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To: Committee, FCA (REPS)
Subject: Presumption of Shared Parenting

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Secretary:

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The Committee Members
House of Representatives
Standing Committee on Family and Community Affairs
Parliament House
Canberra
ACT 2600

Re: Proposed Changes to Residence of Children Post Separation

I am a solicitor practising in the area of Family Law and I am the mother of four children. In the past twelve months I have advised over 350 women in relation to child residence and contact issues. I am of the opinion that changes proposed to the residence of children presuming shared residence raises considerable concerns.

I have assumed when drafting these submissions that all the members of the Committee are fully cognizant with the all the relevant legislation relating to children and families.

The issue of shared residence cannot be viewed in isolation but should be considered in conjunction with not only Family Law but also the law relating to Child care and protection, Child Support, Taxation and Crime to name a few. Added to this you would need to consider the conflict of laws that would arise in relation to State and Federal Law when implementing any changes so that there was any chance of ensuring that "the best interest of the child" is served.

I believe that the following questions should be considered and responsibly addressed by the committee before any steps are taken to implement legislative change.

1. The immediate question is: What substantive, impartial, well researched, unbiased evidence is there that supports the view that "shared residence" will be "in the best interests of the child"?

2. Does shared residence mean that when couples separate prior to the birth of a child that it will be "in the best interests of the child" just after it is born to have shared residence with the father, irrespective of the father's age, experience or criminality (eg. Drugs, alcohol abuse, violent behaviour etc)?

This would then ensure that the child would be prevented from being breastfed by the mother and the protection that comes natural mother's milk and the natural bonding associated with mother/child contact.

3. Does the Government intend to pay for compulsory attended training for new fathers in relation to a newborn child?

4. What are the proposals for the children who will spend half the time in

one parent's "custody" but virtually no time in their care? This of course will be the case when one parent has chosen a career path that provides that they cannot or will not take the time away from work to parent the child but will pay someone else to mind the child.

5. What approaches have been made to employment bodies to assess their willingness to allow flexible and less work hours, by the huge increase in the number of employees who will need to make themselves available to accommodate the needs of children including, sickness, staff development days, school holidays etc?

6. What considerations have been given in relation to the shared residence of chronically ill and disabled children? You will be aware no doubt that a large proportion of these children are being parented in sole parent families with very little if no financial, emotional or respite assistance from the other parent.

7. Will children who may be affected by the change in parenting be fully informed of the possible outcomes when their parents separate, and will they be able to have a say in whether they wish to be parented by predominantly one parent, rather than another person employed to do so by the "too busy" other parent?

8. What are the proposals for the children of parents whose career choices demand that they are regularly away from the family and home State for prolonged periods of time such as Federal Politicians ?

9. As you should be aware parents who live on government assistance live on or below the poverty line and Child Support provides a means whereby the "best interests of the child is served" . This is done, by allowing the carer to have the financial means to support a child in a way deemed acceptable by the Government when it implemented this legislation. Shared Residence should not be looked at in isolation from other issues such as Child Support and so: Is it intended to impose penalties on parents who refuse to pay Child Support that are in line with those currently imposed by the Family Court when resident parents contravene orders relating to children?

or

Are we to accept that the scheme was purely economically driven and a means by which the government's increasingly bulging welfare bill could be lessened?

10. What proposals are there in relation to where both parents should live after separation?

11. When parents separate and one parent continues to live in an affluent suburb and the other has no other financial option but to live in a cheaper area which is usually some distance from the economically advantaged parent, what is the proposal to cover the travel costs that will be imposed on the disadvantaged parent? Will this be met by the government by way of free travel allowances or petrol vouchers?

or

Will the affluent parent be legally tied to an enforceable contract that requires them to subsidize the accommodation costs of the other parent closer to the child's school and other amenities? This of course would ensure that children, particularly the very young's "best interest" would be served and that they would not be under constant undue pressure to get to school and other extra curricular activities.

12. Will parents be required to give undertakings that they will not move beyond a certain distance when they separate?

13. Will the government come to their assistance and provide adequate housing for this purpose? Here the government will have to look at reducing the extremely long waiting list of approximately 17 years for public housing to immediate, and this will require co-operation from State Governments.

14. Where childcare has to be paid, because both parents will have to endeavour to obtain employment, the discrepancy, between the parent's incomes imposes impossible burdens on the poorer paid parent. Does the government intend to subsidize the childcare payments for the poorer parent? Or will the other parent carry the full burden of this cost?

15. Has the Government looked into actively implementing the proliferation of Child Care Centres that will be required to mind the children whom would have otherwise been cared for by the resident parent? Once again State co-operation will be required as well as increased State funding to meet the demand.

16. Who will pay for the child's clothing and school related expenses? If you imagine that this will not be an issue then I think you need to think again. I know from experience that this is often a pressing real problem particularly in low-income households and any replacement of clothes can be a great drain on the budget of low-income families.

17. What arrangements have been made to have an apolitical independent research done using a minimum of 20,000 children Australia wide to get an unbiased (if possible, and only if questions are properly drawn) view of children aged 5 to 14 years old in relation to parenting and residence? Would the legislators take into account the children's opinions on issues that will have considerable effect on their lives for a substantial period of their childhood?

18. Will children be given the right to make a personal application to the Family Court to vary any residence provisions? This would need to be done through an Independent Representative who would be instructed directly by the child, who would have direct contact with their legal representative and not through some other party as applies at present?

19. Will the government pay for the child's legal costs?

20. Does the Government intend to provide overnight, weekly carers in the case of the numerous contact cases that require supervised contact? You would be aware that there are currently orders in place in that require that contact be supervised because the Court has deemed it necessary because they are of the view that the children are at risk.

21. Time limits are imposed to enable parties to finalise their relationship and to get on with their lives. Has the government reviewed the real numbers of cases of victims from the Domestic Violence Court Support Scheme? If they have they will realize that the real number of women who are subject to harassment and violence after a relationship has ended. They will also realize that the ultimate victims are the children who suffer in this conflicting environment. Shared Residence would enable most of these perpetrators to continue this behaviour with the apparent approval of the Federal Government.

22. Ordinary mothers should be proportionately represented on reference committees, legislative review panels, drafting panels and the like so that they may have a voice in any proposed changes that the Government may implement. Does the Government intend to employ mothers on an equal footing with all others responsible for drafting legislation, which will have a direct, and long term effect on their lives and that of their children?

23. In the early 1990's the Australian Institute of Family Studies did research into families and separation and it revealed that approximately 40% of fathers walked away from the relationship and had no further contact with their children. Has there been similar research done of late and what does it reveal?

24. How is it intended to enforce residence on parents who refuse to accept their responsibility? At present this is not done and there is considerable

concern by parents who cannot understand why they can be penalized for contravening parenting orders for other issues, but the other party cannot be contravened because they will not exercised their right of contact.

25. Will the joint presumption of residence override all existing Family Court Children's Orders?

26. Has any assessment been made to gauge how many new Judges, Registrars, Federal Magistrates will be required to deal with the increased litigation which will flow from the proposed changes? You would also take account of the support infrastructure of Courts, staff etc and the consequent cost to the taxpayer.

27. Who will be the ultimate beneficiary of these proposed changes?

<sum> The Government/Welfare System
<sum> The legal profession
<sum> Child Support payers
<sum> The parents
<sum> The children - I sadly think not

28. Is this another social experiment that our Australian children can afford?

These few questions are only the tip of the iceberg in relation to the current proposal and I believe that all these questions need to be answered in a positive way before shared parenting can be considered.

If you need clarification of any issues raised above I would be more than happy to attend and address the committee in a personal capacity.

Yours faithfully
Margaret Small

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