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| House of Representatives Standing Committee<br>on Family and Community Affairs |         |
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| Secretary:   |         |

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Parliamentary Inquiry Committee - Family Law

Parliament House

CANBERRA ACT



Dear Members of the Committee

**REBUTTABLE PRESUMPTION OF JOINT RESIDENCY IN FAMILY LAW**

I wish to make the following submission to the inquiry.

There will be submissions from many so-called "experts" as to the reasons as to why or why not there should be such a presumption of joint residency.

I base my submission on my own experiences after my marriage of 15 years ended. However after to speaking to other fathers over the years I believe my experiences are a more common occurrence for a larger group of separated fathers than has previously been acknowledged.

**THE CURRENT FAMILY LAW SYSTEM DISCRIMINATES AGAINST MANY FATHERS SEEKING JOINT RESIDENCY**

After my marriage failed I assumed issues such as residency and property could be resolved amicably. Unfortunately this was not the case so solicitors became involved. I was advised, to my disbelief, that the "best I could expect" would be to have residency with our four children every second weekend and half the school holidays. Over the next few years I paid thousands of dollars in legal expenses trying to obtain longer periods of residency with our children. After all before my marriage failed I had seen our children virtually every day of their lives.

At the end of these legal actions the system had won. Although I now also have residency on Wednesday's after school I was not and never will be satisfied in having less than 50% residency. This is way the Family Law is interpreted and administered. I choose to seek more time with my children through the legal system as I had funds to do so. Other fathers do the same in the forlorn hope that they might get a sympathetic judge or some pre hearing negotiations may assist them. Many fathers accept both the reality and the initial advice.

The rebuttable presumption of joint residency would lead to a decreasing number of Family Court proceedings, reduced stress and disputes between separating parties and earlier certainty of residency arrangements for children of the marriages.

THE CURRENT FAMILY LAW SYSTEM ONLY TAKES INTO ACCOUNT EXISTING ARRANGEMENTS AT SEPARATION

At the time of separation I was working full time to provide for the family and my former wife was the primary care giver. However before our children were born we both worked full time and as the children grew older it was our intention for me to reduce my hours and for my former wife to return to part time work. My former wife had worked part time until our second child was born.

As I was the sole money earner at separation (even though we had accumulated joint assets) I did not have a chance of obtaining joint residency. The Family Law system assumes that the situation that existed at separation would have continued until the children turned 18. Accordingly the Family Law determined that I was to earn the money to pay child support and my former wife was to provide the majority of the care until the children turned 18.

The arrangement described above is common in many separated families today. Work and child care patterns change throughout a relationship.

The rebuttable presumption of joint residency would more fairly reflect the arrangements over a child's life where as the children grow older the father has more responsibilities in the day-to-day lives of his children as their mother returns to the workforce. More importantly it reflects the hopes and desires of many separated fathers to be more involved in their children's lives.

IT IS ONLY A PRESUMPTION OF JOINT RESIDENCY

What is the definition of a "good" or "bad" mother or father? Noone knows the answer but one thing is certain – we all fall into one of the categories. Accordingly if there is allegedly a "bad" mother or father then the presumption can be rebutted. Furthermore separated parties can still agree to other arrangements.

Most importantly though the presumption allows separated parties to begin any negotiations on equal footings. Most children have both a mother and a father. Why should one parent have the initial right to care for a child of the marriage more than the other parent?

The rebuttable presumption is the fairest way to begin to determine residency arrangements.

SUMMARY

We are living in the 21<sup>st</sup> century. Equal opportunity, changing childcare arrangements, changing work arrangements have created different family lives to those that we may have experienced when we were young. The current Family Law system is out of date and out of touch.

Separated fathers want to continue to be fathers. However the current system places many hurdles in the way. It is hard at times to think of yourself as a "proper" father as you are not with your children for a significant part of their lives. It is something I will have to deal with for the rest of my life. It is something others fathers can't accept and unfortunately chose suicide as the answer. Other fathers just walk away as it is all too hard.

My hope is that this inquiry will lead to the introduction of the rebuttable presumption of joint residency. This will ensure that separated fathers in the future can have a more active and influential role in their children's lives – isn't this the bottom line in the whole issue.

Thank you for taking the time to read my submission.

Yours sincerely,



STEPHEN DAVIE