

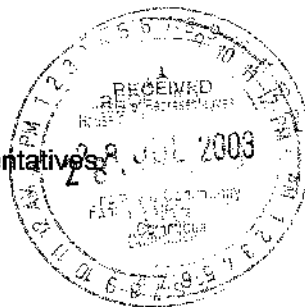


House of Representatives Standing Committee  
on Family and Community Affairs

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21<sup>ST</sup> July 2003

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,

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

WIRE Women's Information has been providing information, support and referral to the women in Victoria for nearly 20 years.

One of the common issues women talk to us about is around separation and family law matters. From the stories we have heard and from other evidence it is our view that Family Law Act should not be amended to introduce a presumption of joint residence.

This inquiry has arisen over a misconception from men that they do not fairly obtain access to their children. In reality the vast majority of family child custody matters are settled by both parents and independent from the family court. Of the cases that are referred to the family court only 5% of these cases are decided by a Judge and matters where the court has to make a decision 40% of fathers are now granted residence.

From our experience, the main reason women are more likely to obtain residence than men is because women still do the vast majority of caring for children during relationships and have often structured their lives around the children (eg by not working or working only part time). Because of this a number of the above factors tend to weigh in favour of women being granted residence and men contact.

The *Family Law Act* also currently emphasises the children's rights by focusing the Court's attention on making decisions that are in the best interests of the child and by providing that children have the right to have regular contact and be cared for by both parents.

The introduction of a presumption of joint residence arrangements is a significant change to the best interest of the children.

***Because all women need options***

Joint residency presumes that both parents can spend equal time with their children and assumes that all parents will be able to:-

- live close to each other (in order that the children can readily attend the same school and health professionals; participate in sport and maintain friendships)
- negotiate flexible working arrangements (in order to care for younger children not at school and to take older children to and from school, health professionals, sport and social events)
- communicate regularly and easily (to negotiate logistics of activities that cross over residence periods or are agreed in one period to occur in another)
- afford to maintain two separate households that are completely "set up" for their children (ie complete sets of clothes, toys and daily necessities).

We believe that starting from a *presumption* of joint residence is not supported by any evidence which suggests it is in the best interests of the majority of children and:-

- it focuses on parent's rights to a "fair" share of their children not children's rights
- it does not reflect the reality of most families either before or after separation
- it may well result in joint residence orders being negotiated or made in inappropriate circumstances
- it will place women and children at greater risk of violence

At WIRE we are also particularly concerned about the introduction of the presumption of joint custody where there is any evidence of domestic violence. Parental conflict clearly has a negative impact on children's well being and they are exposed to this to a greater extent if they have to move frequently between parents. A high level of conflict between parents should therefore be viewed as a counter-indicator to joint residence. Unfortunately, a high level of conflict between parents is a hallmark of parents who have to resort to litigation in relation to their children.

If any presumption is to be introduced into the *Family Law Act*, it should be a presumption that children have no contact with an abusive parent unless it is shown that, in the individual case, they will be safe from abuse and contact will truly be in their best interests.

We are also concerned that any action to introduce a 'presumption of joint residency' may lead to a massive increase in litigation increasing the demand on the Court and Legal Aid, as parents opposed to joint residence are forced to go to Court. It could also force parents into joint residence arrangements because they cannot afford to litigate. In which case the evidence is clear that women are more likely to experience financial hardship after divorce than men, so this will have a disproportionate effect on women.

Perhaps a further significance point is that joint residency requires a high level of emotional maturity and an acceptance that the relationship has ended by both parties. Unfortunately this is not easy to achieve and separating parents can experience a high degree of hostility and in many cases women and children continue to experience domestic violence at time of hand over which clearly has the potential to be damaging to children.

The Court is currently given discretion to make orders for the residence and contact of children looking at the individual situation of each family with reference to a number of factors. It therefore deals with each case that comes before it on its individual merits.

We would like our concerns to be included in this inquiry.

Yours faithfully,

A handwritten signature in black ink, appearing to read "S. Douglas". The signature is written in a cursive style with a large, looped initial "S".

Samiro Douglas  
MANAGER