

Submission No. 857

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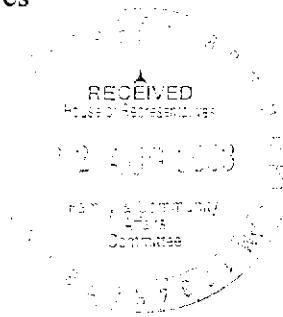
Secretary:

SSDVLC

SOUTH SYDNEY DOMESTIC VIOLENCE LIAISON COMMITTEE

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

21 July 2003



Dear Secretary

South Sydney Domestic Violence Liaison Committee was established in 1988 in response to community concern about domestic violence, and in recognition of the need for agencies to work collectively and cohesively to prevent domestic violence and to deal appropriately with domestic violence issues in our culturally diverse region. The Committee consists of numerous local agencies representing South Sydney's linguistically and culturally diverse communities - for example, Redfern Legal Centre, Aboriginal Medical Service, Centrelink, The Shop Women & Children's Centre, Centrecare, Violence Against Women Regional Specialist.

The Committee aims to prevent domestic violence with the South Sydney Community through working collectively to educate the community and relevant services about the effects and nature of domestic violence.

The Committee provides this submission in order to draw attention to the need to properly protect women and children from domestic violence.

This submission is relevant to Section (a) (i) of the terms of reference of the inquiry. The submission addresses a selection of the points outlined in the terms of reference, in particular 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.

A State-enforced presumption of joint custody represents a radical change in policy that is not supported by evidence, but is, instead, being led by political factors and emotive anecdotes and which will in many cases not be in children's best interest. We support the

- it will expose women and children to higher levels of conflict and violence;
- it privileges the rights of adults over those of children;
- it is not evidence-based, but rather is driven by narrow ideological and political interests;
- it ignores the evidence that shared residence works for only some families;
- it will increase litigation (old cases may be opened for re-consideration), and will prolong instability and uncertainty for both parents and children.
- it denies children the right to unique consideration of their needs and wishes, which may change over time;
- it will disadvantage women who have sacrificed careers and education to be a stay-at-home parent;
- it will provide some men with opportunities to reduce their child support obligation, while not leading to more equitable sharing of core parenting work, and
- it does not reflect current caring practices in two-parent families, where mothers are still the primary carers of children and undertake most of the domestic work;

Safety and security for children should be the prevailing consideration

In families where breakdown has been caused or accompanied by violence, whether perpetrated on or witnessed by the child, the perception that the child has become a de-humanized item of the marital property to be divided between the parents without considering the impact on the child of fear, uncertainty and ongoing exposure to the threat of violence is untenable. The need of the child for security, stability and safety should be paramount in such circumstances. This should over-ride any presumption in favour of joint custody. In fact the presumption should be reversed such that the perpetrator has no entitlement to contact unless the perpetrator can demonstrate that the child will be safe and, if appropriate for the child's age, that the child wishes to have contact.

We support the views of the Council for the Single Mother and her Child in this regard. On behalf of the Council, Elspeth McInnes² wrote: '...people who can cooperate in the interests of children and are committed to making their post-separation arrangements workable for their kids do fine if they choose shared custody – it is having it imposed which spells trouble for the child who has to be halved for the parents and of course for people who would have to cross further legal hurdles to achieve safety from violence and abuse...this issue goes to the heart of preservation of children's interests, of women's struggle for their own and their children's right to safety, and recognition of the unpaid physical and emotional care and work which women ordinarily undertake in families.'

¹ Positive Shared Parenting Alliance admin@positivesharedalliance.org

² Dr Elspeth McInnes, deLissa Institute of Early Childhood & Family Studies, University of South Australia

most people as providing a nurturing and loving environment. But for some, the family environment can be deadly. In Australia, almost two in five homicides occur between family members, with an average of 129 family homicides each year. Over 13 years in Australia there has been average 77 intimate partner homicides each year. 75% of these involved men killing women. One in four intimate partner homicides occurred after separation. Of these, 84% involved women as the victims. There was no significant difference in the risk of homicide between married and de facto couples. Four out of five killings took place in the home, and in 39 percent of cases there was a known history of domestic violence.

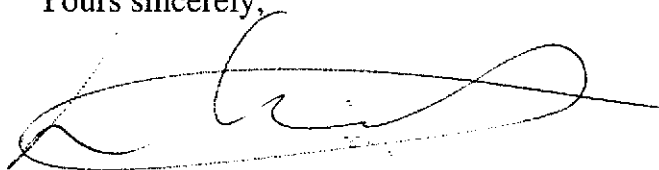
On average, parents kill 25 children each year. 63%, or nearly two out of three, child killers was the father. In three out of five cases the motive was not determined. The most prevalent motives, where known, were 'domestic altercation', 21% and family separation, 9%.

The onus should be on the access seeker to show that the child will be safe

In 1995, as part of a major review of domestic violence law, the New Zealand Parliament amended the legislation under which the Court determines disputes about residence and access. Specifically, the amendment introduced a rebuttable presumption that a parent who had used violence against a child or against the other parent would not have custody of, or unsupervised access to the child unless the court could be satisfied that the child would be safe during visitation arrangements'.⁴

We would propose that Australia adopt a similar approach.

Yours sincerely,



South Sydney Domestic Violence Liaison Committee
Lyndal Gowland
Chairperson

³ J Mouzos and C Rushforth 'Family Homicide in Australia (2003) Trends and Issues Paper Number 255

⁴ Steve Golding, Senior Policy & Project Officer Domestic & Family Violence Prevention Unit
Attorney General's Department, 2003