

Submission No: 1163

Date Received: 15-8-03

Secretary:

1st August 2003

**The Committee Secretary
Standing Committee on Family and Community Affairs
Child Custody Arrangements Inquiry
Department of the House of Representatives
Parliament House
Canberra ACT 2600**

To the Committee Secretary

Shared parenting and joint custody following family breakdown is the highest ideal, and one that is the best outcome for children of separated couples in many situations. However, there are serious concerns regarding how this joint custody will impact on a substantial number of cases where the situation is far from ideal. Many women leave relationships because of violence, including non-physical violence and control, or leave because of the abuse (physical, emotional and/or sexual) that their children have experienced from the other parent.

This paper aims to outline the concerns this organisation has with the proposals for the introduction of a rebuttable presumption of joint custody following relationship breakdown.

Terms of Reference

(a) (i) What other factors should be taken into account in deciding the respective time each parent should spend with their children post separation, in particular whether there should be a presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption could be rebutted.

Factors that should be taken into consideration should include:

- The child's wishes – whether children want to spend time with their other parent – are of paramount concern. Children should be consulted, and their views seriously considered, before any decision regarding who should care for the child is made.
- Any history of domestic violence or child abuse from one of the parents. Although there is current discussion to suggest that a presumption of joint custody would not occur in these situations, it is considered to be dependent on a court conviction to verify abuse has occurred. This Inquiry needs to be aware that conviction in cases of child sexual abuse is very rare compared to the numbers of cases that are reported to and substantiated by child protection services each year. Similarly, only a very small minority of domestic violence offenders are criminally prosecuted. To depend only on a criminal conviction to rebut shared parenting will put thousands of children into contact with parents who have already abused them or demonstrated violence towards other family members.

- Even if a presumption of joint custody is rebuttable, what is intended to occur in the interim, until such a rebuttal is prepared and a case heard? Family Law cases can take several years to be heard by the Family Court, as can criminal charges of child abuse and assault. Will children be forced to spend half their weeks regularly with abusive parents until such a matter is finally formally decided?
- In situations where a parent has a drug / alcohol abuse issue or mental health condition that would prevent their ability to provide adequate care and supervision for a child. How would these situations be adequately assessed and monitored so as not to put a child at risk of abuse or neglect? This situation would have the potential to put considerable additional pressure on child protection systems attempting to deal with increased reports of neglect and abuse.
- Geographical distances. In situations in which one parent wishes to return to extended family and other supports, or reside in another area after separation, this would result in parents forced to pay at least half the transport costs for children to travel back and forth. How would schooling, sports and other activities be arranged in such situations without having a detrimental impact on children? Who would be responsible for the costs of transport and escorting children between households?
- What are the intended consequences for a parent refusing to comply with joint custody, particularly because of concerns the child may be abused? If a parent believes she/he is unable to keep a child safe from an abusive parent, the possibility increases for these non-offending parents to choose to abscond with a child, and put themselves at risk of jail sentences, because they see no other way to protect their child. In these instances, the law would be seen as actively working against them, rather than protecting them and their children from further violence.

(a) (ii) In what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents.

This organisation believes that extended family contact for a child is significantly important, particularly if a child is unable to have contact with a particular parent because of abuse concerns. However, the factors listed above, such as ability to care for and adequately supervise the child, any history of abuse, and the child's wishes, should be assessed carefully in the making of any such decision. There is an additional concern that extended family members may still allow an offending parent to have contact with a child, despite Family Court Orders that exclude such contact.

(b) Does the existing child support formula work fairly for both parents in relation to their care of, and contact with, their children?

Workers of this Service have observed the following difficulties experienced by women with children:

- Family Court Counselling services that have not taken women's and children's experiences of violence into account when mediating between couples, despite a national Domestic Violence protocol;
- Children being forced to have contact with a parent against their wishes and/or after a history of witnessing substantial abuse and violence on one parent by the other;
- Previous Child Protection concerns not being recognised or taken into account by the Family Court, particularly allegations of sexual abuse;
- Violent partners continuing to abuse, threaten and/or stalk their ex-partners in the course of transferring the child/ren;
- Child Contact Centres not existing in most rural areas, and so no options for supervised contact between children and offending parents are available;
- Women not receiving Child Support payments, or receiving them only periodically, resulting in worsened poverty and debt.

It is the opinion of the Eyre Peninsula Women's and Children's Support Centre that the existing child support system is not yet adequately protecting women and children from violent former partners, either physically, emotionally or financially.

Conclusion

This Service believes that the custody and care of children should be negotiated on a case by case basis, rather than making a blanket decision of rebuttable presumption of joint custody for all separating families. It respectfully recommends an increase in resources for the Family Court, including the provision of Family Court Counselling services, to prevent long waiting periods for such family disputes to be finalised. It also respectfully recommends that independent child representation occurs in **all** Family Court matters, and children's views and fears are seriously considered.



Mr Martin Breuker
Deputy Chairperson
Eyre Peninsula Women's and Children's Support Centre

Eyre Peninsula Women's and
 Children's Support Centre
 PO Box 15
 PORT LINCOLN SA 5606