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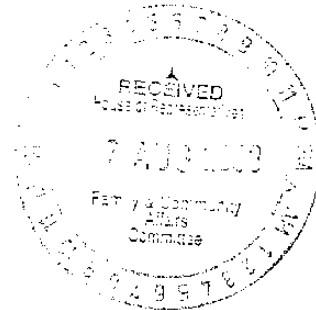
House of Representatives Standing Committee
on Family and Community Affairs

Submission No: **538**

Date Received: **7-8-03**

Secretary:

6th August, 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 Standing Committee,

After parents separate, the care and custody of their children should be the foremost consideration in any compassionate society. Obviously, no one formula can be expected to solve such a complex issue.

However, we share grave concerns lest there be a "*presumption* that a child will spend equal time with each parent" unless existing circumstances are deemed to be detrimental to the best interests of the child being paramount.

As so much of common law is based on precedence, it is not surprising that the Family Court tends to grant custody to mothers (with fathers usually securing considerably less access via Residence and Contact orders) although it is not bound to do so by legal statute.

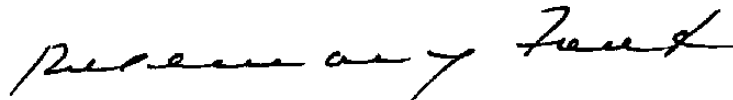
Accordingly, we trust that the Standing Committee's 'Inquiry into Child Custody Arrangements in the Event of Family Separation'

would not seek to legislate for the abovementioned *presumption* should it become the preferred option.

If the *presumption* is implemented, we suggest that a mandatory review be undertaken after an appropriate period of time for trialling such a "social experiment" e.g., a Sunset Clause.

Although we possess professional experience relevant to the Inquiry, it is mainly as involved grandmothers that we seek to bring a number of issues to the Committee's attention. In doing so, we are concerned that if the mother's traditional role as the primary carer is overturned it may result in the diminished wellbeing of Australian children.

Yours sincerely,



ROSEMARY FOOT AO

Previous Positions

Honorary Secretary, NSW Association for Mental Health

Convenor, Permanent Part -Time Work Study

NSW Shadow Minister for Health & Youth & Community Services

Board Member, Eastern Sydney Area Health Service



JESSIE BARTOS

Fmr. Member

Legal Tribunal,

Fmr. Pres. Scots

College Women's

Committee




MARY COOGAN

Fmr. Volunteer

Domestic Violence

Women's Refuges

St. Vincent's Clinic



SUSAN ASHTON

Master of Social

Work; Member,

NSW Mental

Health Review

Tribunal

Attachments: Annexure A; Annexure B

STANDING COMMITTEE'S CHILD CUSTODY ARRANGEMENTS

Annexure A

(1) Reasons for considering rebuttal of the presumption that a child/children spend equal time with each parent

If either or both parents demonstrate:

- * severe mental or physical illness
- * alcohol or drug abuse
- * unstable/irresponsible behaviour
- * history of child neglect
- * history of child abuse

(2) Issues requiring consideration prior to the concept of Joint Custody being adopted

- * question in large families as to how a number of children can reasonably be shared if financial resources are insufficient to provide adequate accommodation at both addresses
- * problems in families if parents do not live in the same location (e.g., schools, medical centres etc.)
- * question as to whether weekly sharing arrangements or a split week is preferable e.g., schools report difficulties with split week situations
- * if *presumption* of children spending equal time with each parent results in more fathers in full employment seeking paid substitute care for their children, will this really be in the best interests of the children?

- * need for relevant Federal and State Government Departments to identify altered circumstances and change procedures accordingly (inevitably additional expenditure will be incurred e.g., awkward problems arising at weekends when Departments are closed; need for Centrelink to arrange for shared pension entitlements where necessary)
- * if the *presumption* is implemented, what will be the status of the great majority of parents who decide on their own joint care arrangements without recourse to Family Court determinations?
- * if one parent seeks to move intrastate, interstate or overseas thus jeopardising joint custody arrangements what action should be taken by the Family Court ?
- * what will be the status of existing orders if shared custody proposals are implemented ? who will be liable for the financial burden of resulting appeals?

STANDING COMMITTEE'S CHILD CUSTODY ARRANGEMENTS

Annexure B

Rulings in relation to grandparents, relatives and significant others with whom children have established contact prior to their parents' separation

- * given that fluid relationships and unstructured parenting have become the norm, will the Family Court have regard to the beneficial influence of of grandparents, relatives and other caring individuals in the future upbringing of the children of recently separated parents? **
- * Whether couples remain together or separate, the care of many vulnerable young children has historically been provided by grandparents, relatives and significant others. Hence, joint custody arrangements need to protect this category of persons as they run the risk of being ostracised by a vengeful parent.
- * will the Committee lend weight to the contention that shared parenting will be prone to extreme vulnerability without the caring, stabilising influence of grandparents relatives and significant others? This valuable support system needs high priority recognition in the best interests of Australian children.

** Australian Institute of Family Studies. Working Paper No. 20, Page 22, June, 1999 "Towards understanding the reasons for Divorce".

"The degree to which family law reform may influence rates of divorce is debatable given the profound social and economic changes of the past decades. In many respects marriage is no longer the only source of financial security, social status in the community, sexual activity and social companionship."