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Committee Secretary
Standing Committee on Family and Community Affairs
Child Custody Arrangements Inquiry
Department of the House of Representatives
Parliament House
Canberra ACT 2600

Dear Committee Members,

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

We write to you on behalf of the Federation of Community Legal Centres' (CLC) Violence Against Women and Children Working Group, in response to the above named inquiry.

The Federation of CLCs (Vic) is the peak body for 45 generalist and specialist CLCs throughout Victoria. Within the Federation there are a number of working groups that address specific areas of law and related issues, one such group being the Violence Against Women and Children Working Group. The aims of this Working Group include working towards the improvement of the legal system's response to violence against women and children so that they receive both equal access and just outcomes before the law.

CLCs provide not only free legal advice and casework to clients unable to afford a private solicitor and ineligible for legal aid assistance, but also take a preventative approach in solving client's problems by being actively involved in community development, legal education and law reform activities. These activities are informed by and complement the casework undertaken by CLCs.

In most generalist CLCs the casework undertaken includes a high proportion of family law matters, and of those matters many would involve family violence. CLCs also assist clients seeking intervention orders by providing legal advice, support and in some cases representation, with some CLCs co-ordinating Intervention Order Court Support Schemes at their local Magistrate's Court. Such schemes operate at the Magistrates' Courts in Melbourne, Broadmeadows, Dandenong, Frankston, Ringwood, Sunshine and Heidelberg.

Therefore, given the nature of the work that CLCs undertake through casework and representation in assisting members of their communities in the event of family separation, complemented by the community development, legal education and law reform activities and involvement in the family violence networks through out the State, the working group is well placed to contribute to this inquiry.

The Terms of Reference we will be addressing are:

(a) Given that the best interests of the child are the paramount consideration:

(i) What other factors should be taken into account in deciding the respective time each parent should spend with his or her children post separation?

Whether there should be a presumption that children will spend equal time with each parent?

b) Whether the existing child support formula works fairly for both parents in relation to their care of, and contact with their children.

We have made a series of **recommendations** in regard to these matters, which are on page 14 of this submission, based on the information which makes up the bulk of this submission. We note that the Australian terminology uses "residence" instead of "custody" and "contact" rather than "access. We shall be using the Australian terminology in this submission.

On the basis of our work in Community Legal centres and the research we have undertaken, we have reached the conclusion that to change the Family Law Act by introducing the presumption of shared residence is not, in the majority of cases, in the best interests of the child. In our work we see demonstrated every day, the fact is that in most cases, and with minimal legal help, people work out child residence arrangements that suit the needs of those family members. In the minority of cases that end up in the Family Court, the degree of dysfunction makes such a concept unworkable. In every case, we believe that the sole determinant to be taken into account must be the best interests of the child.

(a)1: Factors which Need To be Taken Into Account When Deciding Residence of Children

VIOLENCE IN RELATIONSHIPS

One of the key issues which predicate this Inquiry is that too many couples are divorcing, with adverse consequences for children. Since statistics demonstrate that women are initiating divorce in greater numbers than men, the shared residence issue is at least in part an attempt to curb the tendency of women to leave marriages.

When Prime Minister John Howard was first interviewed in relation to this Inquiry, it was reported that the presumption of joint residence, which is

modelled on the American States model “had succeeded in lowering the divorce rate.”¹

What is not being examined is, a) **why** women are leaving their partners, b) whether this is for legitimate reasons, and c) whether these reasons could relate to the best interests of the child.

Data from a 1996 Australian Bureau of Statistics national benchmark study showed that 23% of women who have ever been married or in a de facto relationship had experienced violence in their relationship. This means that one in five women have experienced family violence by the former or current partner (1.4 million women).

Victoria Police Family Violence database show that in the period of 1999 – 2000 there were 19,597 incidents of family violence recorded. In 2000 -2001 there were 21,618 incidents recorded-an increase of 10%. The number of intervention orders sought during the period of 2000-2001 were 20,213 which was an increase of 5% on the previous year, with 19,933 children 16 years and under being present at the incident. These are alarming figures because they are on the increase.

The definition of Domestic Violence includes not only physical violence but psychological, sexual and financial abuse. These forms of abuse are rarely acknowledged in the Family Court, but are major factors when it comes to looking at why women leave men.

Physical Abuse

Physical abuse is the most well known form of Domestic Violence. It includes any type of physically violent behaviour by one person against another to cause a person to feel intimidated and frightened. Physical abuse, like the other forms of Domestic Violence is adopted as a form of control. A perpetrator of physical abuse has described his actions as follows:

“I kicked her in both knees, kicked her up the arse while she was on the floor and I put my foot on her head...did it in a terrorizing manner...”²

Obviously, the physically stronger person in a relationship is more likely to be successful in controlling the less physically strong person when using physical violence. It is important to recognize that physical abuse is often, if not always, accompanied by elements of emotional and financial abuse.

¹ “Why Howard suddenly started to talk about custody battles” *The Age* 21 June 2003, p 1

² James K, Seddon B and Brown J, “‘Using it’ or ‘losing it’: Men’s constructions of their violence towards female partners” Australian Domestic & Family Violence Clearinghouse Research Paper 2002 p 4

Through our casework and Intervention Order Court Support Services in a number of Magistrates Courts, we see that Domestic Violence does not end with the demise of the relationship. Rather, we witness many perpetrators using hand-over periods during contact visits to further abuse and intimidate the women. The on-going danger which women face cannot be ignored. The question is not whether these men should have joint residence, but what sort of a role model they are providing for their children, and whether in the best interests of the child they should have unsupervised access at all. In such situations where there is a history of abuse the onus should be on the abusive parent to show why he should have residence (as in the New Zealand model) as opposed to the onus being on the woman to rebut custody ("residence").

Where there is violence, creating a situation where children will be forced to live with violent fathers while mothers having to deal even more closely with their violent abusive ex partners joint custody is not an option. But while physical violence is relatively easy to identify, there are other forms of violence, more subtle but even more common, which have disastrous impacts on the lives of women and children.

Psychological Abuse

Psychological abuse refers to the behaviour designed to intimidate, threaten and undermine a women's sense of worth. It is the basis of Domestic Violence and generally accompanies other forms of abuse such as physical and verbal abuse. Psychological abuse erodes away of a woman's self esteem and it is the implied threat of violence that instils fear and therefore enables the perpetrator to maintain control over the family.

This has a devastating effect on women and their children and is compounded by the difficulty in trying to articulate this kind of abuse. Although the definition of Domestic Violence has become broader, psychological abuse on its own is much more difficult for a woman to prove, making it impossible to provide the type of evidence required to seek legal support for herself and family. This contributes to incidence of Domestic Violence being grossly under-reported, since threats, intimidation, harassment, bullying, put-downs, threats of self-harm and temper tantrums can cause women and children to live in fear and misery which may not be labelled abuse.

Financial Abuse

Financial abuse is present when women are deprived of economic power in a relationship. Withholding money or not giving her enough money to buy necessities for herself or her children, forcing women to sign documents which disadvantages her, providing the housekeeping money only on receipt of sexual favours, forcing women to beg for money, sexually transmitted debt and so on.

"My husband won't let me have the housekeeping money unless we have sex."

"It wasn't that my husband didn't get paid well.....but for many years he expected me to cover all our needs with about \$40 a week. He knew I'd have to ask for more and when I did there would always be a terrible scene in front of the children".

"When there was money he would hide it and refuse to pay utilities because I was the one wasting the power.."³

Women who leave husbands where financial abuse is an issue are faced with enormous difficulties when it comes to property settlements and child support. If men are reluctant to pay for the costs of raising their children within a relationship, they are unlikely to become generous when they no longer live with their children. In situations like this, it is often argued that men are only withholding child support because "why should they pay when they don't see their children?"

But many women who have tried forms of shared care have discovered that some men will not share the costs of child rearing no matter what. It is common for single mothers to find that they are expected to pay for all school costs (apart from private school fees which are usually mentioned in property settlements)— books, transport fares, excursions, uniform etc, as well as after school, recreation & sporting activities, clothes, medical & dental, presents for friends etc. even when many of these expenses occur during shared or contact visits.

Since the economic consequences for mothers of shared residency will be severe,⁴ the question of whether the financial costs of child rearing will be shared equitably *in the best interests of the child* needs to be examined.

Some single mothers have argued that financial abuse was not an issue in their marriages, since other forms of psychological or physical violence was available to coerce them. When they finally left the relationship, the men started withholding child support as the only means left to exert control over the lives of the women.

It is highly likely that shared residence will enable those men who wish to avoid paying for their children's upkeep to continue to avoid their responsibilities, while reducing the incomes of women who continue to largely support their children.

Children as witnesses of Domestic Violence

Children who witness Domestic Violence are victims of Domestic Violence themselves. Evidence indicates that the impact of witnessing Domestic Violence upon children is profound. In fact, child abuse is 15 times more likely

³ all quotes are from a submission by the Coburg-Brunswick Community Legal & Financial Counselling centre submission on Financial Abuse, 2003

⁴ see the submission to this Inquiry prepared by the Illawara Legal Centre 2003

to occur in households where Domestic Violence exists.⁵ A recent study conducted by the Australian Domestic & Family Violence Clearinghouse found that “there was a pattern that suggested that the most severely violent men were both witnesses and victims of abuse and violence as children.”⁶ The study also found as follows:

“There was often a similarity between how the men saw their parents’ behaviour towards each other and their own behaviour towards partners... “

“Certainly verbal and physical violence [was witnessed]. I was starting to have flashbacks...the pushing and the shoving and the moving out of the way. The door slamming and the same sort of intimidation behaviour that I do now, by my father.

“He fucked me up and I don’t think he should get away with it...He was always jealous; I didn’t have a relationship with him. I didn’t feel at all, because it hurt to feel. I managed to close off, and I still do now. I hurt to feel the feelings so I disregard them...He used to belittle me, put me down verbally that went on for years.”⁷

It is not in the children’s best interests to normalize violence or for children to feel that they need to protect their mother or siblings from violence. This places unnecessary pressure upon a child and may later result in the child becoming a perpetrator or victim of violence him/herself.

In the same study, a participant normalized his experience of Domestic Violence as follows:

“He was very violent...oh just moderate smackings and stickings quite regularly.

Interviewer: Stickings?

[Participant]: Oh just being hit with a stick on the bum.

Interviewer: What sort of stick?

[Participant]: Oh feather duster type material, little thin sticks.

...

Interviewer: And how often would that happen?

⁵ M J Montello and K C DuBois *The Impact of Domestic Violence Allegations in Custody Determinations* located on website address: <http://www.bamsl.org/barjour/winter01/Montello.htm>

⁶ Ibid, p 12

⁷ Ibid, p 13

[Participant]: Oh, a few times a week, like nearly every day. I remember thinking that if I could get through a day without a smacking it was pretty good.⁸

⁸ Ibid.,

THE ROLE OF THE FAMILY COURT

The changes which the Federal Government introduced with the Family Law Reform Act of 1995 were designed to foster shared responsibility for children by both parents. However, a recent review of The Family Law Reform Act⁹ discovered that good intentions do not always lead to positive outcomes.

The study found as follows:

*"The shared parenting concept is totally at odds with the types of parents who litigate"*¹⁰

"The research....suggests that parents are entering into workable and flexible shared residence arrangements after separation," voluntarily and without the involvement of lawyers and courts. "Significantly, each of these parents had exercised their responsibilities jointly and co-operatively before separation, and each of the men had taken an active care giving role."¹¹

So it seems that when parents share care of children during the relationship, and when they voluntarily co-operate, shared residency of children works well. But the people who come before the Family Court are not able to work together 'in the best interests of the children'.

In fact,

*"the reforms have created greater scope for an abusive non-resident parent to harass or interfere in the life of the child's primary caregiver by challenging her decisions and choices. As one counsellor noted, the concept of on-going parental responsibility has become 'a new tool of control' for abusive non-resident parents."*¹²

It will no doubt, be argued by some that the only reason that disputes continue is that 'unfair Family Court orders' deprive non-custodial parents of rights which they can only try to regain through repeated returns to the Family court. However, the reality which we at Community Legal Centres witness every day, is that there is a minority of non-custodial parents who do in fact use the legal system to attempt to continue to exercise the control over ex-partners which they lost upon separation. There is no reason to assume that joint residence will solve this problem, in fact it will simply provide increasing opportunities for harassment. (Witness the current end level of disputes regarding specific issues orders which include disputes about whose turn it is to buy the school jumper, pick the child up from cricket, host the birthday party etc)

⁹ Rhoades, Graycar & Harrison, The Family Law Reform Act: The First Three years Dec 2000

¹⁰ Ibid, p 1

¹¹ Ibid., (own emphasis)

¹² Ibid, p 2

Family Violence Issues and the Family Court

The Report indicates concerns that the 1995 Reforms have placed greater emphasis on the rights of parents than of ensuring the safety of children:

*"...decisions are being made on the basis of the parents' interests (or more accurately, the interests of the parent who is not the existing primary caregiver), rather on the basis of the child's welfare."*¹³

Our experience in Community Legal Centres supports this view. Women who allege child abuse or Domestic Violence as a reason to oppose contact orders, are often now treated as if these allegations are manufactured simply in order to deny fathers their parental rights. Interim Court orders are now less likely to deny father contact, even though when the case is finally heard, the majority of these allegations are found to have substance. The Report finds that *"research has shown conclusively that only a small portion of such allegations fail to be established."*¹⁴

THE BEST INTERESTS OF THE CHILD

The Family Law Act

The Family Law Act ("the Act") makes it clear that children *have a right* to know and be cared for by both parents. Further, each parent has a responsibility towards their child/ren regardless of relationship breakdown. Section 60B of the Family Law Act stipulates as follows:

(1)

The object of this Part is to ensure that children receive adequate and proper parenting to help them achieve their full potential, and to ensure that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children.

(2)

The principles underlying these objects are that, except when it is or would be contrary to a child's best interests:

- 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; and*

¹³ Ibid, p 4

¹⁴ Ibid, p 6

- 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.*

The Act is worded in this manner to indicate that parents are expected to cooperate to the best of their ability about decisions regarding the children. Obviously, this would be in the children's best interests.

Therefore, if the Mother is attempting to prevent the Father from seeing the children (a common allegation by the supporters of the Inquiry), the Father has the ability to challenge the Mother in the Family Court.

The Act requires the Court to look at a number of issues to work out what is in the child's best interests.¹⁵ It is important that a child's wishes be considered, although obviously, this would also depend upon the age and maturity of the child. The Family Court uses psychologists to help it decide what the child's

¹⁵ any wishes expressed by the child and any factors (such as the child's maturity or level of understanding) that the court thinks are relevant to the weight it should give to the child's wishes;

- (b) the nature of the relationship of the child with each of the child's parents and with other persons;
- (c) the likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from:
 - (i) either of his or her parents; or
 - (ii) any other child, or other person, with whom he or she has been living;
- (d) the practical difficulty and expense of a child having contact with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis;
- (e) the capacity of each parent, or of any other person, to provide for the needs of the child, including emotional and intellectual needs;
- (f) the child's maturity, sex and background (including any need to maintain a connection with the lifestyle, culture and traditions of Aboriginal peoples or Torres Strait Islanders) and any other characteristics of the child that the court thinks are relevant;
- (g) the need to protect the child from physical or psychological harm caused, or that may be caused, by:
 - (i) being subjected or exposed to abuse, ill-treatment, violence or other behaviour; or
 - (ii) being directly or indirectly exposed to abuse, ill-treatment, violence or other behaviour that is directed towards, or may affect, another person;
- (h) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents;
 - (i) any family violence involving the child or a member of the child's family;
 - (j) any family violence order that applies to the child or a member of the child's family;
- (k) whether it would be preferable to make the order that would be least likely to lead to the institution of further proceedings in relation to the child;
- (l) any other fact or circumstance that the court thinks is relevant.

wishes really are. It is common for a child to say to each parent that s/he would like to live with both parents on the misguided presumption that this would cause each parent to feel happier. Unfortunately, this results in misunderstanding and puts extra pressure on a child to "choose" either parent, when this would of course be detrimental to the child. The Court will not subject a child to give evidence. Rather, a psychologist is appointed to ascertain, whether the child does wish to live with one parent more than the other, and if so, why. Further, the psychologist may be able to ascertain why a child may be telling each parent different wishes. Either party has the opportunity to cross-examine the psychologist in his/her findings at the time of the trial. The Court then makes the finding about the psychologist's views after both parties have had the opportunity to question the psychologist.

Another important issue is the nature of the relationship the child has with either parent. The reality is that most Mothers are full-time homemakers at least during the child's early years of development. Generally, Mothers remain the primary caregivers of the family and still shoulder the major responsibility in running the household. Therefore, when separation occurs, by and large, the Father has not had the experience of caring for the children to the same extent as the Mother. Therefore, in such situations, the Mother is the more suitable person to care for the children on a daily basis. In the less common situations where the Father is the primary caregiver, it is likely then that if a contested residence dispute arose, that the Father would be considered a more appropriate resident parent. The Family Court considers the status quo as a significant factor in determining the child's residence post-separation. This is due to the fact that uprooting a child from his/her usual place of residence, and altering the roles of significant players in the child's life is not considered in the child's best interests. In situations where the primary caregiver displays inappropriate behaviour towards the child, then the status quo is likely to be changed

United Nations Convention on the Rights of the Child

The Family Law Act's emphasis upon the child's best interests being the paramount consideration in residence and contact disputes echoes the sentiments of the United Nations Convention on the Rights of the Child ("the Convention"). As a signatory to this Convention the Australian Government is obligated to ensure that,

Article 3: In all actions concerning children....the best interests of the child shall be a primary consideration.

Article 9.3: States parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

Further, the Convention spells out the right of the child to be heard on issues affecting their lives, (Article 12) and the right to live without violence and

abuse (Article 19). It is clear that there can be no other interests which compromises in any way the best interests of the child.

REASONS FOR THE PRESUMPTION

According to journalist Bettina Arndt, joint residence is usually better for children of divorced parents.¹⁶ Arndt and supporters of the Inquiry state that “children in joint custody arrangements were better adjusted than children in sole custody.”¹⁷ However, according to a study conducted in the 1970’s children in *voluntary* joint residence arrangements are no better adjusted than children raised in sole residence households.¹⁸ There is little or no evidence to support the proposition that children are “better” adjusted in joint residence households.

What Arndt fails to take into account is the fact that when parents co-operate and are amicable in joint residence situations, then the children are less likely to suffer trauma. Unfortunately, in those cases where conflict exists between the parents, the child will undoubtedly be put in a position of antagonism and discord. An American study by Johnston, Kline and Tschann undertaken in 1989 of 100 low income families in ongoing residence disputes found that children who have more frequent contact with warring parents in joint residence circumstances were “linked to more troubled emotional problems” than children in sole residence families. The study also found that the more contact children had with warring parents, the more emotionally troubled they became, “as the children were forced to live in a constant environment of anxiety and tension, constantly moving between two enemy camps.”¹⁹

Rita Moses, Manager of the Children’s Contact Service at the Brimbank Community Centre²⁰ supports this view and writes as follows:

Children’s Contact Service values embrace the principles of shared parenting and children’s rights to know and be cared for by both parents. However our experience leads us to believe that it is dangerous to presume that a ‘one size fits all’, 50/50 joint residence model will satisfactorily accommodate children’s needs following the aftermath of family breakdown.

Our opposing view of the rebuttable joint residence proposal is shaped and influenced by our involvement with warring parents who are so far removed from the notion of co-parenting.

¹⁶ The Age, 20 June 2003, “To care for the kids, keep dad in the picture”

¹⁷ Ibid,

¹⁸ Leff, Renee. “Joint Custody: Implications for Women Progress: Family Systems Research and Therapy, 1995, Volume 4 (p 29-40). Encino, CA: Phillips Graduate Institute

¹⁹ Johnston, Janet R., Marsha Kline, and Jeanne M. Tschann, “Ongoing Postdivorce Conflict: Effects on children of Joint Custody and Frequent access” American Journal of Orthopsychiatry, Vol. 59, No. 4 (Oct. 1989)

²⁰ Rita Moses is the Manager of the Brimbank Children’s Contact Centre located at 822 Ballarat Road, Deer Park, Victoria 3021.

Our experience with facilitating a changeover for a joint residence arrangement was not successful and our involvement was subsequently discontinued. In this case the increased hostility displayed by one parent culminated in an escalation of conflict to an unmanageable level. One raises the question how this form of arrangement can be automatically imposed, when the behaviour of parents preclude their involvement in a Children's Contact Service. How can these parents possibly be forced to manage a joint residence arrangement on their own?

This family, not unlike many others, will never be able to acquire the skills to communicate and negotiate a shared parenting arrangement. Whilst parents remain entrenched in conflict, hostility and acrimony, joint residence will inevitably be detrimental to their children's well being. Effective parenting is reliant and dependent on willingness to consult and discuss, two key ingredients that are absent in the presence of conflict.

Overall, consideration must be given to the varied constellation of families, post separation, and acceptance that a prescribed model cannot possibly be applied to all. Most importantly from the children's perspective, it is imperative that we remain focused on their welfare and best interests and understand that a formulated 'shared care' equation, based on a number of days, does not necessarily satisfy and provide for children's need for love and care.

Arndt further espouses "The real benefits of a joint custody presumption are educational- in teaching parents that shared care is in their children's best interests, a message which the family law system constantly undermines."²¹

Whilst it is certainly beneficial to educate parents on parenting skills, it is not necessarily in the children's best interests to force joint residence on parents who are unable to co-operate with each other post-separation. Due to the often turbulent emotions that result from relationship breakdowns, it is very difficult for all parties to not feel hurt, angered or saddened by the situation. Forcing parties to be in frequent contact with each other at times when they do not wish to be, can only work towards exacerbating the situation, and causing the children to feel tense and stressed. The Australian Institute of Family Studies found that "contact was positively related to interparental conflict which suggests that contact provides opportunities for conflict to occur... Policy makers and practitioners who work with divorced families should consider the possibility that maintaining or increasing the level of contact between non-resident parents and children may not always be in the children's best interest."²²

This situation is worsened if Domestic Violence exists in the relationship. Forcing such parties to meet more frequently puts the woman and the children

²¹ The Age, 20 June 2003, "To care for the kids, keep dad in the picture"

²² Amato, Paul R., *Contact With Non-custodial Fathers and Children's Wellbeing* "Family Matters," No. 36, Dec, p 32-34, Australian Institute of Family Studies, Melbourne, Australia.

at increased risk of violence, which is obviously not in the children's best interests.

JOINT RESIDENCE: LIVING WITH THE REALITY

The concept of shared parenting in a society in which issues of difference are dealt with in a rational manner has merit. But unfortunately that is not the current situation. Even for those few parents who have entered into such arrangements, they have had many hurdles to overcome.²³ These are parents who are reasonable people with similar parenting skills, which despite the change in their circumstances are still able to maintain respect for one another to ensure minimal impact on their children.

If the 'best interest of the child' is to be paramount then how can the presumption of 'shared parenting' be the starting point, when there are so many other factors that first need to be considered.

The economic reality of joint residence

The ability of both parties to live in an area which is in close proximity to allow children to have easy access to school, sporting and social networks. In a property and rental market which has soared over the past few years many women who generally do not have the same earning capacity as men would find themselves precluded from certain areas or even unable to continue paying the mortgage of what was the family home. This would make it difficult to be able to live nearby. The costs required in setting up two residences which would include clothing, toys, computer and all the other necessities required to cater for all the child's needs. Rather than sharing of costs this would be two lots of costs to avoid the transporting of items from one place to the other. With women generally having a lower capacity to be employed in high income positions. This would result in an extra financial burden on the mother who may already be experiencing difficulties.

The emotional impact of joint residence

Children need to have routine and a sense of belonging. Moving from one home to another would be extremely difficult. Having to adapt to different environments, different daily routines, and different sets of rules would be stressful for even the most well adjusted child. Nor would this situation be beneficial for babies and young children whose development is based on routine within a familiar and stable environment. Moving house from week to week could not be in the 'best interest' of young children. It needs to be realised that not all children would cope with this situation. Problems faced by children and young people adapting to this kind of situation would ultimately have an impact and be reflected in their school performance.

²³ See D Saunders, *child Custody Decisions in Families Experiencing Woman Abuse* 39 Soc. Work 51 (Jan 1994), J Wallerstein & J Johnston, *Children of Divorce: Recent findings Regarding Long-Term Effects and recent Studies of Joint and Sole Custody*, 11 Pediatrics in Rev. 197 (Jan 1990), J Wallerstein & T Tanke, *To Move or Not to Move: Psychological and Legal Considerations in the Relocation of Children Following Divorce*, 30 Fam. L. Q, 305 (Summer 1996)

It is an uncontrovertible fact that where both parents live together, the majority of dedicated parenting time is provided by mothers. Data from the Australian Bureau of Statistics shows that in 37% of couple families with children, the father is in paid work and the mother not. When parents separate it is often less disruptive for the child to remain with the parent who has been the primary carer.

b) Whether the existing child support formula works fairly for both parents in relation to their care of, and contact with their children.

Child Support and Shared Residence

“The research suggests that the desire to reduce child support liabilities is frequently the motivating factor for seeking and making shared residence arrangements.”²⁴

Our experience in legal centres confirms this research. A very large number of non-resident fathers contact CLC’s every week seeking ways to avoid paying child support. While legal centres help many men who, through adverse circumstances are facing child support liabilities they are having difficulty meeting, many others are angry that they are obliged to pay child support at all.

Many men are angry that women have the “luxury” of Centrelink benefits, and mistakenly believe that shared parenting will enable them to gain a windfall. The truth is that women and children are financially disadvantaged after separation and continue to be so far longer than do separated men. If the Federal Government believes that shared parenting will solve this situation, it is out of touch with reality. Women’s incomes will be reduced by shared parenting, but women will be in no stronger position to enter the labour market than currently. Men who share parenting will either be forced to give up work, reduce hours, leave the children in the care of grandparents or girl-friends or put children in long day-care in order to continue their careers. How can more childcare and/or lower incomes for all family members be in the best interests of the child?

The existing child support formula does not reflect the actual costs of raising children, but, when it is paid, helps to reduce child poverty and improves outcomes for children of separated parents. The percentages of payer contact used to calculate changes in the formula should not fall below what is currently defined as substantial care as there is no proportionate reduction in costs to the primary carer parent. Where child contact is related to child

²⁴Rhoades, Graycar & Harrison, The Family Law Reform Act: The First Three years Dec 2000

support and away from children's needs it works against children's best interests.

RECOMMENDATIONS

- **All allegations of child abuse and family violence must be treated seriously. No unsupervised contact should be permitted until the case has been fully examined. Where the allegations has been proved, perpetrators must be required to undertake the appropriate anger management and parenting courses before unsupervised contact is resumed.**
- **Many of our clients experience episodes of violence during contact changeovers, and we have had clients who have been killed by their ex-partners in these circumstances. Many women over the past few years have been choosing to have changeover at McDonalds or the local police station. This inquiry needs to take a serious look at the problem of post separation Domestic Violence, which will only be exacerbated by shared parenting.**
- **Supervised access is being ordered less frequently when there are allegations of Domestic Violence. It needs to be ordered more frequently to guarantee the safety of children and women. This would require more resources into establishing more Children's Contact services nationwide.**
- **Where care of a child is shared evenly, each parent should be eligible for Parenting Payment Single and Family Tax Benefit A and B should be increased by 40 percent for each child to reflect the limits on parental earnings, higher needs and costs of providing care across two households.**
- **The Government should establish a national child protection service for the family law system to assist the courts in the investigation of safety issues where violence or abuse is alleged. Where violence or abuse is established on the balance of probabilities, there should be a rebuttable presumption of 'no contact' with the person who has used violence until they can demonstrate how contact would not pose a threat to the safety of the child, or other family members. The service should also be able to investigate and review the outcomes for children following orders which allegedly expose the child to risk of violence, abuse or other harm arising from the orders.**

- **To reduce child poverty in single parent households, the threshold of the maintenance income test should be increased by 50 percent and the FTB taper rate on child support received should be reduced from 50 cents to 30 cents in the dollar. The payee's income should be disregarded as a factor in calculation of child support payable because that income does not change the payer's obligation to contribute to the support of their child.**
- **Any examination of child support must examine the contributions, both financial and physical, of both parents to the raising of children.**
- **All forms of Domestic Violence including psychological and financial abuse need to be taken into account by the Family Court in determining child residence issues**
- **Despite the overwhelming evidence that children who witness Domestic Violence are themselves at serious psychological risk, there seems to be a view that if “he never touches the kids”, unsupervised contact is appropriate. Being a witness to Domestic Violence in all it's forms must be considered a serious form of abuse, and living with perpetrators of such abuse is against the best interests of the child.**

We will be willing to make oral submissions to the Inquiry in relation to our submission.

Yours faithfully,

Flora Culpan, Belinda Lo, Jacinta Moloney and Karen Milgrom

On behalf of the Federation of Community Legal Centres
Violence Against Women & Children's Working Group