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Manly-Warringah Women's Resource Centre Limited, A.C.N. 001 510 475
P.O. Box 556, Dee Why, N.S.W. 2099.
Telephone: 9971 4499
Fax: 9971 4324

House of Representatives Standing Committee
on Family and Community Affairs

Submission No. **555**
Date Received: **7-8-03**

Secretary:

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

31st July 2003.

Dear Secretary,

Please find attached the submission of the Manly Warringah Women's Resource Centre. I appeal to the committee to consider the best interests of children when they make their final recommendations to the Parliament.

I would ask the men on the committee to put themselves in the position of having to look after their children on a shared basis without a wife to assist them, having to spend time away from home, whilst the house is in session and then realistically decide if they could fulfil the duties of being a member of the Parliament.

Equally; for the women on the committee. What age were your children (if any) before you could achieve your position as an elected member. Were you the primary caregiver of those children in their formative years, putting your career on hold until they were older? Or did you have a supportive husband to enable you to achieve your goals.

Do not be swayed by the angry voices of a few. Look at the bigger picture and consider what is required for the happiness of a child. The love of both parents and extended family is paramount. If for any reason that is not possible, a stable and secure environment, while they are young is best for their wellbeing. This usually means having a primary home and caregiver.

A presumption of equal time could become very costly for the Government, with an increase in supporting benefits to enable both parents to care for their children. The request for Legal Aid would also increase, as more primary care givers would have to litigate to protect the rights of their children.

If you have any need for further information from our service please contact me. I would be pleased to assist in any way.

Yours faithfully,

Barbara Kilpatrick OAM.
Principal Executive Officer.

Submission by the Manly Warringah Women's Resource Centre to the Inquiry into Child Custody Arrangements in the event of Family Separation being conducted by the Standing Committee on Family and Community Affairs.

The Manly Warringah Women's Resource Centre is a Centre for women and children funded by the Federal Government through SAAP to work with victims of domestic violence and child abuse. We have been in operation since 1976 and have the following programs under our auspice.

- A Women's Resource Centre
- A Women's and Children's Refuge
- A Family Support Service
- A Court Assistance Scheme
- A young Pregnant Women's Scheme
- A Specialist Counselling Service for Children

In preparing this submission on behalf of this organisation, I have drawn on discussions with the coordinators of all the programs we offer, other organisations involved with children's services and women who use this service. A member of the Pathways Advisory Group has also advised me, that Shared Residency of children is not a recommendation of that committee.

Terms of Reference (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.

(i): It is the collective opinion of all involved in the preparation of this submission that the best interests of the child are the paramount consideration therefore:

If there is a presumption that joint residency is the **status quo** (that is children spend equal time with both parents) it may work to the detriment of many children, because in most cases such an arrangement is inappropriate or impractical. Such a presumption is focussed on the parents needs placating them rather than looking at the welfare of the child.

Women are in the most instances the primary caregivers of their children; they put their careers on hold to fulfil that role. The children are used to that regime and the stability it creates. A presumption of joint residency would have

ramifications far beyond the number of parents who use the Court. Many negotiate using the services the Court provides, whilst others are able to make workable and sensible arrangements concerning their children. For those who do not fit into these categories we have the most concern. Where one parent is unduly powerful, controlling and overly self focussed, they may force the other to agree to the child being shared. In most cases they have not shared in the caring of the child when the relationship was intact and may be an inappropriate primary caregiver.

There are other obvious factors that militate against shared parenting.

- Where the parents continue to express hostility to each other, are unable to cooperate with each other or are inflexible.
- Where a child is a baby and requires the constant attention of the primary caregiver.
- Where prior to separation one parent had the major role in caring for the child and the other parent does not have the parenting skills necessary to meet the needs of the child.
- Where the financial circumstances of the parties are very different and both parents cannot support the child at the same level.
- Where the parents do not share the same values, religious views, or parenting philosophies.
- Where the parents live in different suburbs some distance apart, there will be the problems of schooling, peer relationships, sporting activities and travel arrangements for the child to negotiate
- Where parents have to change their work practices to fit in with the accommodation needs of the children.

There are many more examples I could use to support this stance, I want to make it very clear that I believe there are current provisions of the Family Law Act that already include mechanisms for shared residency being a child's right **where it is in the child's best interest.**

- (ii) In our view it is very important that children have regular contact with significant people who have been part of their lives in a positive way, particularly with their Grandparents, who in many instances have had an important role in their lives. It is very difficult, when a relationship ends and there is acrimony between the parties, which is then carried further into the extended family. This often seems to be a normal reaction. Unfortunately it is the children who suffer, it seems there needs to be a code of conduct in place for all adults, then in practice something could be worked out where contact with the children would be welcomed.

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

Research over the past two decades has consistently shown that women are more likely to experience financial hardship following marital dissolution. In a ¹1993 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%. More recent studies have revealed a statistically significant relationship between gender and financial living standards after divorce.²

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*: women experiencing spousal violence were considerably more likely than those 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.³ *Division of marital property*: 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.⁴ *Lower rates of employment*: in June 2001, only 21% of female lone parents were employed full-time and many are unemployed. Further the employment rate of lone mothers with dependant children is considerably below that of couple mothers.⁵ *Lower earning capacity*: 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.⁶

In 2000, a survey conducted of Child Support Agency clients revealed that only 28% of payees reported always receiving payments on time, while 40% reported that payment was never received. The Child Support Agency failed to collect nearly \$770 million in 200-2001 and the debts written off by the Child Support Agency during this period rose by 27% to \$74 million.]

The payer parents who choose to leave employment rather than pay for their child give a very clear indication of how important that child's wellbeing is to them. They would rather the taxpayer support their child. Why should that parent have shared residency of that child.

¹ *Settling Down: Pathways of Parents After Divorce* Australian Institute of Family Studies (1993)

² R Weston and B Smyth, *Financial Living Standards After Divorce* (2000) 55 *Family Matters* 11.

³ G. Sheehan and B Smyth, *Spousal Violence and Post-Separation Financial Outcomes* (2000) 14 *Australian Family Law Journal* 102

⁴ M Harrison, K Funder and P McDonald 'Principles, Practice and Problems in Property and Income Transfers'.

⁵ Australian Bureau of Statistics, *Year Book Australia 2002* Cat No. 1301,0,2002

⁶ K. Funder, "Work and the Marriage Partnership"

We felt it was important to address the Prime Minister's concern about young boys not having a proper role model, if they do not see enough of their father. Some boys and young men suffer from an excess of destructive male role models, not from their absence. 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, rather than fathers in particular.⁷

We also believe it is very important for a girl to have a positive relationship with her father. It is as important for her to know and spend time with him as it is for a boy. The most important issue to come from this is that the needs of all children have to be considered, and that when decisions are made they must be in the best interest of the child not the adults.

Conclusion

We ask the committee to consider:

- 1) A change to the Family Law Act to prioritise the safety of children and women escaping domestic violence and abuse as the threshold determinant of a child's best interests in cases of involving allegations of violence.
- 2) That Shared Custody (Residence) will not become the basis for Legislative change.
- 3) That Legal Aid be made available to all parties if required for proceedings involving domestic violence and child abuse.
- 4) Funding be allocated to appropriate agencies to implement Project Magellan nationally and to implement the recommendations of the Family Law Council 2002 on Child Protection.

I would welcome the opportunity to appear before the Committee if that is at all possible, to give first hand information on how a decision for a rebuttable presumption of joint custody would have a disastrous impact on the wellbeing of children whose parents are before the court.



Barbara Kilpatrick OAM
Principal Executive Officer.

⁷ Silverstein L: Deconstructing the Essential Father, Vol.54 number 6, June 1999