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Secretary:

BPW AUSTRALIA

Submission to the

**INQUIRY INTO CHILD CUSTODY ARRANGEMENTS IN THE EVENT OF FAMILY
SEPARATION**

The Ideal

BPW Australia supports the overarching principle that in all Australian families shared parenting from birth is an ideal we should strive for. Children need the love and support of both parents in a happy home. However not all families are ideal, and those where there is relationship breakdown are often far from ideal. As a nation, we should be supporting such families to best meet the individual needs of their children.

Current law

The Family Law Act is premised on ensuring the welfare of the child. There are currently a number of principles written into the Family Law Act which require the Court to consider the best interests of the child in making any orders about residence and contact in situations of family breakdown.

There is no disputing the fact that the current law is not working effectively, but the fault is not in the law but in the application of the law and the lack of funding and resources made available to the Courts and the support organisations that are currently in existence.

Proposed law

The proposed law is premised on ensuring the rights and welfare of the parents. It applies a one size fits all principle that takes no account of the circumstances of individual families and individual children. These families that require the assistance of the Family Court to resolve their differences are not the ideal families, and are on the whole dysfunctional and troubled. For these families, there is a need for more resources, services and support directed at assisting them in effectively parenting their children.

There is also an assumption that all parents and children want a shared parenting arrangement, whereas the reality is that most separated parents who are able to arrive at their own arrangements without the assistance of the Court do not choose shared residence. Parents' and children's lives do not readily fit shared care, and neither do family's resources.

Recommendations

As a family friendly nation, we should remain focused on the child as the paramount consideration when applying the law to resolve disputes that arise as a result of the painful and costly social phenomenon of relationship breakdown.

A better future for Australian families in all their shapes and sizes requires a policy that fits the child rather than one that requires the child to fit the policy. A presumption of shared care when parents separate does not focus on the needs of children.

Rather than change the policy of the Family Law Act, we recommend that the current system with its resources and systems that are already in place should be better resourced and funding should be allocated to ensure that the system remains child-focused.

BPW Australia
BACKGROUND PAPER
INQUIRY INTO CHILD CUSTODY ARRANGEMENTS IN THE EVENT OF FAMILY
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1. The Committee's terms of reference to investigate and make recommendations for action on the following matters:-

- a. *The best interests of the child*
 - i. *Factors to be taken into account in deciding the time each parent should spend with children post separation:*
 - ii. *Circumstances that orders should be made for children to have contact with others, including grandparents:*
- b. *Whether the existing child support formula works fairly for both parents in relation to their care of and contact with their children.*

Section 68F of the current Family Law Act sets out the factors that the Court must take into consideration in determining the best interests of the children, and these factors adequately cover the vast range of considerations that should be balanced up when determining the time the children should spend with each parent. What needs to be improved is the emphasis that the Court places on these factors in making its decisions about children's best interests. It is funding, resources, education, co-ordination, and efficiency that must be urgently improved. A major consideration in reducing the conflict in families relying on the Family Court for decisions is the length of time that families are caught up in the system. The Court is already able to make orders with respect to grandparents and other interested parties, and does so when appropriate. Educating the public about the rights of children to know and be cared for by significant others is essential to ensure that children remain connected with extended families. The judiciary and support services require ongoing education about cultural diversity, the impact of separation in different ethnic groups, and the grief process that people experience as the result of relationship breakdown.

The Child Support formula currently in place allows for adjustments for periods of time the children are in the care of the non-resident parent. Again, the system is not effective in practice, as the Child Support Agency is not effective nor efficient in collecting contributions or policing non-payment by liable parents. Those who evade the most child support are those most able to pay, being the self-employed and professionals who are able to use the tax system to reduce their declared accessible income.

Taking child support from the resident parent in lieu of time spent with the non resident parent ignores the aggregate costs faced by the resident parent in providing day to day accommodation, education and health services together with clothing, food and shoes for growing children.