

House of Representatives Standing Committee on Family and Community Affairs	
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Centacare
Catholic Diocese of Rockhampton

Submission to

House of Representatives Standing Committee on Family and Community Affairs
Parliament House.
Child Custody Arrangements Inquiry
Canberra
ACT, 2600

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Terms of Reference

On 25 June 2003 the Federal Government announced a Parliamentary Inquiry into Joint Residence Arrangements in the Event of Family Separation. The Inquiry will be conducted by the Committee on Family and Community Affairs.

The Terms of Reference are as follows:

- (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 their children post separation, in particular whether there should be a presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption could be rebutted; and
 - (ii) in what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents.

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

Organisational Background

Centacare – Catholic Diocese of Rockhampton has operated as a non-profit social welfare agency in Central Queensland for over 28 years. It is incorporated under the Roman Catholic Trust Incorporation for the Diocese of Rockhampton and is accountable through the Centacare Advisory Board. It is a member organisation of Catholic Welfare Australia (CWA). Centacare has an agency wide quality system with documented policies and procedures, an effective management system and provides supervision to all workers in line with best practice standards. Centacare has an existing range of services which include:

- Personal Counselling service
- Relationship and Marriage Counselling
- Central Highlands Sexual Assault Program
- Central Highlands Family Support Program
- Relationship and Marriage Education Program
- Mediation Program for separating couples
- Rebuilding when your Relationship Ends Program
- Seasons for Growth (children 6-12 years)
- Access Service (Employee Assistance Program)
- Community Child Abuse Prevention Library
- Commonwealth Carers Respite Service
- Aged Care Service
- Disability Care Service
- Natural Family Planning Service
- Domestic Violence service of Central Queensland

Some of these programs are funded through the Commonwealth - Family and Community Services.

The Catholic Church is committed to help marriages succeed and as such offers significant relationship education and counselling programs. Centacare Catholic Diocese of Rockhampton supports the CWA position in saying we want to see both parents actively and constructively involved in their children's lives. This support must be, loving, safe, responsible and developmentally appropriate. Unfortunately when separation occurs loving parents get distracted from parental obligations as emotion of the crisis consumes them.

Centacare Catholic Diocese of Rockhampton does express some concern regarding the proposed presumption that children will spend equal time with each parent. Counsellors within Centacare, who are often working with couples that are separating have expressed the following points regarding this presumption:

- a number of Centacare clients have voluntarily put in place a shared care arrangement and have found this can work well but only when:
 - people live geographically close,
 - parents are flexible, cooperative and can negotiate,
 - the level of animosity is low or non-existent
(Often, however these are often the very reasons why they separated and divorced in the first place).
- all expressed an overriding concern when there is alleged or proven abuse or violence.
- The proposed new presumption could undermine the normal growth and development of a child as a result of-
 - lack of stable home environment
 - extra curricular activities i.e. sport would be difficult as a child may not be able to attend training every week which would be very disruptive.
 - inconsistency of behavior management, home routine and parenting styles.
- Many children struggle with parents separating and try to regain as normal a life as possible. Having to alternate between two places of residency would make this difficult for children in terms of schooling, sport, friends, hobbies and leisure activities.
- In regional, rural and remote areas partners often choose, for a variety of reasons to live in different geographic locations. If this were so than the practical workings of the presumption would prove very disruptive for child/ren, who may suffer psychological and developmental difficulties as a result of instability.
- When people separate research suggests that both persons or households are less financially situated. With shared residency then there would be a need for separate independent households and duplicate provision for the children e.g. clothes, toys, medical requirements etc.
- Centacare's experience has shown that where the Parenting Order has been made by the Court, (generally - two nights a fortnight and one day per week for contact parent plus half holidays, shared Christmas, Easter & birthdays), the arrangement generally works well for the best interests of the child. In cases where both parents have been actively involved in raising the children power and control issues are present.
- When violence or abuse is involved children need to be protected. These issues need to be raised to ensure a relevant and appropriate response is made.

Questions and issues for consideration

- What would be the timeframes based around the presumption. E.g. weekly/monthly/6 monthly this would not allow for consistency for the children or their parents.
- What values does the presumption reflect and teach?
- Whose needs are being met by the proposed presumption? The criterion in the best interest for the child/ren needs to be maintained and reinforced. (Children do not create the problems of their parents but they have to live with the consequences. It is important contact and residency arrangements suit the children and not only to suit the parent/s).
- Where is the sense of belonging for the child/ren if they are continually moving between two or more homes?
- Each case needs to be looked at individually as there are different circumstances, but shared arrangements can happen now under the present Act.
- Child/ren are put 'at risk' of further harm because of undisclosed abuse (including DV, physical, emotional, sexual) by feeling unsettled and not being allowed to develop relationships with significant others outside their parents, due to the constant moving. Our experience shows that a tactic of abusers is to isolate their victims as much as possible from others or threaten to do so. Would this presumption lead to perpetrators having more ability to hide?
- Importance of a primary care giver?
- How would the new legislation affect sole parent pension and public housing?
 - How would it be assessed?
 - How would housing be allocated and would it lead to much greater demand on the already stretched public housing.
 - It will be difficult to find suitable flexible employment for parent/s to recoup money they otherwise would have had if receiving the sole parent pension as they can work sometimes and not others. Or does this mean the children would actually end up spending more time in child care.
- What will happen to existing custodial and similar arrangements if this legislation comes in?
- Will there be any circumstances that will be exempt from the legislation?
- Fairness of system in the case where one parent will be more flexible but as a result may lose income support.
- Will there be a provision for the child/ren to have a say?

- For the children, parents and perhaps step brothers and sisters, there will be no settling period because transient and continually having to readjust.
- There many cases it is now evident that parents are being asked to move back to the same town as their ex-partner to allow contact to happen. Consideration must be given as to whether this is in the “best interests of the children” in some cases.
- Children do have a “right to have a relationships with mother & father” and have positive role models. However, where abuse of violence has occurred it should the abusive parent needs to show proof of counselling and altered behaviour.
- Acknowledgment needs to be given that in approximately one quarter of the cases that go to the Family Court abuse or violence has been an issue.
- Whatever system is put in place it is unfair to put pressure on the children to decide and parents should not be putting this pressure on them. Children need to have greater access to independent support to put forward their views.

The Current System

“The current system is based on where parents cannot agree on arrangements for the children and the Family Court has to decide. It is bound by law to look at the **best interests of the child** as the **paramount consideration**.”¹

The Family Law Act also sets out four clear principles about parenting of children namely:

- children have a 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
- 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
- parents share duties and responsibilities concerning the care, welfare and development of their children; and
- parents should agree about the future parenting of their children.²

“The Court must also consider a number of other factors³ such as

- any expressed wishes of the children
- the nature of the relationship of the child with each parent
- the likely effect of any changes in the child's circumstances
- the practical difficulty and expense of a child having contact with a parent
- the capacity of each parent to provide for the needs of the child
- the child's maturity, sex and background, including issues of race, culture and religion
- the need to protect the child from physical or psychological harm

¹ see section 65E of the FLA

² see section 60B(2) of the FLA

³ see section 68F of the FLA

- the attitude to the child and to the responsibilities of parenthood
- any family violence which has occurred.”

Centacare feels the current principles and factors are fair and just and allow for the wide variety of situations and circumstances. In changing these there would be an added cost to infrastructure systems that support parents and their children during and after separation e.g. Courts, solicitors, mediation, housing, transport.

Self representation takes longer and is more costly to the system and those that have been subjected to abuse or violence do not have the resilience, confidence or are scared to follow this path. Thus, often settle for more than ideal agreements.

Perhaps the presumption will it make separation more difficult and make people work harder to resolve the issues. This can also be a double edge sword. For non-abusive relationships this may be positive but for abusive and violent relationships this may be extremely negative and damaging. Thus, more public campaigns and community resources would be need to send the message that abuse and violence in relationships in wrong and should not be tolerated. In recent research by the Australian Institute of Family Studies asked

'If you had your time over would you still have separated?' Women (83 per cent) were significantly more likely than men (67 per cent) to affirm that, in retrospect, they would still have separated.

For women, these post divorce reflections on their separation were significantly related to the combined main reason given for divorce. Not surprisingly, women who mentioned abusive behaviours as the main reason for divorce were significantly less likely to lament the loss of their former spouse or regret their separation than women who mentioned affective and external reasons for the breakdown. Since so few men mentioned abusive behaviours, any differences by reason for divorce were not statistically reliable.⁴

Jordan's (1996) research on the effect of marital separation on men more than ten years after divorce found men still reported strong feelings both of anger at having been 'left' and attachment towards their ex-spouses.

“A feature of the follow-up sample respondents, who had been separated from their ex-wife for between 11 to 12 years, was the high number of men who still reported strong feelings and attachments toward their ex-wife. Some 46% still felt angry towards their ex-wife, the same percentage as ten years before. Some 27% of the follow-up sample still spent time thinking about their ex-wife 11 to 12 years after separating.”⁵

⁴ Ilene Wolcott and Jody Hughes -*Towards understanding the reasons for divorce* . Australian Institute of Family Studies Working paper No 20.

⁵ Peter K Jordan *Ten Years on: The effects of separation and divorce on men* Fifth Australian Family Research Conference, Family Research: Pathways to Policy, Brisbane 27-29 November 1996

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

The existing child support formula even though complex is seen as fair to for both parents in relation to their care. The difficulty often faced by Centacare clients is the non payment of the Child Support and the subsequent living in poverty of the single parent.

The current Child Support formula appears to disadvantage non residential parent when there are three or more children, particularly those on high incomes. This can lead to further antagonism and bitterness. For those with three or more children to the same partner there needs to be a more equitable formula or worked out on individual basis.

In some recent case experience the residential parent, where there is no abuse or violence and it's geographically possible, have had no real barriers to the contact parent having further contact until it comes to "109 nights" because it is at this point where the child support payment drops significantly, thus reducing the residential parents financial abilities.

"Of single parent families, 75% - 85% are headed by single mothers.⁶ Being the resident mother of children is still the most likely predictor of poverty in Australia. Research over the past two decades has consistently shown that women are more likely to experience financial hardship following marital dissolution.⁷ In a 1993 study, husbands surveyed three years following their marital breakdown had returned to income levels equivalent to pre-separation while wives' income levels had dropped by 26%.⁸ More recent studies have revealed a statistically significant relationship between gender and financial living standards after divorce.⁹

Research has also shown that the degree of financial disadvantage experienced by women post-separation may be exacerbated by a number of factors; spousal violence,¹⁰ division of marital property,¹¹ lower rates of employment¹² and lower earning capacity¹³.

⁶ Australian Bureau of Statistics, *Labour Force Status and Other Characteristics of Families*, Australia, Cat No 6224.0, AGPS, Canberra, 2000.

⁷ See R Weston, 'Changes in Household Income Circumstances', in P McDonald (ed), *Settling Up: Property and Income Distribution on Divorce in Australia*, Australian Institute of Family Studies (1986) 100; R Weston, 'Income Circumstances of Parents and Children: A Longitudinal View', in K Funder, M Harrison and R Weston (eds), *Settling Down: Pathways of Parents After Divorce*, Australian Institute of Family Studies (1993) 135.

⁸ *Settling Down: Pathways of Parents After Divorce*, above, note 11 at p 137.

⁹ R Weston and B Smyth, 'Financial Living Standards After Divorce' (2000) 55 *Family Matters* 11.

¹⁰ Women experiencing spousal violence were considerably more likely than women who experience no violence to have financially disadvantaged household incomes. Further, studies showed that women experiencing spousal violence are more likely to receive a minority share of property following divorce.: See G Sheehan and B Smyth, 'Spousal Violence and Post-Separation Financial Outcomes' (2000) 14 *Australian Family Law Journal* 102

¹¹ The financial burden of separation on women who have taken time out of paid work to care for children is not always reflected in a distribution of property that is sufficiently in their favour - M Harrison, K Funder and P McDonald, 'Principles, Practice and Problems in Property and Income Transfers', in K Funder, M Harrison and R Weston (eds), *Settling Down: Pathways of Parents After Divorce*, Australian Institute of Family Studies (1993) 192, 194.

¹² In June 2001, only 21% of female lone parents were employed full-time and many are unemployed, Australian Bureau of Statistics, *Year Book Australia 2002*, Cat No 1301.0, 2002. Further the employment rate of lone mothers with dependant

Many women do not receive their child support entitlements

In 2000, a survey conducted of Child Support Agency (CSA) clients revealed that only 28% of payees reported always receiving payments on time, while 40% reported that payment was never received.¹⁴ The total child support debt grew at an average rate of 7% in the four years to June 2001, to a total of \$670 million.¹⁵ The age of child support debt increased over this period¹⁶ and the percentage of payers with child support debts rose from 56% to 74% in 2001.¹⁷ The older and larger the debt amount, the harder the debt is to recover from payers. The Child Support Agency failed to collect nearly \$770 million in 2000-2001 and the debts written off by the Child Support Agency during this period rose by 27% to \$74 million.¹⁸ ¹⁹

Adequate Resourcing

Service providers in this area including Centacare, Catholic Diocese of Rockhampton are working to and beyond capacity. We turn away people and families in need every day, this includes marriages in trouble. We know we make a difference and could do so much more to make a positive difference to the communities we serve but we are hampered and restricted by resource and funding constraints. We are well equipped and professionally skilled to conduct sessions with parents, however we cannot continue to increase our workload without a corresponding increase in our funding.

More funding needs to be made available to support the community, legal and court sector to cope.

children is considerably below that of couple mothers, Australian Bureau of Statistics, *Labour Force Status and Other Characteristics of Families, Australia*, Cat No. 6224.0, 2000.

¹³ Women may have a weaker position in, and attachment to, the labour market, often due to the roles adopted during marriage that can involve substantial costs for their career development. They typically have a lower earning capacity than similarly aged men. See K Funder, 'Work and the Marriage Partnership', in P McDonald (ed), *Settling Up: Property and Income Distribution on Divorce in Australia*, Australian Institute of Family Studies (1986) 65;

¹⁴ Tammy Wolffs and Leife Shallcross, 'Low Income Parents Paying Child Support: Evaluation of the Introduction of a \$260 Minimum Child Support Assessment' (2000) 57 *Family Matters* 26.

¹⁵ Australian National Audit Office, *Client Service in the Child Support Agency Follow-up Audit*, Audit Report No 7, 2002-03, 126.

¹⁶ Australian National Audit Office, *Client Service in the Child Support Agency Follow-up Audit*, Audit Report No 7, 2002-03, 127.

¹⁷ This can partly be attributed to a legislative change in 1999 which introduced a minimum child support liability of \$260 per annum for all payers unless the liability was assessed as nil.

¹⁸ Attorney General's Department, *Child Support Scheme Facts and Figures 2000-2001*, 2002.

¹⁹ (National Network of Women's Legal Services, *Briefing Paper - A Legal Presumption of Joint Residence*

Case examples

Child 8 years

Parents separated 3 years ago, mum is a professional, but currently not working, dad is an executive (12 hour shifts plus, as well as study). Both parents are in new relationships with more children. Mum is full time at home with kids. Dad wants to increase access to 50/50. Mum argues the increase is only because of the maintenance because with current access arrangements father spends minimal time with child. Child is having counselling because of his "unhappy relationship" with dad, who doesn't spend much time with him, and he is constantly in trouble with his stepmother who has 2 small children and dad is angry. Most of the time the child does not want to have the visit, but mum enforces it to ensure a relationship with his father. Punishments of child do not fit the misbehaviour.

If equal time was enforced Dad would need to undertake some parenting education to meet the emotional needs of his son.

Child 7 years

Parents separated 6 years ago, both are blue collar workers. Mum is the full time parent at this moment with 2 other children. Dad has 2 other children. Dad wants equal access. Mum currently has difficulty in enforcing the access as the child does not feel emotionally safe when visiting his father. During the visits his physical needs not met (eg provision of school lunches.) Dad constantly refers to the child as stupid, thick, nerd, girl and Dads partner constantly uses unacceptable language including profanities to describe the child's mother. Mum has constantly encouraged dad to modify his emotional abuse but is told to butt out.

Children 3 and 6 years

Mum is the custodial parent and Dad has access each fortnight and 1 week of each holiday. Dad wants equal access. After extended access with the father the children return to custodial home having lost weight, unclean and manifest severe behavioural problems. Both children have nightmares constantly. The older child reports that dad "drinks and falls asleep" and has lots of mates over for cards. Dad gets angry if the children want something and at times the children are frightened. This has been reported to Department of Families and an investigation has taken place. The issues however continue for the children.

Independent/voluntary Arrangement

Mum and dad live close to each other and have made their own parenting plan. Both parents have moved on and have new partners. A timetable has been developed as a base but there is flexibility depending on family's activities. The children are free to go between.