yfs
youth & family service (logan city) inc.

8th August, 2003

Committee Secretary
Standing Committee on Family and Community Affairs
Child Custody Arrangements Inquiry
Department of the House of Representatives
Parliament House
Canberra ACT 2600
Australia
Tel: (02) 6277 4566
Fax: (02) 6277 4844
Email: FCA.REPS@aph.gov.au

To Whom It May Concern:

Re: Inquiry into child custody arrangements in the event of family separation

This submission responds to the following **highlighted (underlined)** segments of the terms of reference;

Having regard to the Government's recent response to the Report of the Family Law Pathways Advisory Group, the Committee should inquire into, report on and make recommendations for action:

(a) given that the best interests of the child are the paramount consideration:

(i) what other factors should be taken into account in deciding the respective time each parent should spend with their children post separation, in particular whether there should be a presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption could be rebutted; and

(ii) in what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents.

(b) whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children.

By way of summary our submission makes the following points;

A/ The Family Law Act does not need revising to add new principles or factors.

B/ It is our view that this is a matter of addressing attitudes and the lack of economic resources.

C/ In cases of conflict/disagreement some alternative mechanisms of change include;

- timely and accurate assessment.
- reducing the adversarial nature/behaviour present in the legal system.
- giving the legislative enforcement system some teeth so when there is noncompliance with a ruling then that ruling can be enforced.

D/ In regards to the involvement of Grandparents. Where signiifcant ongoing involvement has been evidenced prior to/around separation and-or where the involvement of Grandparents might mitigate against the ill-treatment of the child/ren, then provision need be made for such contact once ruled for to be enforced.

The full body of our submission is as follows;
We believe that both mothers and fathers each have a uniquely important role to play in raising their children, before and after family breakdown.

When couples separate, there are a number of ways of ensuring that children are appropriately cared for; joint physical custody is only one such way and it has merit in cases where both parents freely choose it, where there is an absence of conflict and where both parents are financially stable and live in the same general geographic location. However, a State-enforced presumption of joint custody represents a change in policy that is not warranted and where the same ends can be met via other means.

In support of this view we would like to submit the following argument for your consideration;

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

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.[1]

The Court must also consider a number of other factors[2] such as

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

From reading the law as it now stands our opinion is that the Family Law Act **does not need revising** to add any new principles or factors and particularly it does not need to include a principle stating that there should be a presumption that children will spend equal time with each parent. This is because the pertinent and necessary legal principles and factors already make allowances for this to occur.

It is our opinion that this issue is not a matter that can be resolved by law but rather is partly about the a/ attitude of the various people, agencies currently involved with running and using the system as it now stands and b/ the lack of economic resources required in establishing an alternative system. The expediency of ruling for joint residency as a default ruling would 'paper over' any issues of concern to/for the child and the parenting of the child.

[1] see section 60B(2) of the FLA
[2] see section 68F of the FLA

Without having knowledge of the full history and process behind this issue being reviewed in the first place we can only surmise that it arises from a group or groups who feel frustrated by the system, believing in some cases that the system was biased against them. The key issue around this point is that the Family Courts only get involved where parents cannot agree. At such time emotions are intense and blaming does occur. Sometimes with a legitimate basis and sometimes not. We believe the key is an appropriate and timely assessment of the needs of separating families, the capacity and history of parenting and the need to reduce the adversarial nature/behaviour present in the system.

One problem is the attitude prevalent in an adversarial system, which results in legal advice to either men or women being along the lines "you are wasting your time the system is against you". This of course can easily get translated into "the system favours women" or "the system favours men". This is the attitude that requires shifting. It is partly reinforced by the perception that some Judges maintain an outdated view that women are the best mothers, while others maintain the view that whatever the behaviour of either parent, the child should have contact with both (as though a poor role-model is better than none, which is not the case). Both these myths need to be challenged with a view to ensuring that a parent(s) who show a clear capacity to care for their child are given the option of residency (or in rarer cases, shared residency)

Also early on in the court process assessors need to be able to give an accurate and timely assessment about the systemic nature of issues in the family. One specific example being the importance to say early on if one person is 'poisoning' the mind of the children against the other, either overtly or covertly. This will lead to better outcomes for children and young people as it puts the Court in a position to make a ruling to minimise the undue pressure being applied to the child/young person.

Along with this is the need to give the legislative system some teeth. That is once a ruling is made there needs to be the capacity to prosecute people who fail to comply in a timely fashion as it is around these points that a spiralling escalation of secondary problems and conflict can emerge; conflict from which, in its stated principles, the Family Law Act is attempting to protect children. Understandably provision must be made here to assess the likelihood that, given any history of domestic or family violence, a parent is not breaching the requirements to ensure contact because they fear for the child(ren)' safety.

We also believe that provision needs to be made where one parent has a mental illness or disability and requires support in implementing the parenting role eg. one has epilepsy, is prescribed epilum and consequently is not able to drive. Where they are available, grandparents are consequently

one of the few resources available. We also believe that where the culture of the family is such that Grand Parents have had significant prior involvement, provision should be made for this to be facilitated.

Submitted on behalf of YFS by Greg Miller

Yours Sincerely,

Greg Miller
Counsellor
YFS

Youth and Family Services (Logan City) Inc.
PO Box 727 WOODRIDGE QLD 4114.

Phone (07) 3208 81 99

Fax (07) 3208 8589

Email: yfs@yfs.org.au

yfs

youth & family service (logan city) inc.