

House of Representatives Standing Committee
on Family and Community Affairs

Submission No: 1070

Date Received: 18-8-03

Secretary:

Mr. Peter Dutton M.P.
3/199 Gympie Road
Strathpine
QLD 4500

8 August 03

Dear Peter

Re: Joint Residency

Thank you for meeting with us on 4 August and giving us the opportunity to discuss with you our concerns regarding Joint Residency. As suggested we have amended our letter to you and we be pleased if you forward it to your committee.

Pine Rivers Neighbourhood Centre

The Neighbourhood Centre offers a number of services to the local community. Many of these are focused on providing assistance to families, in particular children. This may take the form of direct support or helping parents undertake their parenting role.

Among the programs offered are -

"Family Support" which links workers as well as trained members of the community with families experiencing difficulties.

"Seasons" a change and loss peer support program for children having difficulty adjusting to changing family circumstances such as separation, divorce or the death of a loved one, also a program for adults is offered.

"Kids Friends", which matches volunteer friends/mentors to children who for various reasons lack a special adult to share problems, interests and good times.

"Counselling" working with individuals, couples and children.

"Community Education" such as parenting courses and financial management.

In addition to our family programs, the Neighbourhood Centre is the coordinating body for "Petrie Legal Service". The Legal Service, which has joint state and federal funding, provides free legal advice and information to members of the Pine Rivers Shire and surrounding districts. It does not undertake casework.

Joint Residency

We do not disagree with the concept joint residency. It can clearly work for a small number of families (4% of all registrations with C.S.A. for 2002 were shared parenting arrangements) and can be beneficial to the children in those circumstances. Our concern is that this example does not represent the majority of cases.

The practical difficulties associated with joint residency are many, including –

- The geographic proximity of parents to each other
- The proximity of the children's schools, friends and leisure activities
- The need to set up 2 households, clothes, toys etc, and the cost of this
- The flexibility of parents working arrangements – time off to take and collect children from school, care for sick children etc
- The financial independence of each parent
- The complexity of the current welfare system, and the ability of new family models to fit within the current inconsistent criteria

Couples with low conflict separations will have less difficulty managing these practical problems. Logistic arrangements are more likely to be followed and communication between parents is amicable. Financial considerations, in particular the reliance on social security, and payment of child support are not significant problems. The formal agreements made between these parents are not imposed by the courts, but made by consent. The children in these circumstances suffer fewer problems than their peers in less amicable separations.

Our clients and Joint Residency

We work with families, and in particular children, in crisis situations. Their parent's separations are not amicable. A presumption of joint residency would drive these families further into crisis, and place families who are currently "managing", into the "at risk" category.

We are concerned about a range of parenting and emotional issues which will adversely affect the children in these families.

Children need to feel safe and secure in their relationship with both parents. Forcing them into a 50/50 living arrangement with each parent may make it difficult for some children to work out where they fit in the new arrangement. Should they favour one parent over the other? How do they respond to the contradictory views of their parents concerning areas of parental conflict? Which parent is right? These are common problems experienced by the children our family programs support.

Inconsistent parenting techniques and inadequate parenting skills cause confusion and uncertainty particularly with young children. The situation may arise where a child can play one parent off against the other, because they do not provide a united front on a particular issue. One partner is usually the main care giver in most family situations, caring for children with special needs will be especially problematic particularly if one parent has been providing the majority of care during the marriage.

We are also concerned that the level of parental commitment to the arrangement may decline, in effect leaving one parent with the majority of the responsibility for day to day care and potentially damaging financial issues to resolve.

Many of our client families live in difficult financial circumstances, the introduction of joint residency, with its inherent costs, would cause even greater financial hardship. In these cases it tends to be the children who feel the brunt of low household income.

The need for employment flexibility may lead to situations where a parent has to cease work to undertake his/her share of the parenting responsibilities. This will increase reliance on the social security system, which is already causing difficulties in its approach to shared parenting.

The issue of domestic violence is also of concern. Parents who have experienced violence will be forced to have regular contact with their former spouse. The stress and anxiety caused will inevitably impact on the children's emotional wellbeing. Children who have themselves been victims of abuse may well be placed in a situation where they are required to spend time with their abuser.

The issue of step families needs careful consideration; the impact on children and new step parents developing stable relationships and the physical space required with sleeping arrangements etc.

The demand on the various family programs provided by the neighbourhood centre and other agencies will undoubtedly increase if a presumption of joint residency were introduced.

The Family Law Act currently provides that in circumstances where parents cannot agree on arrangements concerning their children, and the court has to decide it is bound to look at the "...*best interests of the child*..." as the "...*paramount consideration*..." (Section 65E). In determining what is in the child's best interests, the court must consider the matters set out in section 68F(2) & (3).

We believe the presumption of joint residency fails to take into account the issues raised above and the criteria set out in sections 65E and 68F of the Family Law Act. It will force many children into damaging situations. Ascertaining the best interests of children should be left to the court to decide in accordance with individual circumstances, and established principles.

The fact that the presumption is rebuttable will not help resolve these problems. The cost of court action, the delays in the court lists (which will undoubtedly increase) and the likelihood that some parents will attempt to act for themselves in order to obtain resolutions to their problems, will leave many children in inappropriate and potentially physically and emotionally damaging residency arrangements because their parents are unable to change them.

We are also concerned that this issue is treating children as property, to be divided between each parent according to an arbitrary formula. It is in effect directed towards what is in the parent's best interests, and appears to be motivated by various lobby groups who have particular grievances regarding the operation of family law system in general. We make no comment on the validity of these particular grievances, other than to say that the government must not lose sight of the primary guiding principle of family law, "best interests of the child", when addressing them.

Petrie Legal Service

Analysis of the statistics from the legal service for the 2001 – 2002 year are instructive when considering what is occurring in the Pine Rivers area.

Of the 1673 clients who sought information or advice – 858 clients sought advice concerning family law matters (48.7% of all clients).

The family law clients requested information or advice regarding the following issues:

- 264 - residency and contact
- 231 - divorce and separation
- 127 - property
- 22 - children's welfare
- 19 - child support and
- 195 - unspecified matters (usually because the client was unwilling to discuss the nature of their problem with the administrative volunteer).

All clients were asked about their income source, 685 responded – of those 346 (51%) were in receipt of a social security or other government benefit. The financial problems of joint residency have the potential to make a substantial impact on the lives of a majority of our clients and their children.

Family Law issues are the most common problems dealt with by the legal service. Child residency and contact specifically, make up 31% of all family law problems. Separation and divorce made up, 27% of all matters. Although anecdotal evidence suggests that residence and contact are often discussed as well in these appointments. It appears that a significant number of the 195 unspecified matters related in part to residence and contact as well.

Family Support Program - existing clients with issues re shared parenting;

- Fifteen of our 34 cases will be affected. Five of the 15 there involve violence issues.
- This is what is happening now with children going between households. This will increase with joint residency;
- Children having to choose between parents – torn between two.
- Safety and security – fear they will lose both parents and will be on their own.
- Disruption in schooling, leisure activities.
- Tired (especially young children) from going between households – time off school.
- Two different sets of rules, boundaries, limits.
- Problems with financial resources, instability, who pays for what.
- Greater number of cases going to court.
- Children seeking counseling – may feel they are to blame for parents split – burden of guilt, low self-esteem, fear – last a lifetime.
- Increased conflict between parents affecting children – children feel they are to blame.
- Different parenting ability/commitment.
- Children in greater poverty, situations in two households.
- Increased dependence on Centrelink payments – breakdown of employment situations through having to care for children.
- Violence, physical, emotional, sexual, intimidation.
- Children may not see parents, through the parents' choice. Parents let children down.

Conclusion

The resolution of the joint residency issue will clearly be of importance to local people. Unfortunately it has not been widely promoted at this stage and it appears that there is little or no awareness of it in the local community. Many members of the community rely on organizations such as the Neighbourhood Centre to give them a voice regarding these issues. We trust that you can take our concerns into account when considering this matter.

Yours Sincerely

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Family Support Program

David McKinnon
Petrie Legal Service

Sandy Dore
Centre Coordinator