

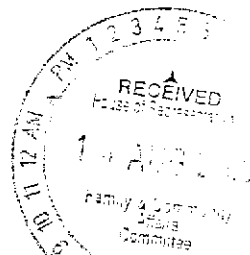
House of Representatives Standing Committee
on Family and Community Affairs

Submission No: 437

Date Received: 14-8-03

Secretary:

House of Representatives
Standing Committee on Family and Community Affairs
Parliament House
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Tweed Shire Women's Service welcomes this opportunity to state its concerns to the Committee in regard to the Enquiry into Joint Residency Arrangements in the Event of Family Separation. Tweed Shire Women's Service believes that the Committee must take into account the danger women and children face after separation from a violent relationship. Tweed Shire Women's Service would clarify that the area of concern is where there have been established cases of domestic violence or child sexual assault.

This service was established in 1991 to provide a Women's Resource Centre, Women and children's Refuge, short term housing, information, referral and crisis counselling. In the years this service has been operating it has been shown clearly that domestic violence does not cease on separation. It is also an established fact that in the case of domestic violence the most dangerous period for women and children is at the point of separation and after separation.

The proposed amendments are very disturbing from the aspect that children appear no more than property to be shared by both parents - regardless of the best interests of the child. It could also be seen that this suggested amendment devalues children with the assumption that regardless of their well being the parents demands are seen to be paramount.

We believe there is no justification for the suggested amendments as it has been demonstrated in the current Family Court decisions that shared Residency is welcome when both parents view this is the best option for their children.

Shared Residency takes a strong commitment from both parents and will not work in the best interests of the child unless both parents are willing, co-operate, communicate, compromise and arrange their lives to make it a viable arrangement for children. Most importantly it needs to be recognised that Shared Residency will not work if there has been a history of domestic violence from a partner.

It is our experience that in cases with domestic violence this co-operation, communication, compromise and sacrifice is not possible. Decisions about medical treatment, social activities, and even basic questions such as clothing and day to day care may cause further aggression and further violence. Children will continue to be witness to this conflict and violence therefore it will inhibit their sense of safety and effect their development emotionally and socially. Shared Residency arrangements are unlikely to ease children's fear of further harm to their mother or themselves with the risk of continuing violence when both parents are required to consult and agree on all aspects of day to day needs of children.

Our experience is that most children coming into a refuge are fearful that their father will find them and fear their mother will be harmed or even killed. These fears interfere with children's ability to function in a healthy, positive way. Their education suffers, as do their relationships with the people in their lives. For a significant number of children who are concerned about their father after separation it is our experience that this concern generally disappears when children realise that their father can take care of his own physical needs.

The issues for children who have experienced domestic violence are immense and the longer they suffer from this violence the more they are affected. Children certainly deserve Legislation that takes into account the impact of the violence that can continue in their lives after their parents have separated.

Data collected by the Australian Bureau of Statistics in 1996 in its National study of violence against women reported data on over 6000 Australian women physically or sexually abused or threatened in ways prosecutable under Australian law. It was found that 1 in 5 Australian women had experienced violence from a male partner during their lifetime. This rate was higher (42%) among separated or divorced women, compared with the 8% of those in current relationships. This being so, one must question the wisdom of any amendment that puts added emphasis on shared Residency as the right of parents.

Children should not be subjected to power and ownership struggles rather viewed purely from the best interests (including safety) of the particular child.

Domestic violence has been recognised as a significant issue in the Family Court. This service applauds this recognition and asks that the Committee continue to take the issues for children experiencing domestic violence with the seriousness they deserve. These suggested amendments would have serious implications for both women and children.

The Tweed Shire Women's Services is opposed to a legal presumption of joint residence for separating families. Such a presumption represents a dangerous and dramatic policy shift in the government's family policy that is not evidence-based but is, instead, being led by political factors and emotive anecdotes. 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.

- It privileges the rights of parents over the rights of children by over-riding the paramourcy of the 'child's best interests' principle which is entrenched in the Family Law Act.
- It ignores the factors listed in the *Family Law Act* which must be considered by the Court in deciding parenting orders, such as children's wishes, capacity of the parent to provide for needs of the children, maintaining children in a settled environment and family violence.
- Current provisions of the Family Law Act already include mechanisms for shared residence being a child's right where it is in the child's best interests.
- Many men already participate actively in their children's lives after separation. In these families neither fathers nor mothers need the law to tell them to do this. Further, most mothers wish to share parenting duties and responsibilities cooperatively with fathers who were significantly involved with their children prior to separation.

- It reduces families abilities to make their own decisions about parenting arrangements depending on children's needs, parent capacities, geographical distance between them, parent's work patterns, finances and housing.
- It does not reflect current caring practices in intact families where mothers are still predominantly the primary carers of children and undertake most of the domestic work. Shared residence would mean arrangements for some families post-separation would be significantly different from pre-separation arrangements.
- It ignores the evidence from research that shared residence works for some families where there has been a history of cooperation, a history of shared care pre-separation and where parents voluntarily enter these arrangements irrespective of the law.
- The child support consequences will force single mothers, already amongst the most impoverished group in the community, to plummet further into poverty and consequently increase the number of children also living in poverty.
- It will present practical difficulties for many separated parents and children and the burden of running two households will too great for many families.
- It will place women and children who are victims of violence at increased risk of further violence. The presumption will force some children to live with violent fathers and will force mothers to have to regularly negotiate with and be in the presence of violent ex-partners. It provides a dangerous tool in the hands of abusive men who wish to control their women partners after separation.
- There will be an increase in litigation as parents who do not want 50:50 shared residence may feel the need to go to court. Given the lack of legal aid funding, many people will self-represent, increasing delays and stretching the resources of the Family Court and Federal Magistrates Service.
- It may lead parties to re-open finalised cases in the belief that a joint residence presumption law will bring them a different outcome. Community agencies are already reporting contact from women whose former partners are threatening to take them to court, or back to court, to get new arrangements for the children.

The Tweed Shire Women's Service asks that you advocate for the safety of the children regarding this matter. We look forward to a reply at your earliest convenience.

Yours sincerely

Rosemary Larkin
Manager