

House of Representatives Standing Committee
on Family and Community Affairs

From: Community Legal Service [cls@umfc.com.au]
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To: Committee, FCA (REPS)
Subject: Albury-Wodonga Community Legal Service Submission

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Secretary:

Dear Sir/Madam

Please find attached our submission regarding Joint Residency and Contact for Grandparents.

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Albury-Wodonga Community Legal Service Submission for the Joint Inquiry into Joint Residency and Contact for grandparents

The Albury-Wodonga Community Legal Service commenced operation in July 1999 and covers North-East Victoria and Southern Riverina of NSW. Since 1999 the service has provided advice, information and referrals to over 2,000 parents in relation to residence and contact issues – both mothers and fathers. As a service we are opposed to the proposal of rebuttable joint residence as it does not focus on the best interests of the child. In regards to contact of grandparents it is submitted that this should occur if it is in the best interests of the child.

As the law currently stands any relevant factor should be considered when trying to determine children's best interests and in turn what living arrangements will be made when parents are not living together. Every family, every parent and every child is different. To begin this process with a presumption of shared care is to ignore these differences and in many cases will ignore the best interests of the child. It may even ignore what is best for the parents but at worst privileges the parents' interests or "rights" above that of the child.

"Shared care" works in very limited cases, requires a committed effort by all involved and is the exception rather than the norm. In its best form it is the ideal arrangement as children are able to be cared for by both parents and these parents rarely require recourse to the legal system, ie. the parents retain a workable relationship and put the children first. In its worse form it is disruptive to children, costly and may even result in conflict (or increased conflict) between parents. How is it in the best interests of the children to always live out of a suitcase, feel like ping pong balls and feel like they are out of control of their situation? Children may find it hard to keep up with schoolwork, friends etc, in between swapping houses. How is it best for the children if conflicting parents are made to have regular, continued contact with each other? Would the proposal have any support from parents if the suggestion was made that parents should move between houses as children are expected to in shared care arrangements? A presumption of shared care returns to old notions of children as property – that they are objects to be moved backwards and forwards between mum's and dad's house.

The Family Law Act refers to children having a right to know and be cared for by both parents. Whether this is equal time or not depends on the individual circumstances of the family in question. One needs to question whether shared care is appropriate after separation. When a child is born to a couple living together is there a presumption of "shared care"? Do both parents spend equal amounts of time with their children? This depends on the parents' situations – surely? Why should the situation change after separation? It appears that some people are now starting to object to the other parent being the primary caregiver, but only after separation. Suddenly they are willing and able to care for children that previously they couldn't or wouldn't.

This is clearly an example of a double-standard in our society. In the majority of cases parents continue to revert to traditional roles of mothers being the primary caregiver when the family is together and "working". On separating, fathers are suddenly calling for changes to the situation and to the law because they feel hardly done by because the law is recognising this important role and decides that the best interests of the child deems it more appropriate to have a residence/contact arrangement. Perhaps society, and fathers for that matter, need to review the role of the father and promote shared care

in all families. If, in general, we were starting on this even playing field than a presumption of shared care would be appropriate.

The law puts the onus, to a large extent, on the parents involved to work out together what is best for their children. There are very few parents that need to use the Family Court to resolve this issue as in most cases the parents can agree as to what arrangements will be in the best interests of the child because it is obvious. Often a residence/contact arrangement occurs as this reflects the situation prior to separation – one parent has been the primary caregiver. Contact is what a parent makes of it and is only as successful as the effort put in by the parent. Some parents cannot and do not want to have the care of their children. This is evident in the number of enquiries we receive from resident parents trying to encourage contact between their children and the other parent. Parents who do resort to going to court are generally those that have ongoing conflict and, in all likelihood, will never be happy with any decision made by the court.

A presumption of joint residence is likely to lead to more conflict between parents and matters coming before the court. But in real terms how and who is going to police it? Will it increase the need for orders to be made, even when parents agree between themselves that one parent will give up their shared care and will “settle” for contact. It is concerning to read articles which state “dad’s have 1 in 5 chance of winning sole custody”. Again children are being referred to as something to be “won”. The community’s concept of parenting after separation needs to be adjusted to looking primarily at what is in the children’s best interests. The difficulty with this is that each parent thinks they are what is in the best interests of their child without looking at their motives. Are they angry at the other parent and want to beat or get them? Or do they really believe they can give the child a stable, happy, loving environment?

Has the push for this rebuttable presumption come from parents upset about the lack of quality time spent with their children or is it linked to the issue of Child Support? Many clients contact our service linking the issues of contact with children to child support. What a sad state of affairs when parents are so blinded by money that they cannot see the impact arrangements can have on children.