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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

House of Representatives Standing Committee on Family and Community Affairs
Submission No: 1594
Date Received: 8-8-03
Secretary:

Dear Committee,

This letter is a submission to the Committee's Child Custody Arrangements Inquiry.

(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 parent 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;*

The best interests of the child can only be paramount when each child is entitled to unique consideration of its interests and circumstances, rather than any presumed model of parental division of the child. A rebuttable presumption of joint custody (residence) is dangerous and not supportable for a number of reasons.

I am therefore opposed to any presumed division of children of separated parents.

The factors listed in Section 68F of the Family Law Act to define a child's best interests should be weighted towards safety as the threshold determinant of a child's best interests. **There is strong evidence to show that where there are allegations of domestic violence and/or child abuse that the current system of family law is inadequate in its ability to protect children from violence.** The Government should establish a national child protection service for the family law system to assist the courts in the investigation of safety issues where violence or abuse is alleged. Where violence or abuse is established on the balance of probabilities, there should be a rebuttable presumption of 'no contact' with the person who has used violence until they can demonstrate how contact would not pose a threat to the safety of the child, or other family members. The service should also be able to investigate and review the outcomes for children following orders which allegedly expose the child to risk of violence, abuse or other harm arising from the orders.

Where care of a child is shared evenly each parent should be eligible for Parenting Payment. Single and Family Tax Benefit A and B should be increased by 40% for each child to reflect the limits on parental earnings, higher needs and costs of providing care across two households.

- (ii) *in what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents.*

Current family law provisions enable grandparents to make applications with respect to grandchildren when they cannot make agreements without court intervention, therefore the provisions do not have to be changed.

- (b) *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 imposes modest requirements on payer parents after exempting a self-support component and capping the income to be considered and it should therefore be maintained. The percentage formula does not reflect the actual costs of raising children, but child support makes a valued contribution, which, when it is paid, reduces child poverty and improves outcomes for children of separated parents. The percentages of payer contact used to calculate changes in the formula should not fall below the current definition of substantial care as there is no proportionate reduction in costs to the primary carer parent. Closely tying child contact and financial outcomes for parents also directs parental focus away from children's needs and interests to dollar outcomes and therefore functions in practice against children's best interests.

To reduce child poverty in single parent households the threshold of the maintenance income test should be increased by 50 per cent and the FTB taper rate on child support received should be reduced from 50 cents to 30 cents in the dollar. The payee's income should be disregarded as a factor in calculation of child support payable because that income does not change the payer's obligation to contribute to the support of their child.

In conclusion and in summary, I call for the scrapping of any proposal of presumption of joint custody post separation.

Given the current serious gaps in child protection in Family Law as identified by the Family Court Magellan project and the Family Law Council, **I call for a change to the Family Law Act to prioritise the safety of children and women escaping violence/abuse as the threshold determinant of a child's best interests in cases involving allegations of violence.**

I call for the introduction of a rebuttable presumption of no contact where there are allegations of violence established on the balance of probabilities.

I call for adequate funds to be given to the relevant agencies to implement Project Magellan across the nation and to implement the recommendations of the Family Law Council 2002 report on Child Protection.

Given the absence of adequate legal aid for family law, particularly for cases involving allegations of violence, **I call for the extension of legal aid to all parties to proceedings to resolve concerns raised regarding domestic violence and child abuse.**

Yours faithfully,

Jeannette Tsoulos

