 55 and Warshak, op cit, 406-407. By contrast, Bridge argues that shared parenting may have more to do with parental self-interest than children's needs. See C Bridge, 'Shared Residence in England and New Zealand – A Comparative Analysis' (1996) 8:1 *Child and Family Law Quarterly* 12, 17-18.

548 Fineman, 'Custody Determination at Divorce: The Limits of Social Science Research and the Fallacy of the Liberal Ideology of Equality,' op cit, 99.

549 Ibid, 109.

women in childcare and child-upbringing and may act as a 'catalyst for reform'[550] in actual behaviour in the family and in gender-stereotyping by the courts.[551]

The third main argument in favour of joint custody or shared residence is based on practical considerations. First of all, a presumption favouring shared residence would reduce the incidence, trauma, cost and length of litigation. Emotional involvement of parties and children would be largely avoided. The use of legal practitioners and experts and lay witnesses would be minimized. Court resources and judicial time would be saved and utilized for other purposes. Predictability and certainty would be injected into the interpretation and application of the best interests standard and as with other statutory presumptions, judges would need to take a far lesser role in analysing social science material and trying to predict the future. Furthermore, since sole parent families whether female-headed or male-headed are more likely to be poorer than two-parent families, it is claimed that shared custody financially benefits women by ensuring that both parents share in the costs and responsibilities associated with caring for children.[552] In addition, parties would be more likely to settle outstanding financial matters if the care of children were no longer used as a threat or lever to obtain an unfair advantage in negotiations and settlements.

Arguments against joint custody/shared residence

There are many arguments against court-ordered or legislatively prescribed shared residence. In my view, the risks and criticisms of imposed shared residence negate and far outweigh any positive claims. These negative aspects need to be described in detail. Some of the criticisms emanate from overseas experience and studies.[553]

---

550 Hasche, op cit, 229.

551 For a critique of joint custody as couched in a commitment to formal equality, see Grillo, op cit, 1568. Grillo rejects joint custody because it does not reflect reality.

552 It is argued that shared residence involves sharing child-rearing costs but not necessarily in equal shares. Advocates claim that joint custody does not relieve a father of the responsibility to pay child support to the mother if his financial position is superior.

553 For positive accounts of joint custody in Scandinavia and the United States in the 1980s, see J Trost, 'Legal Changes and the Role of Fathers: The Swedish Experience' (1986) 9:3-4 *Marriage and Family Review* 85 and survey in W S Coysh, J R Johnston, J M Tschann, J S Wallerstein and M Kline, 'Parental Post-Divorce Adjustment in Joint and Sole Physical Custody Families'

For example, the Californian experiment has valuable lessons against a statutory or legal presumption. In 1973, California replaced the maternal preference with the best interests standard.[554] Then in 1979, California passed innovative amendments to its Civil Code that came into effect in January 1980.[555] The new law stipulated that the best interests of the child would be served by frequent and continuing contact with both parents. Joint legal and physical custody operated as a preference in custody cases and if sole custody was ordered, the court had to state reasons. Gender of the parents was not a factor and both parents were treated equally.

Many American states followed suit enacting joint custody or shared parenting laws and some also legislated for joint custody as a rebuttable statutory presumption.[556] Joint custody became a legal and social industry. The incidence of joint physical and joint legal custody orders increased greatly and contemporaneously, parenting literature and social science support for joint custody grew.[557] In 1989 however, the Californian legislature repealed the presumption and joint custody became one of several equally-weighted options open to a court determining child custody cases. Other states followed a similar legislative course.[558] Californian law now has no presumptions and best interests of the child is the paramount standard.

The American experiment pioneered (and terminated) by California failed largely because studies showed that notwithstanding joint legal custody (which included

(1989) 10:1 *Journal of Family Issues* 52. For details of other American studies, see Kelly, 'Children's Post-Divorce Adjustment,' op cit, 54-56 and Johnston, op cit, 415-418.

554 For a study 'when the best interests standard was in its heyday in California,' see L J Weitzman, 'Gender Differences in Custody Bargaining in the United States' in Weitzman and Maclean (eds), op cit, 395.

555 Cal Civ Code §4600.5. For a legislative history and analysis, see D J Miller, 'Joint Custody' (1979) 13:3 *Family Law Quarterly* 345 and J A Cook, 'California's Joint Custody Statute' in Folberg (ed), op cit, 168.

556 By 1984, over 30 states had enacted some form of joint custody statute. For details of the different legislative approaches and court decisions, see J Folberg, 'Issues and Trends in the Law of Joint Custody' in Folberg (ed), op cit, 159. By 1988, 36 states had some legislative form of joint custody. See Mason, op cit, 126 and 130.

557 For a review of research and literature on joint custody up to the mid-1980s, see J Stahl, 'A Review of Joint and Shared Parenting Literature' in Folberg (ed), op cit, 25. Stahl states that in the early 1980s, some 15 to 20 articles and books on custody appeared each year, many on joint custody.

558 See the account of different states in S Simon, 'Joint Custody Loses Favor for Increasing Children's Feeling of Being Torn Apart,' the *Wall Street Journal*, 15 July 1991, pp B1 and B2.

shared physical custody), the overwhelming burden of physical care and financial responsibility for the children continued to fall on the mother.[559] Gender differentials continued,[560] often to the social and economic disadvantage of women. In addition, joint custody was not working where parents did not communicate, co-operate or agree and where instability for the children continued.[561]

Studies and experience have confirmed two risks predicted with joint custody or shared residence orders. First, even where such an order is made, whether by virtue of a statutory presumption or the exercise of judicial discretion, 'what is called joint custody, is in fact often sole maternal custody with another name, the day-to-day responsibility for the children remaining with their mothers.'[562] Children generally remain with or drift back to their mothers.[563] Secondly, where joint custody is awarded, mothers receive smaller amounts of child maintenance than if granted sole custody.[564] This means that notwithstanding the claim that joint custody or shared residence shares the financial cost of childcare, such orders in fact exacerbate the already often poverty-stricken situation of single mothers as many women remain financially dependent on welfare with even less financial help from the children's fathers.[565]

A third risk with a joint custody or shared residence order is that even though the mother often assumes daily care and financial responsibility for the children, the father can rely on such an order to try and control or influence the life of the mother

---

559 For example, Maccoby and Mnookin, op cit. See footnote 13 above. Maccoby and Mnookin studied 1100 Californian families over a three year period following divorce. Of the total, 80 per cent had joint legal custody but only less than 20 per cent had joint physical custody (p 269). In most cases, children lived with their mothers (70 per cent), fathers paid less maintenance and in many, the father partially or totally dropped out of the children's lives (pp 269-270).

560 Ibid, 269 and 271. Even in the dual-residence families, the mother more commonly performed more of the child-rearing responsibilities.

561 Maccoby and Mnookin, op cit, 271-274 and Mason, op cit, 131-132.

562 Hasche, op cit, 229-230.

563 Johnston, op cit, 419.

564 Polikoff, op cit, 242.

565 In her national study in the United States, Weitzman demonstrated that the joint custody option did not change either the division of labour (mothers still did most of the childcare) or the impoverishment of single mothers. See Weitzman, op cit, 245-256.

and her decision making regarding the children and also the lives of the children.[566] There is a real risk of manipulation and interference. As Graycar warns, '[T]he symbolic force of a legal "right" to custody, and therefore to decision-making powers over a child, may give the father, already most likely to be the economically and physically stronger parent, a tactical advantage in a dispute between parties of unequal bargaining power. So, while not having the responsibility for the day to day care and nurture of children, fathers may none the less maintain the power to make decisions, often important decisions ...'[567]

The purported emotional benefits of joint custody or shared residence for parents and children can also be criticized. For example, Johnston surveyed many of the American studies over the past three decades[568] reporting on joint physical custody and on children's adjustment in sole custody compared to joint custody families.[569]

Johnston concludes that 'there is no convincing evidence that joint custody is either more detrimental or more beneficial for the majority of children of divorce compared to mother or father sole custody arrangements. However, substantial amounts of

---

566 Several commentators make this point. See Polikoff, op cit, 242; Smart, *The Ties That Bind*, op cit, 139; M Fineman, 'Dominant Discourse, Professional Language and Legal Change in Child Custody Decisionmaking' (1988) 101:4 *Harvard Law Review* 727, 759-761; A M Delorey, 'Joint Legal Custody: A Reversion to Patriarchal Power' (1989) 3:1 *Canadian Journal of Women and the Law* 33, 40-42; Bacchi, op cit, 198 and Boyd, 'W(h)ither Feminism?,' op cit, 340.

567 R Graycar, 'Equal Rights Versus Fathers' Rights: The Child Custody Debate in Australia' in Smart and Sevenhuijsen (eds), op cit, 158, 175. Further in the pre-reform Australian context, Nygh (then a Family Court judge) agrees that some men may use joint custody to continue to exercise control over their children and former wives but he still supports joint custody as the 'ideal solution.' See Nygh, op cit, 71 and 72. This also applies in the post-reform context. See pp 266-269 above.

568 Johnston found that the earlier studies of the late 1970s and early 1980s used 'highly selective samples of couples who could be described as pioneers of the concept, even crusaders' who 'tended to be motivated and committed to making joint custody work.' Those early studies therefore supported joint custody regimes. Later studies of the mid-to-late 1980s focused on children at different age groups and varying parental motivations. These studies too were small, unrepresentative and methodologically questionable but were 'generally positive, if not enthusiastic' about joint custody. Then in the last decade, studies have been broader, more representative, longer and less problematic in terms of research methodology. See Johnston, op cit, 415-416 (footnote 416 above).

569 See also S F G Schwartz, 'Toward a Presumption of Joint Custody' (1984) 18:2 *Family Law Quarterly* 225 who advocates joint custody and cites various social science material in support. See also Stahl in Folberg (ed), op cit, for details of joint custody studies in the early 1980s. For studies in the 1980s that question the long-term benefits of shared parenting, see Mason, op cit, 172.

access to both parents (as with joint custody schedules) and frequent transitions between parents are generally associated with poorer children's adjustment in the most extreme cases, in those divorced families where there is high on-going conflict and continual disputes over the children.'[570]

Johnston's comments confirm the findings of other studies that 'shared custody is not likely to prove beneficial to the welfare of child and parents unless all those involved are prepared to make it work.'[571] I agree that joint custody or shared residence can work well if the parties genuinely choose to co-operate and pursue such an arrangement after separation.[572] However, voluntary joint residence and division of responsibility for specific issues is different from court-ordered or legislatively-mandated shared residence. To impose a pattern of parenting on divorcing parents who probably lack the necessary 'mutuality'[573] and past experience to make joint custody or shared parenting work, may be legally imposing 'a presumption to continue substantial inequalities of power and responsibilities.'[574] It may also be more harmful than beneficial to children to impose a shared residence regime upon parties who are conflictual and unco-operative.[575]

---

570 Johnston, op cit, 420-421.

571 M Harty and J Wood, 'From Shared Care to Shared Residence: Perspectives on Section II of the *Children Act* 1989' (1991) 21 *Family Law* 430, 431. See also Wallerstein and Blakeslee, op cit, 256-273, 304 and Maccoby and Mnookin, op cit, 293.

572 Polikoff argues that such a choice is more likely to work if the parties actually shared childcare and child-rearing during cohabitation. See Polikoff, op cit, 242. Shared care is not a popular voluntary arrangement in Australia. According to national 1997 figures, only three per cent of children whose parents had separated were in a shared care arrangement (that is, where each natural parent cared for the child for at least 30 per cent of the time). The vast majority (97 per cent) were in a sole care arrangement where the resident parent cared for them more than 70 per cent of the time. Most children of separated parents lived with their mothers (88 per cent). See Australian Bureau of Statistics, *Australian Social Trends 1999*, op cit, 42-43.

573 J Brophy, 'Custody Law, Childcare and Inequality in Britain' in Smart and Sevenhuijsen (eds), op cit, 233.

574 Id.

575 Some research in the United States suggests that children in court-ordered shared custody arrangements (not by consent) deteriorate emotionally faster than their peers. See E Walsh, 'The Wallerstein Experience' (1991) 21 *Family Law* 49, 50.

Legislative and judicial response

> A court can order that custody be shared, but it cannot order that the parents stop bickering, stop disparaging each other, or accommodate one another in child care decisions as married persons would. And if parents do not live close to each other, joint custody can place an intolerable strain on a child's social and academic life if one parent is not willing to allow the other to supply a more-or-less permanent home. Furthermore, parents must constantly give permission for one thing or another. ... When the parents violently disagree – and particularly when they disagree because they are continuing fights left over from the marriage – the child is likely to be left hopelessly confused as the parents are played off one against the other.[576]

As described earlier, California and other states in the United States have repealed their statutory presumptions in favour of joint custody. State courts there have wide discretion to make children's orders or approve a parenting plan subject to the overriding principle of the best interests of the child.[577] In Canada, recent family law reforms proposed by the Department of Justice included the proposal *not* to adopt a mandatory joint custody presumption.[578] In the United Kingdom, the *Children Act* 1989 which came into effect in October 1991, permits arrangements for shared residence and shared care of children to be ordered by the court but there is no statutory or legal presumption in favour of such arrangements. In making children's orders, the courts are to consider the welfare of the child as paramount.[579] However, the *Children Act* also contains a 'no order' presumption so that if separating parents agree to shared or joint custody, the court need not approve nor scrutinize such an arrangement to ensure that the welfare of the child is enhanced.[580]

What about the viability of a presumption or preference for joint custody or shared residence and parenting in Australia? Joint custody where parents fairly equally share the physical care, residence and responsibility of children has been traditionally rarely

---

576 Neely, op cit, 183.

577 For a useful summary of developments in state legislation and case law on custody and other areas of family law in the various states in the United States, see the update articles 'Family Law in the Fifty States – An Overview' in *Family Law Quarterly* each year.

578 See Boyd, 'W(h)ither Feminism?,' op cit, 339-340.

579 For an overview, see Fricker, op cit and Dewar, op cit.

580 See footnote 106 above.

ordered by the Family Court in contested cases.[581] In line with English case law,[582] Australian courts treat court-imposed joint custody orders as uncommon because of the notion that children need the stability of one home and general routine and because of practical difficulties. Also, if shared care is appropriate, the parents are likely to agree and co-operate and not resort to litigation in the first place. '[L]itigated matters are, by definition, the very cases in which an on-going commitment to quality co-parenting is least likely to eventuate.'[583] Imposing co-operation may do more harm than good.

The reluctance of the Family Court in Australia to order joint custody in contested cases has persisted from early days. For example, a survey of all contested custody orders made by the Family Court at the Melbourne registry in 1980 revealed that only five per cent of orders were for arrangements other than sole custody to one parent or the other.[584] Again, in the later 1990 sample of defended custody cases in all registries, only five per cent of cases resulted in orders for joint or shared custody.[585] And again in the 2000-2001 statistics available on-line.

There are a few reported decisions on this point. 'Case law has shown that judges are (often with good reason) sceptical of "joint custody" solutions as they are exposed to disputes which rarely seem amenable to any form of co-operation.'[586] Family Court judges appear to mirror the reported concerns of their Californian counterparts against joint or shared physical custody namely poor co-operation, instability created by shifting from home to home, distance between homes and acrimony and revenge

---

581 In its submission to the Joint Select Committee on Certain Aspects of the Operation and Interpretation of the Family Law Act, the Family Court of Australia 'advised that the court rarely made orders for joint custody,' often because of the practicalities which work against a successful shared parenting arrangement. See Joint Select Committee on Certain Aspects of the Operation and Interpretation of the Family Law Act, *The Family Law Act 1975: Aspects of its Operation and Interpretation*, op cit, para 5.27.

582 For an analysis of English case law since the 1950s, see J Westcott, V Mills and A Reader, 'Joint Custody Orders' (1988) 18 *Family Law* 95 and more recently since the 1989 legislation, see Harty and Wood, op cit.

583 L Moloney and M Harrison, 'Comment – Parenting After Separation: Can the Law Do Better?' (1992) 6:1 *Australian Journal of Family Law* 79, 84.

584 See Horwill and Bordow, op cit, 29-30. I have taken account of the different terminology then applicable. See also pp 263-264 above.

585 Bordow, (full report, 1992), op cit, 11-12 and Bordow, (summary, 1994), op cit, 255-256.

586 Moloney and Harrison, op cit, 83-84. For example, see *Cullen and Cullen* [1981] FLC 91-113.

See also Rhoades, Graycar & Harrison, The First Three Years of the Family Law Act (2000)

between parents.[587] For example, in *H and H-K*,[588] the court did order joint guardianship and joint physical custody of a four year old girl but in a situation where a workable joint custody arrangement was already in place. The trial judge noted the 'rare' and 'unusual nature'[589] of an order giving each parent equal time with the child and also recognized that there may need to be changes in the future when circumstances change.

By contrast in *Padgen*,[590] the court declined to make an order for shared custody, even though the 13 year old child's wishes were to live in that kind of arrangement. His Honour awarded sole custody to the mother in accord with the *status quo* and noted that as between the parents 'there also remains the deficit in mutual trust, co-operation and good communications which appear to be desirable elements in a shared custody scheme.'[591] Again, in *Forck and Thomas*,[592] the trial judge refused to make a joint custody order in respect of a nine year old child because of 'tension and mistrust'[593] between the parents and their inability to communicate and co-operate.

Although the Family Court has been generally reluctant to impose joint custody regimes for what appear to be appropriate and pragmatic reasons, there has been some public debate in favour of such arrangements. In 1987, the Family Law Council published a report called *Access – Some Options for Reform*[594] which included positive remarks about the option of joint custody or shared parenting. After further

---

587 These were the reasons cited in a 1989 survey of Californian judges. Judges were asked to rate the results of joint custody arrangements in cases where they had been attempted. Almost 70 per cent rated the results as mixed or worse. Only 30 per cent rated joint custody outcomes as moderately good or very good. Interestingly, at that time, there was a statutory presumption in favour of joint legal and physical custody. See Reidy, Silver and Carlson, op cit, 80-83. These same reasons are also cited by Nicholson CJ in *Forck and Thomas* [1993] FLC 92-372 at pp 79,868-79,869 where the trial judge refused to make a joint custody order (and reviewed research on joint custody before doing so).

588 *H and H-K* [1990] FLC 92-128.

589 Ibid at 77,852 per Kay J.

590 *Padgen and Padgen* [1991] FLC 92-231.

591 Ibid at 78,595 per Rowlands J.

592 *Forck and Thomas* [1993] FLC 92-372.

593 Ibid at 79,869 and 79,870 per Nicholson CJ. See also footnote 587 above.

594 Family Law Council, *Access – Some Options For Reform* (Australian Government Publishing Service, Canberra, 1987).

consultation, the Family Law Council released another report in 1992 entitled *Patterns of Parenting After Separation*.[595] The report covered various proposals for reform of family law. Although the Council supported the ideas of 'co-operative parenting' and children maintaining meaningful contact with both parents, it specifically rejected a statutory presumption for joint custody as a solution. In the following year, a federal Joint Select Committee reported on certain aspects of the operation and interpretation of the *Family Law Act*.[596] Various advantages and disadvantages of joint custody or shared parenting were listed[597] but no formal position was taken.

Finally, as described earlier, the *Family Law Act* was substantially amended with respect to children in 1995. The Act does not contain any statutory preference for joint care or shared residence arrangements but there are strong judicial[598] and legislative statements promoting co-parenting, shared parental responsibility and contact[599] (almost at all costs). As stated earlier, research shows a worrying trend of the Family Court making more formal residence/residence orders[600] but where the care and cost of the children are not shared and which the non-resident parent (usually the father) is utilizing to gain a better bargaining position, to harass the resident parent, to minimize child support and to stop the resident parent from relocating. I have argued however, that the disadvantages of court-ordered shared residence clearly outweigh any claimed

595 Family Law Council, *Patterns of Parenting After Separation: A report to the Minister for Justice and Consumer Affairs*, op cit, which followed Family Law Council, *Patterns of Parenting After Separation*, a discussion paper released in April 1991. For further details, see also Moloney and Harrison, op cit, 79-81.

596 Joint Select Committee on Certain Aspects of the Operation and Interpretation of the Family Law Act, *The Family Law Act 1975: Aspects of its Operation and Interpretation*, op cit, paras 5.17-5.27.

597 Ibid, para 5.27. This included the written submission of the Family Court that court-ordered joint custody was rare because 'in most cases, it can not be achieved.' See also footnote 581 above.

598 In *B and B: Family Law Reform Act 1995* [1997] 92-755, the Full Court at 84,217 discussed 'parental responsibility' and the changes to the Act and stated that post-separation, 'consultation should obviously occur between the parents in relation to major issues affecting the children ...'

599 See footnote 302 above.

600 See Dewar and Parker (full report and summary), op cit and Rhoades, Graycar and Harrison, op cit. See footnote 20 above.

benefits and often prejudice the position of separated mothers with dependent children and so it is crucial that this discernible trend does not evolve into a legal presumption.