



Australians Against Child Abuse Ltd.

ACN 057 044 514

Submission to

Standing Committee on Family and Community Affairs

House of Representatives Standing Committee
on Family and Community Affairs

Inquiry into child custody arrangements
in the event of family separation

Submission No: 703

Date Received: 16-8-03

Secretary:

Introduction

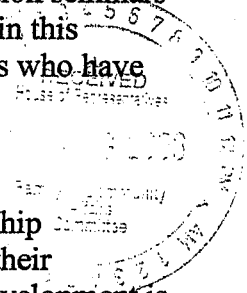
In the context of parental separation and divorce, determinations about the residency and contact arrangements is pivotal in supporting the positive resolution of developmental tasks for children and young people. The needs and wishes of children are the foundation for any such decision-making by the Family Court. However, an overlay of other considerations become a focus of concern when abuse and family violence are alleged and substantiated. In this submission, we make a case for cementing even more explicitly a framework based on the rights of children as the keystone of decision making by the Family Court.

About Australians Against Child Abuse

Australians Against Child Abuse is an independent children's charity that provides specialist counselling programs to children who are affected by abuse and family violence. It also runs parenting seminars, research and prevention programs. More than 300 children per year receive counselling for the trauma associated with experiences of abuse, neglect and family violence. Over the past two years, more than 4000 parents have attended parenting education seminars throughout metropolitan and regional Victoria and Tasmania. The issues raised in this submission are based on the feedback and experiences from children and parents who have participated in these programs.

The case supporting the centrality of children's rights and needs

- It is clear that children achieve the best developmental outcomes in relationship environments which are nurturing of their capacities and acknowledging of their vulnerabilities. The disruptive impact of parental separation on children's development is minimised when parents avoid conflict and are able to maintain respectful mechanisms for communication. Strategies which encourage a joint appreciation by both parents of their children's needs are essential.
- It has been the experience of our organisation that a shared residency arrangement is only effective if the following conditions are met:
 - Both parents reside within reasonable geographical proximity to each other. This factor ensures that the same educational, social and other important networks for children can be maintained between households.
 - Both parents demonstrate their ability and commitment to reasonable negotiation about meeting the needs of their children. In such circumstances, conflict is minimal and important issues can be discussed and mutually resolved.
 - There is a basic similarity in parenting styles and approaches. Without similar parenting orientations, children can feel confused and compromised.
 - The child is old enough not to be adversely affected by disruption in their attachment experiences with either parents. The younger the infant, the more significant the obstacles faced by the child in establishing a primary attachment with either parent.



- The child experiences nurture and support with both parents.
- Both parents are committed to the success of the shared residency strategy.
- It cannot be assumed that parents will indeed interpret the needs of their children in complimentary or similar ways. In these circumstances, it is clear from our experience that the focus of the decision making of the Family Court should be tailored to what the court believes best meets the needs of individual children.
- The presumption of shared residency between a child and both his/her parents moves the focus away from individual children's needs and applies an adult centric ideology to the Court's consideration. That is, it is the parents' needs to share in the care of their children which is given a priority over establishing a residency arrangement which is based on the specific developmental needs of an individual child.
- The Court should have the freedom to make decisions which it believes are tailored to the needs of individual children. Under current legislation, it is already an option for the court to make shared contact/residency arrangements if it believes that it is in the best interests of the child to do so.
- In the event that children have been abused or neglected by one parent, the presumption of joint residency increases the vulnerability of children to further abuse. The presumption introduces the notion of a test being applied in order for joint residency not to be considered a viable alternative. In this context, it is clear that such a presumption creates an unnecessary hurdle in ensuring the child's safety and protection from further harm. Within a children's rights framework, the presumption of joint residency is simply the wrong starting point to effectively meet children's needs.

Conclusion

Children reach their potential within the context of supportive and nurturing familial environments. Following parental separation and divorce, the strength of relationships between parents, their children and other family members can be significantly compromised. Consequently, children's emotional, psychological and physical development may be impaired. Children are further harmed when the separation is highly conflictual and/or when they have experienced abuse and family violence by one or either of the parents. It has been our experience that in the course of parental disputation, children's needs and rights are often minimised by parents.

The introduction of the presumption of joint custody into family court decision making substitutes the current focus on children's needs with a framework that over-emphasises parental rights to share in the care of their child no matter the individual cost to that child. In the context of high conflict separation, it is our fear that this presumption will only further entrench warring parents into arguing for their rights. In the context of children experiencing abuse and family violence, it is our belief that the presumption introduces an additional obstacle to an already complex family court process that at times fails to protect children from ongoing harm and exploitation.

For this reason, we would urge the inquiry to consider recommending the strengthening of principles in family law that identify and address the needs of individual children as the cornerstone for decision making about residency and contact in the Family Court.

About this submission

This submission has been prepared by Joe Tucci, CEO of Australians Against Child Abuse in conjunction with key staff of the organisation. Additional information can be provided by contacting the organisation through the following address:

Joe Tucci
CEO
Australians Against Child Abuse
PO BOX 525
Ringwood VIC 3134

Phone: 9874 3922 Fax: 9874 7922
Email: jtucci@aaca.com.au