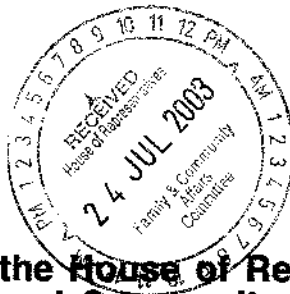


Ms Carmel Penglis
7 Dudley Street
Asquith 2077
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House of Representatives Standing Committee
on Family and Community Affairs

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To: The members of the ~~House of Representatives~~ Standing Committee on family and Community Affairs.

Submission to Parliamentary Inquiry Into Joint residence Arrangements.

As a person who is divorced and as a teacher of many children who have separated or divorced parents, I wish to make my views heard on this matter.

The great strength of the Family Law Act 1975 was that it was based on the view that the interest of the children remains paramount at all times. The outcome of a divorce or a separation should be based on what is best for the children. They are the innocent parties in this situation and should not be disadvantaged in any way. To have any legislated mandatory formula about the residence of children seems to shift the focus onto parental rights without maintaining primary and essential focus on the rights of the children.

The current situation seems to work quite well. All marital breakdowns are painful experiences for the parents and the children. Currently 97% of matters relating to divorce are settled without a hearing in front of a judge. So through mediation, negotiations between legal advisers or the parties and compromises are reached. Any compromise will be amicably received by the parties as they have come to the decision jointly. The act of compromise means that communication is maintained. for the parents to communicate is most important for the benefit of the children. In cases where communication is impossible obviously an imposed decision will have to be sought. The current situation allow all these things to happen.

The emphasis on parenting plans also gives parents a opportunity to put into place a regime which works for their family. each family is unique and cannot have a fixed formula imposed upon it.

The imposition of a standard 50.50 residence concept as the base point of negotiations is not recognising the success of the current system.

To presume that children will have two residences is short sighted. Most children need a stable environment in which to grow and develop. Moving house form one week to another is destabilising. As an adult I would find this unsettling and difficult. So for a children or teenager this would be chaotic. Such an arrangement would call or organisational skills which few adults have let alone children. This was a suggested option for my children during the process of the divorce and this was met with disapproval from them. Now several years later also with the benefit of being young adults, they still say that in their case such an arrangement would have been extremely difficult. The emphasis must remain on what is the most stable and nurturing environment for the children.

The concept of joint residence also presumes that the parents will live close to each other- this may not be practical. The marital home may have to be sold and

two households set up in another location where two residence would be purchased. This does not take into consideration the parents' occupations, the children's schools or the children's social networks. To lose all of this would be devastating to the family which is already struggling to minimise the impact of divorce or separation on the children.

In our current society, it is more often the mother who puts her career on the "back burner" so that the children are able to enjoy what is available to them. It is generally the mother who has arranged the extra curricular activities such as the soccer training, netball training, jazz ballet or the drum lessons. It is generally the mother who knows the parents of her children's friends and who organises the after school play sessions or other activities. It is generally the mother who is involved in the school and knows the teachers and the school routines. Also it is usually the mother who is supervising homework, driving to the local library with the children for research and generally supporting activities relating to their learning. This is because usually the family has chosen this role for the wife. Even women who are working frequently manage their hours so that these activities can still be pursued.

to give joint residence would mean that fathers would not be able to maintain their children's lifestyle due to their careers. You can not expect children to be denied the ability to be involved in extra curricular activities that are so popular because their parents are divorced.

Women do tend to fulfil the role of primary carer and most children, while loving both parents dearly, do form a strong emotional bond with their mother as a result of the roles negotiated within a family prior to divorce. To deny this is to deny the reality of family life in contemporary Australia.

Currently the majority of mother do have the bulk of residence time with them because they are the ones who actually do look after the day-to-day care of the children and generally have since their birth.

Complaints about the current Child Support Scheme are possible based on a few vocal men who do not like to pay anything to their ex partner. They seem to view Child Support as spousal maintenance. The reality is that divorce was between the husband and the wife and responsibility for the children remains. Women who are single parents are using 100% of their income for the home and the children. To be paying 18% after a living allowance rate is deducted is an absolute bargain in comparison. The great benefit of the CSA is that most PAYE taxpayers are now ~~shouldering their responsibilities~~. Of course there is a problem with people who are not taxpayers or who are owners of their won businesses and are able to conceal their true income using "clever" accounting.

As for joint residence the impact of this has to be considered in relation to the children. Surely a stable home with good quality time spent with their other parents is a good compromise. Many fathers have active roles in their children's lives. They are at parent teacher evenings, on the P&C, at sports events, concert etc. They are able to compromise with their ex wife to achieve what is good for the children.

Already there is the mechanism in the Family Law Act to have joint residency. SO why are people not availing themselves of this if it is such a pressing issue? Could it be that once they calculate the CSA payments long after the residence issues have been settled, the fathers look for a way of reducing their payments?

As for inquiring into the rights of grandparents and other significant people, all this is included in the existing act.

The suggestion of removing lawyers from the whole process would only serve to further disempower a group of people who already feel powerless. My experience was that my lawyer encouraged compromise, was always aware of my interests, was constantly thinking of the impact of any offer on the children and thoroughly supported me through the most stressful event in my life. I still value the support I received from my solicitor and barrister.

It seems that this whole issue is related to a small group of disgruntled men who are filled with resentment at the demise of their marriage and are determined to make life difficult for their ex wife through the children. I would dispute this as a rational basis for legislative reform.

Consequently I implore you to abandon a mandatory 50/50 split in the place of residence for children. Any mandatory position that is legislated is denying the unique nature of each family and is definitely placing the interests of the children as secondary after those of the parents. This is not in the spirit of the Act nor is it consistent with our obligations as signatories to the United Nations Convention on the Rights of the Child 1975.

Yours faithfully,



Carmel Penglis