

**SUBMISSION TO FEDERAL GOVERNMENT PARLIAMENTARY INQUIRY
INTO JOINT RESIDENCE ARRANGEMENTS IN THE EVENT OF FAMILY
SEPARATION.**

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I wish to oppose the idea of presumption of joint custody, because I believe that there should be no qualifier to "the best interests of the child".....

In all cases where there is mutual agreement between parents there is no need for such a presumption – and this covers 95% of separating parents, who agree on residence based on who has been the primary caregiver, work arrangements, needs of the children etc.

In cases where there is conflict over residence (5%) this is the worst scenario in which to establish joint residence. The few studies of such arrangements all agree that joint residence requires an extraordinary degree of co-operation between parents and a corresponding level of maturity for children to be able to handle living in two residences. It is particularly unsuitable for young children who may love both parents and miss the non-resident parent, but who require a stable living situation with the primary caregiver for their emotional security.

CASE STUDY

I am a single mother and I will give you my history as an example of the many problems facing children upon separation. I am happy for the information contained to be used but anonymously and with care to ensure the privacy and safety of my children.

My husband and I had been together for over twelve years when we separated. We had three children, the youngest three years old. I was the one who chose separation, but it was after many years of "working on our marriage" such as attempts to get my husband to discuss my concerns and attend marriage guidance, which he refused to do.

My husband had been superannuated out of the Education Department after a breakdown because he was recognised by psychiatrists as being unfit to have charge of a classroom. I was sure his mental condition would improve over time, and so we had children and raised them. However his behaviour grew increasingly difficult to live with. He had violent temper tantrums where he smashed furniture and threw things around, threw stones at the dog, shouted and generally behaved in ways, which caused the children to fear his moods. This alternated with periods of withdrawal where he refused to leave our home, become very depressed, argumentative and paranoid, which resulted in the family becoming increasingly isolated in our country home. He had guns and would threaten to kill himself at times.

He occasionally smacked the children, but when he did, it was so hard that the marks of his fingers were clearly visible on their bottoms. Mostly they were just frightened of his temper. They would hide in their rooms to keep out of his way. They were scared to bring friends home because he would yell at them. They

hated it when we argued, and would beg me not to disagree with him, no matter what the issue. But it was impossible to avoid arguing with him, since he would start a fight by himself and just keep on and on till he got what he wanted, which was me to respond, at which time we would end up in a shouting match. Many mornings I would be awakened at six because he had woken up angry at something I had said the previous day and he would begin to shout, not caring that the children were woken in such a manner. Every morning I would wake with a sick feeling, dreading his mood and what sort of a day we would have.

Things were not always bad. At first this sort of behaviour was occasional; over the years it became more and more the norm. The children, who wanted more than anything a 'normal family', treasured the good times. The children and I lived by walking on eggshells, trying to avoid setting my husband off. This required giving into his demands, be they decisions about our daily life, sexual or financial "go and ask your parents for money' etc.

I worked part-time while he worked on our house and bush-block. He never went near the children's school, it made him nervous, so I had to do all the social responsibilities such as 'milk and fruit' and parent-teacher liaison, taking the children to all after school and social activities, and any entertainment on weekends since he mostly refused to leave home. I also did most of the house-work, all the child-care and was constantly berated for being lazy.

This was my marriage and on looking back, the question I ask myself is not why I left, but how I stuck it out for so long. I stayed because I knew he suffered from depression and I was scared that he would kill himself if I left. I did not know that this is a common ploy by people who seek to control others. I stayed because I believed that if I could just find the right help for him he would be OK. I left when I realised that the damage he was doing to our children was too serious to ignore or post-pone any longer.

When it came time to separate my husband was so angry that I believed that there was a chance he would shoot me, although I never voiced my fear. Several years later my oldest child told me that she was scared of leaving me during that early period of separation because she too thought I would be killed.

The reason I am going into some detail is because what I experienced has a name, psychological abuse. I was not bashed but my life and that of my children was tormented. I did not know this at the time, when I left I felt guilty that I was breaking up the family.

When we separated my husband was too distraught to see the children at all for the first few months. Then he decided he wanted regular contact. I was concerned that his mental health was such that it would not be good for the children but the counsellors I consulted all made it clear that unless I could prove child abuse I had to allow contact. I was also told that it was better for the children that they see their father.

So he started seeing the children every second weekend and half the holidays. The oldest child was ten. She became the mummy of the family. When the

children were at their father's, it was she who looked after the 3-year-old almost completely. He was too distressed to do anything, so the children did everything for themselves. He also would say most inappropriate and frightening things to the 10-year-old such as, when he was driving he pointed to a tree and told her that was the tree he would drive the car into, to kill himself.

Over the years of separation both the three-year old and the ten year old hated going for contact visits. The three year old would cry and cling to me both before and after while the ten-year old would always become uncontrollable every Sunday night upon return from her fathers. His depression gradually lifted, but contact visits were rarely fun. The children were expected to work all weekend, weeding the garden, fetching firewood, even washing his clothes. He never took them anywhere or did anything with them. When he repartnered the children became his babysitters. The children complained to me every fortnight, but if I tried to talk about it, he would just take it out on the children by being angry with them.

When we divorced we had a session with the Family Court counselling service at which I complained about those issues. I was told that it was none of my business what he did, as long as the children were fed and not neglected.

Of course it was my business. Who had to provide the comfort and love the other twelve days of the fortnight? Who had to pay for counselling for the oldest, when she lost the plot for a while in Year Eleven and refused to see her father for two years? Who was it that got shouted at, by her, "Why did you force us to keep going to our Dad's even though we hated it? You knew what he was like. We were only little kids"?

I told her that it was the law, which said she had to go. That what she went through was not recognised as abuse. That her father's right to have her was more important in the eyes of the law than her right to choose.

That is the existing situation, which made my children's childhood miserable. If joint custody was to be the norm, and I was to contest it on the above grounds, what would happen?

I have told my story because it is not unique. After working for more than twenty years in the community sector, for neighbourhood houses, community welfare, education and legal services I have heard similar stories repeated over and over. Women tell stories of what their marriage was really like and how many years it took them to leave. Psychological abuse, emotional abuse and financial abuse are so common, yet ignored. So when we talk about a woman being able to rebut joint custody if there is violence, we assume she can show us her bruises. When we talk about child abuse, we assume physical or sexual violence. We do not count children who are scared that their father will be angry or cry or threaten to kill himself if the child does not do exactly what he wants. We do not count using children to punish the ex-partner for leaving. We do not count children who are treated as possessions, to be picked up and put down at whim. We do not regard the best interest of the child as the sole criterion for determining how and where children spend their lives.

CONCERNS ABOUT JOINT REBUTTABLE CUSTODY

1. Every case is different and needs to be looked at on one basis only: **the best interests of the child.**
2. Shared care is unsuitable for very young children. Infants need their mothers unless there are exceptional circumstances. Mothers and fathers are not interchangeable. Mothers arrange their lives, working and leisure around the needs of their children both within and outside relationships in ways that very few fathers do. Until that changes the primary caregiver will continue to be the mother.
3. Issues such as psychological, emotional and financial abuse need to be given more weight in determining residence and contact issues in the Family Court. They also need to be seriously taken into account by counsellors and mediators, in order to ensure that women are not pressured into agreements which are not in the best interests of the child.
4. The pressure to stay in relationships can result in children growing up in severely dysfunctional families, which has a consequence for that child for the rest of his/her life.
5. Children need positive role models and unconditional love more than they need abusive, neglectful or dysfunctional parents.
6. If rebuttable joint custody becomes the law, will men leave work to go on Centrelink benefits so that they can jointly raise children? Will this increase welfare dependency rather than minimising it?
7. What happens when men work in non-family-friendly jobs? Will it be granny looking after the kids? Or the new girl-friend? Or longer hours of childcare? Is this in the best interests of the children?
8. Will this proposal encourage young women to have children? Will it encourage women to stay home with their young children? Women who know they could end up with only part-time care of the children if a marriage breaks up, will need to think about their own futures in a different way. They will have more incentive to maintain their careers throughout their marriage, which may not be in the best interests of the children.
9. **A parent's role is not measured in hours, it is measured in love.** Studies show that where a woman trusts her ex-partner to care for the children in a positive way, she will encourage the relationship between them. It is in a single mother's interest to have time out knowing that the child is happy and safe with his/her father.

10. How are most families going to be able to afford two family residences in the same suburbs so that children can attend school, social and recreational activities etc?
11. Rural families will be particularly disadvantaged. What about the situation where the man has a farm, property or job in a rural area? Will the woman be forced to stay in the same town even if there is no job/prospects for her? Will she be forbidden from starting a new life? What about the educational, social needs of the children?
12. What happens when one of the couple wishes to repartner with someone who does not live in that suburb/town? Will the previous relationship be allowed to dictate the future lives of the family?

CHILD SUPPORT

The Inquiry asks whether the existing child support formula works fairly. The answer to that is, no.

Once again I refer to my own case to demonstrate problems of child support. My ex did not pay a cent of child support for the first two years after separation. When he did pay support it was at a declared income of approximately the equivalent of the pension. Although the children were telling me he was working a lot, he was working for himself and not declaring it. I spoke to the Child Support Agency and was told that I should employ a private detective to find out what he was up to, because it wasn't their job to investigate. Catch 22: - if I could afford a private detective I would not be chasing child support!

My ex repartnered, had another child and convinced the child's mother that I was greedy for complaining at the pittance I was getting, when I was lucky enough to get it: \$45 per week to support three children. That relationship broke down so now he has four children he doesn't support. He is currently unemployed again, travelling around Northern Australia with his new, young, girlfriend. He pays me no child support nor does he pay his most recent ex. He could go on to have more children whom he will not support.

1. The Child Support Agency needs the power to investigate where there are grounds to believe that income is not being declared for Child Support purposes.
2. Since single mothers who receive no or minimal child support are doing all the financial work of raising children – estimated to cost a quarter of a million each – on a single and usually part-time wage – society should express its gratitude for the hard slog of single mothers in making the burden less onerous. This could be done through less punitive attitudes and practises by the CSA, Centrelink – the breaching regime and the taxation office.
3. CSA should not include the mother's income in determination of child support levels.

4. While society focusses on serial single mums who have children by different partners, at least those women are actually doing the hard work of raising the children. What about the men who go round having babies and then don't support them? Shouldn't there be punitive measures to discourage such anti-social, irresponsible behavior?
5. When the CSA and Centrelink force women to hassle men for child support, it is perpetuating the financial abuse which is often a feature of dysfunctional relationships.

I would be pleased to participate in any public forums or hearings on this issue,

Yours Faithfully,
