

Submission No: **801**

Date Received: **8-8-03**

Secretary:

Submission to the inquiry into child custody arrangements in the event of family separation

This submission has been prepared in consultation with workers in the area of child protection and domestic violence in the central west of NSW.

It addresses the first issue in the terms of reference, namely commenting on whether there should be a presumption that children will spend equal time with each parent and what factors should be taken into account in deciding the time each parent should spend with their children post separation.

In summary, the submission opposes a legal presumption of joint residence and advocates specific measures to be applied that prioritise children's safety where domestic violence and/or child abuse is established or alleged

A legal presumption of joint residence is opposed for the following reasons

- If the principle of the paramount rights of the child is to be implemented, then each child's needs and interests must be considered in the particular context and situation of that child. The presumption of joint residence elevates the rights of parents over that of the children.
- Most parents post separation make agreements about care arrangements without determination of the Family Court. In these agreements, near equal care is uncommon. (*Australian Bureau of Statistics Family Characteristics Survey, 1997*). Where shared care does occur there is no research looking at how it is implemented or the effects of arrangements on children and both parents. Such a policy change should be based at the very least on some understanding of likely impacts, indicators for success and evidence of positive outcomes for children.
- Current provisions in the Family Law Act provide for shared residence when it is in the child's best interest
- In the majority of intact families, women remain the primary carers of children, as reflected in part time and interrupted employment patterns. Shared residence would create a significant change in care responsibilities before and after separation that may add to children's upheaval.
- **A presumption of joint residence may be an additional burden for children and parents in regional and rural centres where limited employment, education options, transport and distance between centres makes the practicalities of achieving shared care more problematic.**
- It places women and children who are victims of domestic violence at increased risk of continued violence, and does not sufficiently prioritise their safety

Where allegations of child abuse or domestic violence are made or a parent has used violence against a child or the other parent, the paramount interests of the child lie in the safety of the child and non violent parent, rather than the promotion of contact with a violent parent.

Promotion of safety should involve the following

- Specialist investigation resources to quickly determine allegations of abuse and risk of continuing violence
- Interim orders that protect the children's safety while investigations are carried out
- Where violence is demonstrated or assessed as a risk to the children, a rebuttable presumption of no contact or supervised contact should be in place until the court is satisfied the children would be safe
- Project Magellan, a Victorian pilot for residence and contact disputes where serious allegations of child abuse have been made, provides positive direction in the sorts of processes and resources that are effective in such situations
(Monash University Resolving Family Violence to Children 2001)

This is proposed for the following reasons

- Evidence is clear that living in a situation with domestic violence, even when they are not the primary target of violence is detrimental to children, and challenges the myth that a man may be an abusive husband but a good father
- Child abuse and neglect are often present in situations of domestic violence
- Domestic violence does not stop with separation, in fact it often escalates as a woman challenges her partner's control over her
- Women's actions to protect children by disclosing abuse or refusing contact because of safety concerns are signals to be taken seriously by services and the Court. They are found to be false in only a minority of cases *(Brown T, Frederico M, Hewitt L & Sheehan R 2000 Revealing the extent of child abuse in the context of marital breakdown and custody and access issues Child Abuse and Neglect Vol 24, no 6)*

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