



MACLEOD WOMEN'S REFUGE

6 August 2003

House of Representatives Standing Committee on
Family and Community Affairs
Parliament House
Canberra ACT 2600

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Secretary:

Dear Committee Members

RE PARLIAMENTARY ENQUIRY INTO: A PRESUMPTION OF JOINT RESIDENCE WITHIN THE FAMILY LAW

Macleod Women's Refuge provides crisis accommodation to women and children who are experiencing domestic violence and require safe accommodation. We would like to make submissions to the above enquiry particularly focussing on women and children who have no alternative but to leave violent and abusive relationships to ensure their well being and long term safety.

We would strenuously argue any change to the current Family Law Act based on the joint presumption of shared residence would seriously compromise the safety of these women and children. This can be substantiated by contemporary research, current practice and social norms within our society. Whilst we agree in spirit with the principles about parenting which are incorporated in the Family Law Act, we know in practice that they are compromised when women and children live in a family situation that is abusive and violent. It is to be noted that in American states such as California where there was a shared parenting presumption family law reform is moving away from this presumption as being in the best interests of the child.

We would like to raise the following points as crucial to the debate.

Victims of Violence

1. According to an ABS study in 1996, one in five Australian women have experienced family violence by their current or former partner representing a total of 1.4 million women. There is now research that demonstrates that there is a high incidence of domestic violence in cases going to the Family Court and that domestic violence against women continues after separation. A 2002 study found that of 35 resident mothers 86% described violence during contact changeover or contact visits. It should not be surprising that violence and abuse is more prevalent in families who separate than families who remain together. It is against this background of violence that children live their daily lives and may witness and/or experience direct violence themselves.
2. The presumption will place women and children who are victims of violence and abuse at increased risk of further violence. Some children maybe forced to live with their violent father leaving their mothers with no option but to regularly negotiate with and be in the presence of violent ex-partners. It sets up an extremely dangerous scenario where violent men who wish to control their partners after separation have more opportunity to engage in abusive and often seriously violent behaviours.

3. Many women who leave abusive and violent relationships do so when they can see how it is affecting the children, either indirectly as witnesses or when they are targeted and experience direct abuse. Contemporary research now illustrates that in families where there is domestic violence there are often concurrent child protection issues. A presumption of shared residence would seriously compromise the safety of children who have witnessed and/or experienced direct abuse in their family as a result of domestic and family violence.
4. At a recent international domestic and sexual violence conference held on the Gold Coast, keynote speaker Associate Professor Ruth Busch, a noted academic and family law reform activist based in New Zealand, reported that in Australia 3% of abusive fathers were given no interim contact. When final orders were made, approximately two years later, 28% were given no contact. A presumption of shared parenting would not protect these women and children at a time when research indicates that they are most vulnerable.

Post Separation Care of Children

1. Many separated men maintain contact with their children (64%). They participate actively in children's lives after separation and do not need the law to tell them to do this. A recent study shows that 25% of resident mothers believed there was not enough contact and many women wish to share parenting duties and responsibilities with fathers who were significantly involved with their children prior to separation.
2. The presumption of shared residence would present considerable practical difficulties for many separated parents and children. Where there is violence and abuse it could be very dangerous and seriously compromise safety, particularly if women (and dependent children) were forced to live within the same community as their abusive ex partner, to ensure the expediency of shared arrangements. It is our experience that many women and children who leave the refuge choose to relocate to a safe location.
3. It is a simplistic solution to an extremely complex situation and does not take into account a families' ability to negotiate their own decisions about parenting arrangements depending on children's needs, parental capacity including the geographical distance between them, their work patterns, finances and housing. It disregards evidence from research that shared residence works for some families where there has been a history of cooperation, of shared care arrangements pre-separation and where parents voluntarily enter into these arrangements, irrespective of the law.
4. Single mothers are already amongst the most marginalised groups within Australian society and the Child Support and Centrelink consequences of shared parenting will only further ensure that they are doomed to a cycle of poverty and accordingly increase the number of children living in poverty. These children will suffer poor health and well being as a consequence.

The Role of Women as Primary Carers

1. Recent Time Use surveys show that women still have the primary responsibility for caring for children and housework and do 90% of cooking, laundry and cleaning and were twice more likely than men to care for children. The majority of women who have used the service provided by Macleod Women's Refuge have been the primary carers of their children prior to separation. In our considerable experience most children who have witnessed domestic violence and abuse express a wish to remain living with their mum post separation.

2. Women willingly continue to provide the primary care of their children post separation regardless of the fact that being the resident mother is a likely predictor of poverty. Research has shown that the degree of financial hardship experienced by women post separation is exacerbated by a number of factors including spousal violence, the division of marital property, lower rates of employment and lower earning capacity. A presumption of shared parenting would mean significant change in the lifestyles of children compared to what they had experienced prior to separation, and in many cases would go against their expressed wishes. It also does not reflect the current caring practices of intact families where mothers are still predominantly the primary carers of children.

Role Models

1. In contemporary society boys and young men suffer from an excess of destructive and violent male role models which contributes to them developing masculine identities that are violent and dominating. It is more important that boys are raised by nurturing and positive parents of either sex, rather than by fathers in particular.
2. Boys and young men who grow up with abusive and violent fathers as male role models are more likely to develop into adults who perpetuate the same behaviours within their own family.
3. Many children who have violent or abusive fathers still have positive and nurturing relationships with other males within their family and community. Grandfathers, uncles, teachers, sporting coaches/managers and sometimes male professionals often provide the male contact and role modelling that is required for boys and young men to develop self esteem and confidence which is necessary for their health and wellbeing and the development of healthy, respectful relationships with others.

Legal Implications

1. There could be an explosion of 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 have to self-represent which would increase delays and stretch the resources of the Family Court and Federal Magistrates Service. This is often the case where there is domestic violence and abuse in a relationship.
2. It may also result in parties re-opening finalised cases in the belief that a joint residence presumption will bring them a different outcome. Many women who are escaping from abusive and violent partners are often both threatened with continued legal action and/or involved in continuing disputes within the Family Court regarding arrangements for their children.

We urge members of the Standing Committee to seriously consider the above points in debating the presumption of joint residence within the Family Law Act. We strongly believe that if such a legal change was to happen then it would have disastrous consequences for children and women generally, and in particular those who are affected by domestic and family violence.

Yours faithfully

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