

07 August 2003

Ref: rosslyn/policy issues/sharedparent

House of Representatives Standing Committee on Family and Community Affairs		youth advocacy centre inc community legal & welfare service for young people Web www.yac.net.au Email admin@yac.net.au 52 Inwood Street Woolloowin Q.4030 Phone 07 3857 1155 Fax 07 3857 1803
Submission No:	553	
Date Received:	7-8-03	
Secretary:		

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

By Post and Facsimile: (02) 6277 4844

Dear Sir/Madam

Re: Inquiry into Child Custody Arrangements in the Event of Family Separation

Youth Advocacy Centre (YAC) is a community legal and welfare centre designed specifically for those young people aged between 10 and 16 years inclusively and has been in operation for over 20 years. In that time it has generated a wealth of experience and knowledge about issues affecting children and young people. We welcome the opportunity to contribute to the inquiry into child custody arrangements in the event of family separation.

The presumption of joint residence would gravely restrict the rights of children and young people and contradict the well accepted international standards and Family Law Act principle which focus on the best interests of the child as a paramount consideration. It is disappointing to note that the inquiry is referenced in terms of "custody" which clearly has proprietorial connotations and a focus on parental rights, rather than the interests of the child.

Our submission shall focus on:

- Australia's obligations to consider the best interests of the child under the United Nation's Convention on the Rights of the Child;
- How family law currently accommodates the best interests of the child; and
- The impact of a presumption of joint residence would have on the lives of children and young people.

UN Convention on the Rights of the Child

Australia has an international obligation to ensure that the best interests of the child are a primary consideration. Australia ratified the United Nations Convention on the Rights of the Child (UNCROC) in December 1990. Article 3 of UNCROC states that:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the interests of the child shall be a primary consideration.

Article 3 is the compulsory criterion for all actions concerning children, and is relevant to any discussion to amend child contact and residence arrangements under the domestic *Family Law Act*.

Further Article 9 states that:

States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interest of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence....

State Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

A presumption that children spend equal time with each parent, in many circumstances, may clearly not be in the interests of the child, and is *prima facie* in breach of Australia's international obligations.

Family Law Act Principles

Where parents cannot agree on arrangements for children and the Family Court has to decide it is bound by law to look at the **best interests of the child** as the **paramount consideration**.¹

The Family Law Act also sets out four clear principles about parenting of children namely:

- children have a right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together; and
- children have a right of contact, on a regular basis, with both their parents, and with other people significant to their care, welfare and development; and
- parents share duties and responsibilities concerning the care, welfare and development of their children; and
- parents should agree about the future parenting of their children.²

The Court must also consider a number of other factors³ such as

- any expressed wishes of the children
- the nature of the relationship of the child with each parent

¹ see section 65E of the FLA

² see section 60B(2) of the FLA

³ see section 68F of the FLA

- the likely effect of any changes in the child's circumstances
- the practical difficulty and expense of a child having contact with a parent
- the capacity of each parent to provide for the needs of the child
- the child's maturity, sex and background, including issues of race, culture and religion
- the need to protect the child from physical or psychological harm
- the attitude to the child and to the responsibilities of parenthood
- any family violence which has occurred.

Current provisions of the Family Law Act already include mechanisms for shared residence where it is in the child's best interests. The Act recognises that an equal amount of time with each parent is to the detriment of many children where the arrangement is inappropriate or impractical. A presumption of joint residence privileges the rights of parents over the rights of children by over-riding the paramountcy of the 'child's best interests' principle which is entrenched in the Family Law Act.

Impact of a Legal Presumption of Joint Residence

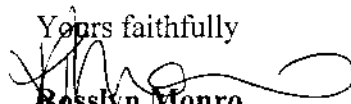
YAC is opposed to a legal presumption of joint residence for separating families, as such a presumption represents a dangerous and dramatic policy shift in the government's family policy. A presumption offers a simplistic, "one-size-fits-all" solution to families who are complex, have a multitude of needs and patterns and operate in a variety of ways. Such a legal presumption is premised on the notion that the children of marriages are chattels over whom parents have a right to bargain over.

In our experience, many contact arrangements are designed around the needs of parents, not children. The routine blocks of contact time result in inflexible care arrangements that are not necessarily accommodating of children's development and need to participate in relationships and activities outside those of the parent-child relationship. For example schooling patterns are potentially disrupted if the child is required to change residences throughout the school week. A joint residence arrangement would further impede children's ability to negotiate with parents about how they spend their time. Children may have difficulty adjusting to routines that are based on contact times rather than the child's activities and interests.

YAC endorses the current regime that provides rights to children and imposes responsibilities on parents. Any amendments to the family law regime must be responsive to the rights of the children rather than making children possessions of their parents.

Should you have any queries in relation to our submission, please do not hesitate to contact me.

Yours faithfully


Rosslyn Monro
Director