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Committee Secretary
Standing Committee on Family and Community Affairs
Child Custody Arrangements Inquiry
Department of the House of Representatives
Parliament House
Canberra ACT 2600
Australia



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Dear Committee

Submission to "Shared Parenting" Inquiry

The Queensland Law Society supports responsible and co-operative parenting by couples and separated parents. But it is the Queensland Law Society's view that there should **not** be a presumption that children spend equal time with each parent after separation.

The Family Law Act already contains adequate provisions to safeguard the best interests of children, where their parents are unable to reach agreement about appropriate care arrangements after separation. Some of these provisions are:

"SECT 60B Object of Part and principles underlying it

- (1) The object of this Part is to ensure that children receive adequate and proper parenting to help them achieve their full potential, and to ensure that parents fulfill their duties, and meet their responsibilities, concerning the care, welfare and development of their children.
- (2) The principles underlying these objects are that, except when it is or would be contrary to a child's best interests:
 - (a) children have the 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
 - (b) 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

- (c) parents share duties and responsibilities concerning the care, welfare and development of their children; and
- (d) parents should agree about the future parenting of their children.

SECT 68F How a court determines what is in a child's best interests

- (1) Subject to subsection (3), in determining what is in the child's best interests, the court must consider the matters set out in subsection (2).
- (2) The court must consider:
 - (a) any wishes expressed by the child and any factors (such as the child's maturity or level of understanding) that the court thinks are relevant to the weight it should give to the child's wishes;
 - (b) the nature of the relationship of the child with each of the child's parents and with other persons;
 - (c) the likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from:
 - (i) either of his or her parents; or
 - (ii) any other child, or other person, with whom he or she has been living;
 - (d) the practical difficulty and expense of a child having contact with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis;
 - (e) the capacity of each parent, or of any other person, to provide for the needs of the child, including emotional and intellectual needs;
 - (f) the child's maturity, sex and background (including any need to maintain a connection with the lifestyle, culture and traditions of Aboriginal peoples or Torres Strait Islanders) and any other characteristics of the child that the court thinks are relevant;
 - (g) the need to protect the child from physical or psychological harm caused, or that may be caused, by:
 - (i) being subjected or exposed to abuse, ill-treatment, violence or other behaviour; or
 - (ii) being directly or indirectly exposed to abuse, ill-treatment, violence or other behaviour that is directed towards, or may affect, another person;
 - (h) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents;
 - (i) any family violence involving the child or a member of the child's family;

- (j) any family violence order that applies to the child or a member of the child's family;
 - (k) whether it would be preferable to make the order that would be least likely to lead to the institution of further proceedings in relation to the child;
 - (l) any other fact or circumstance that the court thinks is relevant.
- (3) If the court is considering whether to make an order with the consent of all the parties to the proceedings, the court may, but is not required to, have regard to all or any of the matters set out in subsection (2).
- (4) In paragraph (2)(f):
- Aboriginal peoples* means the peoples of the Aboriginal race of Australia.
- Torres Strait Islanders* means the descendants of the indigenous inhabitants of the Torres Strait Islands"

The Family Law Act already provides that parenting orders, that is residence and/or contact orders can be made in favour of grandparents.

“SECT 65C Who may apply for a parenting order

A parenting order in relation to a child may be applied for by:

- (a) either or both of the child's parents; or
- (b) the child; or
- (ba) a grandparent of the child; or
- (c) any other person concerned with the care, welfare or development of the child.”

The same principles apply, that is, that the orders must be in the best interest of the children. The factors for deciding what is in the best interests of the children are contained in Section 68F(2)

Why there Should Not be a Presumption of Equal Shared Care after Separation

In society today families care for their children in a myriad of ways, but predominantly those arrangements are structured around the external work arrangements of 1 or both parents. The more common care arrangements in families still involve one parent, usually the mother, reducing or foregoing external work in order to care for children on a full time basis. If external work is engaged in by the primary carer, it is usually on a part time or casual basis.

When parents separate the majority of parents are able to reach agreement about the best care arrangements for their children after separation. Those care arrangements are usually still structured around each parent's pre-separation work arrangements. They usually involve the children still being cared for predominantly by the parent whose life was structured to care for the children prior to separation.

The following statistics, in relation to families arrangements for post-separation care of children are taken from a paper prepared by the National Network of Women's Legal Services.

"A large majority of men who are separated (64%) have contact with their children¹ and almost three quarters of these men have children staying overnight with them.² There is no Australian research showing why more contact does not occur. Interestingly, a recent study on contact arrangements shows that 25% of resident mothers believed that there was not enough contact³, suggesting that, where fathers have good relationships with the children, mothers are keen for contact to occur.

Family Court data reveals that the rate at which fathers are awarded residence of their children is increasing. Outcomes of residence orders made in the Family Court for 2000-2001 show that 70% of residence orders are made in favour of the mother and 20% of orders for residence are made in favour of the father. In the mid 1990s only 15% of residence orders favoured the father. These statistics include orders made by consent as well as orders made as a result of contested hearings.⁴ In looking at outcomes for fathers of contested residence applications, two studies in the Family Court in 1983 and 1994 showed that fathers were successful in 31% of cases.⁵ In a smaller analysis conducted in 2000, fathers were successful in 40% of contested residence applications.⁶

Shared residence is the least common post-separation arrangement with only 3% of children from separated families in 'shared care' arrangements in 1997.⁷ Less than 4% of parents registered with the Child Support Agency last year had equal (or near equal) care of their children.⁸

The Queensland Law Society shares the concerns of other organisations that a presumption that children will spend equal time with each parent:

- privileges the rights of adults over those of children;
- denies children the right to unique consideration of their needs and wishes, which change over time;
- is not based on any evidence or research indicating that such a presumption is best for children;

¹ Australian Bureau of Statistics, *Family Characteristics Survey 1997*, Cat No 4442.0, AGPS, Canberra; See also Smyth B and Parkinson P; 'When the difference is night and day: Insights from HILDA into patterns of parent-child contact after separation', Paper presented at the 8th Australian Institute of Family Studies Conference, March, 2003, page 7 available at <http://www.aifs.org/institute/pubs/papers/smyth3.pdf>.

² see Parkinson and Smyth above note 23 at page 9

³ see Parkinson and Smyth above note 23 at p11

⁴ Residence Order Outcomes 1994/1995 – 2000-2001: Family Court data available on line at www.familycourt.gov.au/court/html/statistics.html

⁵ See Bordow, S; 'Defended cases in the Family Court of Australia: Factors influencing the outcome', *Australian Journal of Family Law*, volume8, No 3, pp 252 - 263

⁶ Moloney, L; 'Do fathers 'win' or do mothers 'lose'? A preliminary analysis of a random sample of parenting judgements in the Family Court of Australia', Presentation to Australian Institute of Family Studies, September 2000

⁷ Australian Bureau of Statistics; *Family Characteristics Survey*, Ct 4442.0, AGPS, Canberra. 1997.

⁸ Attorney General's Department; *Child Support Scheme Facts and Figures, 2001-02*, Canberra, 2003.

- is likely to expose abused parents and children to more danger because of the need for more and more frequent care changeovers giving more opportunities for abuse and conflict;
- will disadvantage parents who have sacrificed careers and education to be a stay-at-home parent;
- will provide some parents with opportunities to reduce their child support obligation, while not leading to more equitable sharing of core parenting work;
- ignores evidence that enforced joint custody does not lead to more co-operative parenting or less conflict between parents;
- ignores evidence that shared residence works for only some families and can be disruptive and distressing for young children in particular; and
- will increase litigation and prolong instability and uncertainty for parents and children.

Data From Overseas

Australia is not alone in considering a presumption of equal shared care of children after separation.

In April 1992 the Family Law Council specifically rejected a legal presumption in favour of joint custody in its report *Patterns of Parenting after Separation*.

In New Zealand "The Shared Parenting Bill" (NZ) was a private member's bill by Muriel Newman. There was significant opposition to a presumption of equal shared parenting from many sections of the community, including the Family Law Section of the New Zealand Law Society. It was first presented to the New Zealand Parliament on 17th February 2000 and was defeated at its first reading on 10th May 2000.

In Canada the Final Federal-Provincial-Territorial Report on Custody and Access and Child Support, "Putting Children First" published in November 2002 recommended against a presumption of equal shared parenting. That enquiry also considered the question of child support. The following are recommendations taken from its executive summary:

"The Family Law Committee recommends that the principles and objectives of family law reform be as follows.

Principles 3

- Ensure that the needs and well-being of children come first.
- Promote an approach that recognizes that no one way of parenting after separation and divorce will be ideal for all children, and that takes into account how children and youth face separation and divorce at different stages of development.
- Support measures that protect children from violence, conflict, abuse and economic hardship.
- Recognize that children and youth benefit from the opportunity to develop and maintain meaningful relationships with both parents, when it is safe and positive to do so.
- Recognize that children and youth benefit from the opportunity to develop and maintain meaningful relationships with their grandparents and other extended-family members, when it is safe and positive to do so."

A full set of the Reports recommendation can be found in Appendix A to the full report.

In America joint custody was first enacted in 1979 with the passage of California's Family Law Act. Today, most US states acknowledge joint custody as an option. Several jurisdictions, however, have significantly limited the applicability of joint custody, while only eight have made it presumptive. It is important here not to confuse the US terminology with terminology used in the Australian Family Law System. In the US, "joint legal custody" relates only to the sharing of the decision-making role in relation or children". It does not refer to joint physical custody where the child spends roughly equal time with each parent.

"Joint legal custody", as it is understood in the US is equivalent to what is now known as "joint responsibility for long term care welfare and development" of a child in Australia. From the commencement of the Family Law Act in 1976 until the 1996 amendments to the Family Law Act, this was known in Australia as "joint guardianship". Under the Family Law Act, these parental rights and responsibilities remained joint unless and until the Court determined that one parent should have sole responsibility. Orders giving one parent sole guardianship or sole responsibility for the long term care, welfare and development of their children were and are made in only a small minority of cases. Therefore, Australia has had a family law system since 1976 where most separated parents have what would be called "joint legal custody" in the US.

In September 1996 the US Commission on Child and Family Welfare recommended against a rebuttable presumption of shared custody in the *Report to the President and Congress*.

Lack of Research findings to support Equal Joint Shared Residence after Separation

US studies have shown that where shared residence couples make these arrangements they do so voluntarily, often without legal assistance and irrespective of legislative provisions. These studies have also shown that relationship between shared residence parents are commonly characterised by cooperation between the parties and low conflict prior to and during separation.⁹

Another renowned American researcher, Dr Kelly, a clinical psychologist, and California Dispute Resolution Institute president supports shared custody yet has stated the push for children of separated parents to spend equal time with each is irrational and ignores the needs of the youngest children. Dr Joan Kelly has said arrangements for children needed to be flexible. "Neither lawyers nor judges understand attachment issues in infants and toddlers and preschoolers. They require shorter visits, to avoid separation anxiety, and therefore, ironically, more transitions. To assume that joint physical custody must be 50-50 is irrational."

Research with children in the UK undertaken by Carol Smart has shown that, for children living in two homes, they had 'emotional and psychological space' to traverse as well as physical space.¹⁰ The research showed that shared care was more likely to be organized to suit parents than to suit children. It found that the majority of children in 'shared residence knew how important the equal apportionment of time was for their parents. The study showed that children often carry the burden of shared care and found it emotionally straining to upset the balance between their parents. Children felt responsible for ensuring 'fairness' between their parents and in fact put their own interests below the interest of their

⁹ Bauserman, R; 'Child Adjustment in Joint-Custody Versus Sole-Custody Arrangments: A Meta-Analytic Review', *Journal of Family Psychology*, 2002, volume 16, no1, 91-102 at page 99. See also Rhoades, H, Graycar, R and Harrison M; 'The first years of the Family Law Reform Act 1995', *Family Matters* No 58, Autumn, 2001 page 80 available at <http://www.aifs.org.au/institute/pubs/fm2001/fm58/hr.pdf>

¹⁰ Smart, C., 'Children's Voices' Paper presented at the 25th Anniversary Conference of the Family Court of Australia, July, 2001, available at <http://familycourt.gov.au/papers/html/smart.html>.

parents for shared care. The research argues that being shared on a fifty-fifty basis can become 'uniquely oppressive' for some children.¹¹

There is to date no Australian research looking at predictors of successful shared residence arrangements in separated families. Little is known about parents who opt for shared care of their children, how these arrangements are structured, how well the arrangements 'work' and the effect of these arrangements on children.

Bruce Smythe, a research fellow at the Australian Institute of Family Studies, argues that significant gaps exist in what's known about parent-child contact after parental separation and that the data needed to fill these gaps has been brick-walled by a number of conceptual and methodological impediments. He concludes: "Until...measures are developed, and data are collected, policy related to parent-child contact is unlikely to be able to address the many challenges it currently faces."

Domestic Violence

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.¹²

There is now a significant body of research that demonstrates that there is a high incidence of domestic violence in cases going to the Family Court¹³ and that domestic violence against women continues after separation. A 2002 study found that of the 35 resident mothers, 86% described violence during contact changeover or contact visits.¹⁴ It is not surprising that violence and abuse is more prevalent in families who separate, than families who remain together.

The Effect on Ongoing Conflict

It is generally well accepted that children are adversely affected by ongoing conflict between their parents whether parents are together or separated.

A report to the Washington State Parenting Act Study by Lye (1999) found that

Research indicates that joint physical custody and frequent child non-residential parent contact have adverse consequences for children in high conflict situations. Joint physical custody and frequent child non-residential parent contact do not promote parental cooperation

In the same vein Saunders (1998) states:

Enthusiasm for joint custody in the early 1980s was fuelled by studies of couples who were highly motivated to 'make it work' (Johnston, 1995). This enthusiasm has waned in recent years, in part

¹¹ Smart C; 'From Children's Shoes to Children's Voices' *Family Court Review*, volume 40, No 3 July 2002, pp 307 – 319 at page 314.

¹² ABS; *Women's Safety Australia*, Canberra 2000, Catalogue No 4108.9 at page 51 and see Table 6.5 at page 53.

¹³ Hunter R "Family Law Case Profiles" *Justice Research Centre*, June 1999 at p. 186

¹⁴ Kaye M, Stubbs J and Tomie J; *Negotiating child residence and contact arrangements against a background of domestic violence*, Working Paper No 4, 2003, Family Law and Social Policy Research Unit, Griffith University, p36. Available on line at <http://www.gu.edu.au/centre/flru/>. Analyses of cases in the Melbourne and Canberra Registries of the Family Court between 1994 and 1995 found that one half of all cases going to Pre Hearing conferences involved allegations of child abuse. T Brown, M Frederico, L Hewitt and R Sheehan; 'Child Abuse and the Family Court' [1998] *Trends and Issues in Crime and Criminal Justice* no91, pp 2-3. See also

because of social science findings. For example, Johnston 1995) concluded from her most recent review that 'highly conflictual parents' (not necessarily violent) had a poor prognosis for becoming cooperative parents and there is increasing evidence that children of divorce have more problems because of the conflict between the parents before the divorce and not because of the divorce itself (Kelly, 1993)

Johnston et al (1989) found that:

Children shuffled more frequently between parents were more exposed to and involved in parental conflict and aggression and were more often perceived by both parents as being depressed, withdrawn, uncommunicative, and/or aggressive. These findings, the authors note, are consistent with the findings of other studies.

This effect has been found to be even stronger in court ordered joint custody arrangements. Amato, in an examination of a California study of joint custody, states

Three and a half years after separation, these couples [*with court ordered joint custody*] were experiencing considerably more conflict and less co-operative parenting than were couples for whom joint custody was the first choice of each parent

In a publication in 1997 entitled "Mom's House, Dad's House: Making Shared Custody Work" by Ricci, 2nd Edition, Macmillan, New York, Ricci found that the way parents relate to each other as parents is crucial to how well children adjust to family transitions and change. If a pattern is destructive, neither equal time nor a more traditional... visitation arrangement can protect a child.

Bruce Smyth, (footnote b) in a report delivered in July 2003 on his current research project into parent-child contact after separation notes that previous research studies did not "control for conflict and parents who opted for shared care are more likely to be self selected for low conflict. This makes it hard to unpack what's going to work: structure (ie, the pattern of care) or process (eg, the level of conflict) ...Work by Ricci (1997) gives primacy to process over structure."

A Male Role model

The Queensland Law Society queries whether there is sufficient distinction being made between the lack of a male role model and the lack of a father's involvement in a child's upbringing. Many children from separated families will continue to have a male role model in their lives by virtue of the mother's new partner or by virtue of extended family.

Further it is not true to say that any role model is better than none. Some boys and young men grow up with neglectful or abusive adult men and violent and dominating images of manhood. It is wrong to assume that *any* male role model is better than none. It is more important that boys are raised by nurturing and positive parents of *either* sex....¹⁵

Children's best interests

The Queensland Law Society is concerned that the introduction of a presumption of equal shared care will produce more litigation over parenting issues and will result in orders being made where in reality it is not in the best interests of children or their mothers to reside for equal amounts of time with each parent.

Lawyers predicted more litigation when the Family Law Reform Act was passed in 1996. Lawyers expressed concern at that time that the Court, by virtue of the amendments would be reluctant to order

¹⁵ Silverstein, L; 'Deconstructing the Essential Father, *American Psychologist*, Vol .54, number 6, June 1999.

less contact on an interim basis. Concerns were also raised about the effects the changes would have in cases where 1 parent expressed a wish to relocate.

Rhodes, Graycar & Harrison's in-depth 3 year study into the effects of the Family Law Reform Act found a major impact in the area of interim orders. They found that the changes in the Act brought about an *effective* presumption that children's best interests were served by continuing contact with the non-resident parent. This resulted in courts being reluctant to deny access at the interim hearing stage, with a considerable reduction in the number of 'no-contact' orders made at interim hearings. Unfortunately they found no corresponding reduction in the number of no contact orders made at final hearings, indicating a considerable number of cases where interim orders directly placed children's (and possibly carers') safety at risk.

Lawyer's Experiences

Many parents when they separate can reach an agreement about the care arrangements for their children. Many do not even consult a lawyer. Many consult a lawyer for general legal advice but are then able to make agreements.

A minority of separating families end up litigating about their post separation parenting arrangements. **These families are the ones for whom a presumption of equal shared parenting would NOT work.** Lawyers experiences of these families are that they more often than not involve:

1. Violence .
2. Sexual Assault of a parent
3. Drug abuse by 1 or both parents
4. Alcohol Issues
5. Sexual abuse of children
6. Mental Health Issues such as varying degrees of depression, bi-polar disorder, other psychiatric disorders and personality disorders
7. Gender Issues
8. Cultural Issues including where both parties are migrants, cross cultural marriages
9. Relocation Issues – where 1 parent for a variety of reasons, including job prospects, repartnering and family support wish to move away from where the parents resided during the relationship or
10. Cases where parents live in different Countries.

One Queensland Law Society Family Law Committee member reported that of the current cases her office handled, 70% involved allegations of domestic violence before separation with continuing violence occurring after separation, 20 % involved allegations that 1 or both parent had drug issues. The remaining 10 % involved the types of matters referred to later in this submission

Some applications involve families where each parent has different belief systems or different attitudes to parenting and these different belief systems or attitudes lead to ongoing conflict between the parents over how the other parent should care for the children. The conflict engendered in these types of matters is

just as damaging for children. These are also cases where a presumption of equal shared parenting would lead to greater dispute for the children.

Lawyers report on occasion parents with residence orders seeking legal advice because they want the non residence parent to be having more contact or to be more consistent in having contact with their children. These residence parents report concern about the psychologically damaging effect on their children of this lack of consistency in relation to contact by the non residence parent.

Relocation Cases

The Family Law Reform Act changes in 1996 have resulted in very difficult cases where the case is about a mother who wishes to relocate with her children away from where the father is living.

The experience of mother's immediately after the Reform Act is that they were prevented from relocating even when their current partner relocated for work reasons. There is a reported case where a mother was prevented from relocating to reside with a new husband even where there were children from the 2nd relationship for whom the mother had the primary care (H and E [1999] FamCA 358).

Mothers are frequently prevented by injunction from moving on an interim basis. This is the case even when they need to move in order to take up an employment opportunity. Mothers find themselves in a "catch 22". They need the father's consent to move or an order of the Court allowing them to move. In some cases it takes several months for the case to come to trial in the Court by which time the job opportunity has been lost. In a current case the mother cannot move until the court allows her to (the father has refused permission) yet she receives no child support because the Child Support Agency has assessed her as having an earning capacity which she only has if she can move to take up a job offer interstate.

Further amendments to introduce a presumption of equal shared parenting are likely to lead to more decisions by parties and by the Court to refuse applications by mother's to relocate.

Family Tax Benefit

Any change in the actual or legally presumed levels of care will have an impact of the entitlements of parents to Family Tax Benefits. At present, a parent who has a child in their care for more than 10% of hours in the year is entitled to an apportionment of Family Tax Benefits. The effect of higher levels of care by an employed parent exercising contact on a carer parent whose income is lower will be to redistribute these benefits from lower income households to higher income households. Indeed, some higher income households may not be entitled to the benefit at all, but this will still result in a lower level of entitlements for the low income household. [Note; The Family Assistance Office calculates FTB entitlements on the number of hours in the year that a child is with its parents, but the Child Support Agency bases its calculations on the number of nights that children spend with their parents each year.]

Child Support

Before commenting on any suggested change in the child support formula, the effect of a change to the law or care arrangements under the existing child support formula should be considered.

Most parents regard themselves as struggling financially after separation as the same income as has previously sustained one household must be divided between two households. At present after separation, the parent with whom the children live is regarded as the "sole carer" for child support purposes. Child support is calculated accordingly.

The Queensland Law Society is concerned that if a presumption of equal shared care is introduced, this will lead to a reduction of child support for some parents caring for their children. Already lawyers hear of full-time carer-parents whose child support is reduced because court orders provide for substantial contact or shared residence when the other parent is not exercising that level of contact. In such a case, it is CSA policy to collect child support in accord with the "legal" level of care anticipated by the court orders, not the "actual" level of care.

An example of the impact a presumption of equally shared parenting is illustrated by the following case where a non-resident parent is not caring for children to the extent envisaged by court orders:

In one case dealt with recently a father chose not to exercise contact with his 2 children. He left home without informing the family where he was for days. He moved into a new relationship. The father earned about \$70,000 per annum. The mother was always the full time carer of the children through out the marriage. After separation she applied to undergo training for work and was sent by her local employment office to 2 training courses. She obtained only casual employment in retail earning no more than \$12,000 per annum. Under the current Child Support formulae she is entitled to a payment of \$15,575 per annum or \$298 per week as the "sole" carer. [This means that the children spend more than 70% of nights with her per year.]

Assuming the child support formula did not change and only the manner in which the Child Support Agency interpreted and applied the presumption (i.e. assumed that the father has shared care of his 2 children) then the mother in this example would receive \$9,579 per annum or \$184 per week.

Single mothers are poor

Of single parent families, 75% - 85% are headed by single mothers.¹⁶ 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.¹⁷ 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%.¹⁸ More recent studies have revealed a statistically significant relationship between gender and financial living standards after divorce.¹⁹

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,²⁰ division of marital property,²¹ lower rates of employment²² and lower earning capacity²³.

¹⁶ Australian Bureau of Statistics, *Labour Force Status and Other Characteristics of Families*, Australia, Cat No 6224.0, AGPS, Canberra, 2000.

¹⁷ 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.

¹⁸ *Settling Down: Pathways of Parents After Divorce*, above, note 11 at p 137.

¹⁹ R Weston and B Smyth, 'Financial Living Standards After Divorce' (2000) 55 *Family Matters* 11.

²⁰ 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

²¹ 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.

These parents have very low incomes and least capacity to generate additional income. Therefore, any reduction in child support, pension or benefit payments will adversely affect these parents and the children living in their households.

Child Support Formula

Any approach to child support must take into account what is "just and equitable" (balancing the interests of both parents) and also what is "otherwise proper" (fair to the community by limiting expenditure on pensions and benefits).

The dilemma is that any reduction of child support to reflect the costs of exercising additional contact may impact unfairly on the carer parent because:

- It will almost always cost more for a non-resident parent exercising contact to have more contact. Expenditure by the parent exercising contact will often duplicate the expenditure on the child in the other parent's household; but
- The saving to a carer parent (i.e. the cost of food and other minor expenses while the children are with the other parent) will usually be far less than the additional cost for the parent exercising contact (which may not be limited to feeding children, but may include substantial contact costs). Often parents will be ordered to share the costs of transport or supervision of contact. In those cases, the additional cost of contact often exceeds any saving to the carer parent of not having to provide for the children when they are in the care of the other parent.
- Furthermore, any reduction in the child support received by carer parents will increase the community's contributions to pensions and benefits to the households of low income carer parents.

A further concern is that any change in the child support formula may increase levels of disputes between parents about levels of care of children and about the support of their children. At present, the most common contact arrangements do not reach a level where they would reduce the contact parent's child support liability (i.e. 30% of nights in the year).

If new "steps" were to be introduced into the child support formula at, say, 10% or 20% of nights in the year, this would become an issue in almost every case. Disagreements over levels of care would be more bitterly fought because of the financial implications. More matters would be litigated and those matters would be harder to settle. Not only would the dispute be likely to consume the money that could and should have been spent on children, but children would suffer from the heightened levels of dispute between their parents.

The advantage to the parent exercising contact of a change in the child support formula must be considered in the light of likely disadvantages to the carer parent, the children and the community. The

²² 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 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.

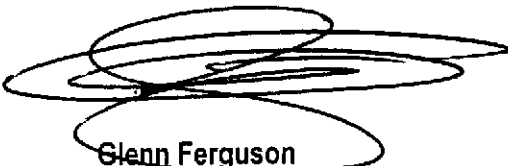
²³ Women may have a weaker position in, and attachment to, the labour market, often due to the roles adopted during marriage that can involve substantial costs for their career development. They typically have a lower earning capacity than similarly aged men. See K Funder, 'Work and the Marriage Partnership', in P McDonald (ed), *Settling Up: Property and Income Distribution on Divorce in Australia*, Australian Institute of Family Studies (1986) 65;

Queensland Law Society considers that there is no clear or compelling case for altering the child support formula. However, if Government gives further consideration to this proposal:

- There should not be a reduction of the child support payable by the non-resident parent unless the community is prepared to make up the difference that is lost to low-income carer parents through supplementing the parenting payment and the Family Tax Benefit.
- Government must allocate additional resources to Courts, Legal Aid Commissions and the Child Support Agency in anticipation of an increased in conflict and litigation between parents.

Members of the Committee are available to appear at the Public hearings. We look forward to hearing from you.

Yours sincerely



Glenn Ferguson
President