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Secretary:

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The Secretary
House of Representatives Standing Committee on
Family and Community Affairs
Parliament House
CABNBERRA, ACT.



Dear Committee,

The Sonshine Sanctuary is a Crisis Accommodation and Support Centre for women and children who need to pause in their lives to reflect on the effects of domestic and/or family violence. We offer a confidential service in a caring and supportive environment, where women are assisted to explore their options, and make plans for the future. The effects of domestic/family violence on children is recognised and addressed. In older terms, we are a 'Women's Refuge' or "Women's Shelter'

We would like to hereby make a submission to the Parliamentary Enquiry into a presumption of Joint Residence with the Family Law Act. We are greatly concerned that the Court would consider 'joint shared residency' as a starting point, and that deviation would require legal litigation.

Please let us preface our remarks by stating that we aware shared residency can work and that at the moment such arrangements can be made voluntarily, so that any couple finding such an arrangement their preference are at liberty to currently make such a plan, either with or without legal assistance. However, studies have shown that the relationship between shared residence parents is commonly characterised by cooperation between the parties and low conflict situations prior to and during separation.

Our concern is that not all children are in the fortunate position of having two parents highly cooperating and in low conflict. In fact, we would suggest that such a presumed premise would highly victimise many children, and we ask you to seriously consider our comments in the light of the Enquiry Terms of Reference which primarily state that 'the best interests of the child are the paramount consideration.' Surely this does not mean that the 'best interest' of children with cooperative and low-conflict parents is to be considered, but that the 'best interest' of the child whose parents are in conflict are to be sacrificed?

Data from a 1996 Australian Bureau of Statistics national benchmark study showed that 23% of women who have ever been married or in a defacto relationship had

experienced violence in that relationship. This means that one in five Australian women have experienced family violence by their current or former partner – representing a total of 1.4 million women and their children.¹

There is now a significant body of research that demonstrates that there is a high incidence of domestic/family violence in cases going to the Family Court² and that violence against women continues after separation. Is it a healthy and caring society that would send children to live 50-percent of their lives with a man who [in the case of Domestic Violence Protection Orders being in place] has been deemed by the Courts on the balance of probabilities to be violent? And just what is the definition of violence? Kicking, punching, choking, constant criticising, yelling, ‘putting down’ unwanted sexual contact or activity, threats, irrational accusations, property damage, isolation from family and friends, spiritual abuse, and financial abuse. Is this the person who makes a ‘good role model’?

Some children [boys and/or girls] suffer from an excess of destructive male role models, not from their absence. They may grow up with neglectful or abusive adult men and violent and dominating images of manhood. It cannot be assumed that the father role model is better than none. It is more important that boys are raised by nurturing and positive parents of their sex, rather than by poor fathers.³ We say again, please consider the children of fathers who have been deemed by the Court on the balance of probabilities to be ‘violent’

We are gravely concerned about the Enquiry’s Terms of Reference which state ‘ Clause [b] whether the existing child support formula works fairly for both parents in relation to their care of and contact with their children’ We would like to be so bold as to ask the Enquiry to consider that Item [a] in the Terms of Reference states that the interests of the child shall be paramount, and that the ‘interests of the child’ [Clause a] do not necessarily provide for ‘fairness’ to the parents [Clause b]. We would suggest that the presumption of shared parenting privileges the rights of parents over the rights of children by over-riding the paramouncy of the ‘child’s best interests’ principle which is entrenched in the Family Law Act.

Please let us add that our experiences as a Domestic Violence community service have shown us that at times the male parent may be the most suitable person to have current residency of the children of a relationship, but again we suggest that our present legislation allows this to be happen – either with or without legal representation..

We cannot imagine how such a change to the Family Law might work in practice? Would the child spend alternate weeks with each parent? Or alternate 6-months? How would schooling be arranged – surely not two schools? How would agreement be reached on parenting arrangements depending on children’s needs, geographical distance between them, parent’s work patterns, finances and housing. Is there a

¹ ABS Women’s Safety Australia, Canberra 2000, Catalogue No. 4108.9 at page 51 and see Table 6.5 at page 53

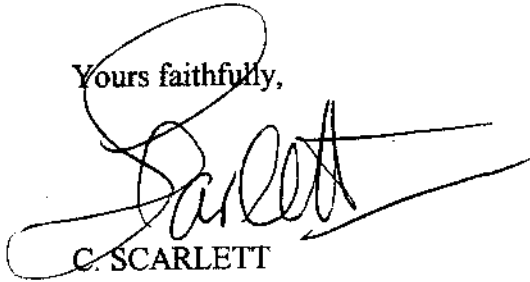
² Hunter R, ‘Family Law Case Profiles’ Justice Research Centre, June 1999 at Page 186.

³ Silverstein, L ‘Deconstructing the Essential Father’ American Psychologist Vol 54, number 6, June 1999 in an email communication by Dr Michael Flood, Research Fellow, The Australian Institute, Canberra.

presumption that the parenting capacities are equal, and that all parents act in the best interest of the child? Is there a presumption that both parents always have the resources to set up two households?

More importantly, there will be an increase to litigation as parents who do not want 50-50 shared residency may feel the need to go to court. Given the lack of legal aid funding, many people will self-represent, increasing delays and stretching the resources of the Family Court and Federal Magistrates Service. In the meantime, whilst awaiting the Court outcome [perhaps 24-36 months] some children will dangerously at risk.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Scarlett', with a large, sweeping flourish extending to the left and underlining the name.

C. SCARLETT
EXEC SECRETARY.

Our current Chairperson is Mrs Pat Locke, 07-3886-7802