



The University of Sydney

Submission No. 25

Date Received

RECEIVED
15 JUL 2005

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Joanne Towner
Secretary,
The Standing Committee on Legal and Constitutional Affairs
Parliament House
Canberra
ACT 2600

Dear Ms Towner

Thank you for the opportunity to respond to the exposure draft of the *Family Law Amendment (Shared Parental Responsibility) Bill, 2005*. As a social worker I do not have expertise in legislation. However, I take this opportunity to follow up my earlier submission to the 2003 Inquiry into Child Custody Arrangements. That submission stressed the need for matters involving allegations of domestic violence or child abuse to be managed under a different pathway than other matters involving the care of children following the dissolution of the parents' relationship.

I applaud the fact that this legislation does attempt to incorporate the special needs of women and children who have been exposed to domestic violence and to child abuse. However, the onus of "proving" these situations is placed on women and in the context in which "shared parental responsibility" is strongly advocated as the key principle, it concerns me that women who seek to limit contact in order to achieve safety for themselves and their children, are "de facto" positioned as unwilling to "facilitate and encourage a close and continuing relationship between the child and the other parent". Proving such allegations is very difficult in many cases, for the following reasons:

- Under the government's domestic violence policy – the *Partnerships Against Domestic Violence initiative* – it is recognised that such violence involves more than physical violence – a range of verbal, economic and psychologically abusive behaviours are used with the aim of controlling the other partner. Such behaviours can cause women to live in fear, but may not be readily "provable" or

visible to those outside the relationship. Staff of relationship centres will therefore require extensive specialist training in identifying domestic violence.

- Men who perpetrate domestic violence are known to use Family Law proceedings and contact arrangements to further attempt to control, harm and manipulate women and children (Bancroft and Silverman, 2002; Laing, in press). These can be difficult behaviours to prove. This can result in long-term emotional abuse of women and children, as I have identified in my current research with women who suffer post-separation abuse. Increasing penalties for “non-compliance” with contact orders will unfortunately provide abusive men with fertile ground on which to threaten women seeking solely to protect themselves and their children.
- Situations involving domestic violence are not “disputes” to be “resolved”, but situations of abuse of power. Thus the whole framework of the legislation does not accommodate the needs of abused women and children with a high enough priority.
- Many women do not have evidence of previous domestic violence. In the early stages of abuse, most women do all they can to hide the fact that they are being abused, because of shame, fear and self-blame engendered by the emotional abuse they suffer.
- It is difficult for women to prove allegations of child abuse in the context of relationship breakdown. There is ample evidence that state child protection authorities are reluctant to investigate allegations in this context, even though there is solid research evidence that such allegations are no more likely to be false than in other contexts (Brown et al, 2000). Family Court counsellors are not permitted to investigate such allegations. Hence women seeking to protect their children are left to fall through the “gaps” in the system between the state child protection and Family Law systems. To quote one mother in my current research study, who still struggles to achieve safety from ongoing abuse by her ex-partner many years after separation: “ *I can’t protect them (3 children) either by staying there in the relationship, or being apart. So that’s their life*”. If allegations of abuse are to be assessed in a thorough and timely manner, a federal child protection service, such as recommended by the Family Law Council (2002), is required. Funding dispute resolution centres serves the needs of those who are separating

in the absence of violence, but is only half of the solution, if the protection of children is to be adequately addressed.

In summary, these legislative changes attempt to address the safety of women and children, but in their current form, do not do so adequately. More worryingly, the emphasis on shared parenting as the "gold standard" and the punitive stance to parents who are seen to oppose this - even with very good reason - creates a context in which the stated commitment to ensuring children's safety, cannot be realised.

Dr Lesley Laing
Senior Lecturer
15/7/05

References:

- Bancroft, L. and Silverman, J.S. (2002). *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics*
- Brown, T., Frederico, M., Hewitt, L. & Sheehan, R. 2000, 'Revealing the existence of child abuse in the context of marital breakdown and custody and access disputes', *Child Abuse and Neglect*, vol. 24, no. 6, pp. 849-859.
- Laing, L. (in press) *Swimming against the tide: managing child contact in the context of domestic violence*, Report of a research study.