

Domestic Violence Crisis Service Inc.

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House of Representatives Standing Committee on Family and Community Affairs
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Secretary:

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

Dear Committee,

RE: INQUIRY INTO A LEGAL PRESUMPTION OF JOINT RESIDENCE

The Domestic Violence Crisis Service welcomes the opportunity to provide comment to the Standing Committee. We will limit our submission to a number of issues that are of particular concern to this Service. I will first give you some information on our Service in order for you to understand the context of where our information and experience comes from.

DVCS works with all people affected by domestic violence. This includes people who have been subjected to domestic violence, people who use violence and/or abuse in their relationships and children who have witnessed and/or been subjected to violence or abuse.

The priority of our Service is for the safety of people who have been subjected to domestic violence, within this we recognise that the majority are women and children. Our work with people who use violence and/or abuse in their relationships encourages self-responsibility and accountability.

DVCS services include:

- direct crisis intervention at the scene of the incident working closely with the Australian Federal Police.
- 24 hours / 7 days crisis telephone lines
- information and referrals for women, men and young people
- contact with safe accommodation agencies i.e. refuges, motels
- education and resources
- court support for people who have been subjected to violence
- support for family and friends

DVCS believes that in families where the parenting is loving, caring and respectful of each family member and where respectful and caring ways of relating are also modeled between the adults, then this is a wonderful environment for children. We work with

those families where this is not the case and our concerns relating to 'a legal presumption of joint residence' speak to those families living with domestic violence and in particular, our concerns for their children.

It is well researched that many boys who have grown up with domestic violence will then themselves become violent and abusive to their partners and sometimes their children. Our belief is that it is wrong to assume that any male model is better than none. Our belief is that it is important that boys in particular are raised by loving, nurturing and respectful parents of either sex, rather than by fathers in particular. We are strongly of the opinion that a legal presumption of joint residence is not in the best interests of many, many children.

Data from a 1996 ABS national benchmark study showed that 23% of women who have ever been married or in a de-facto relationship had experienced violence in that relationship. This means that 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 also a significant body of 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 (Kaye M, Stubbs J & Tomie J, '*Negotiating child residence and contact arrangements against a background of domestic violence*' available on line at <http://www.gu.edu.au/centre/flru/>.) found that of 35 resident mothers, 86% described violence during contact changeover or contact visits. These results would be in line with our experience at DVCS, we are well aware that violence often escalates post separation, and murder suicides, where the violent partner kills their family and then kills themselves, almost always occur following separation due to the violence. 84% of victims are women in all 'intimate partner homicides' post separation. Separation following domestic violence is the most common reason for child homicide in Australia, with the child/children's father generally the offender.

In 2002 our Service received **308** invitations to attend the scene of a domestic violence incident from a member of the household following notification of the incident to our Service from the Australian Federal Police. **205** of those households had children, the total of children present at those incidents was **828**.

During this same period we received a total of **8304** calls to our crisis telephone lines, supported **469** clients at Court in Protection Order matters and **25** clients at Court in criminal (family violence) matters.

It is clear that domestic violence is widespread and, rather than decreasing, increasing. It is not known if this is an actual increase or appears as an increase because more women with their children are seeking support from services and the criminal justice systems.

We are strongly of the opinion that these issues cannot be taken lightly, our Service works daily with women and their children who have lived with violence and abuse for many years and escaped to make lives free from the violence. They are then faced with ongoing violence and abuse, often at the point of Family Court granted access. We work with many women who are assaulted at access changeover times and sometimes this has included sexual assault. Many, indeed most of these incidents are witnessed by their children. We are also aware of and work with numerous mothers and their children in circumstances where the children are abused during access.

Even as Family Law currently exists, 'that the best interests of the child are the paramount consideration', we are continually appalled by some of the decisions that are made by the Family Court relating to the granting of access where there has been violence either witnessed by the children or in some situations, where the children have been subjected to violence and/or abuse. It is extremely difficult for us to comprehend that this is in the best interest of the children. Given that this is our experience of what currently occurs, time and time again, it is with grave concern that we consider how this might look in practice if there was a 'legal presumption of joint residence'.

Our Service is of the opinion that the Family Law as it currently stands is able to take into account situations where joint residency is indeed in the 'best interests of the child'. In the majority of cases, these are circumstances where the parents have separated on reasonable terms and agree in a spirit of cooperation and mutual concern and caring for each other and the children, that they will enter into an arrangement of joint residency. Our concern stems from the situations that are not co-operative and where there has been a history of violence and or abuse.

I have attached for your information two case scenarios from the files of our Service that demonstrate some of our concerns relating to the above matters.

Again, thank you for the opportunity to make comment to the Inquiry. DVCS would welcome the opportunity to give evidence to the Standing Committee at the Public Hearings. For any further information or clarification, please do not hesitate to contact me.

Yours sincerely,

Dennise Simpson
Manager
7 August 2003

Children's Case study B:

Joe and Rob are three and four year old boys. They are having supervised contact at their grandmother's (father's mother) house every fortnight in order for their father to have access. Their father physically and sexually assaulted their mother. The children witnessed numerous physical assaults and on one occasion were woken up by their father and ordered to sit on their parent's bed as their father raped their mother. Their father said as he was raping their mother. "This is how you treat women, boys."

Their mother didn't want the boys to have contact with their father because she felt he was very cruel and he had never lifted a finger to look after any of their needs like bathing them, feeding them, and changing their clothes. He had liked to play with them for a short time and take them out to show them off but if they cried or whined he would bring them straight home.

He was granted supervised access by the Family Court. The Court would not listen to the fact that his own mother was as frightened of him as anybody else and that she had never been able to stop him hurting anyone including herself.

Later, the children attended their father's second wedding and came home saying "Daddy broke the fire and Jinni ran away".

The children's mother did not know what this meant but was later told by her brother's sister that her brother had beaten up his new wife on their wedding day and trashed the flat where they were staying. He had also kicked the gas heater, which is apparently what the child's words were describing. All of this was witnessed by the children. The sister also said that "her brother's new wife had run away but she would probably be back because she was pregnant".

Children's Case Study A:

Three children aged ten, twelve and fourteen. The children had witnessed their mother stabbed by their father. Following this incident the mother had left the relationship with the children. The children had also witnessed an assault on an earlier occasion when their father broke their mother arm. No charges were ever laid even though the police attended both incidents.

The children stated that they had witnessed their mother physically assaulted and abused for all their life. Recently the children had witnessed their father kill a much loved family dog by dropping a lump of concrete on its head because he said he wanted to punish them all for leaving him when he was so sick and really needed their help.

At Court Counselling the children told the counsellor they loved their dad but were very afraid when he was drunk and when he hurt their mum and when he did other crazy things

Their father agreed to not consume alcohol when the children are in his care and for eight hours before they are due to arrive. The father would only agree to the alcohol order if it applied to his ex wife as well. His ex wife agreed to this order because her solicitor said it would be cheaper to agree than to fight it. She agreed even though there were no allegations she had a problem with alcohol and the children had never identified any problem behaviour relating to alcohol from their mother -only from their father.

The children are old enough to be dropped at the train station by their mother and travel to the town where their father is living. The children were apprehensive about seeing their father but reassured by the counselor's comments and the order, and the fact that their father, in front of the counsellor, had promised not to drink.

The children arrive at the station to be greeted by their father who is obviously drunk. The children are frightened and don't want to get in the car with him because he is too drunk to drive. The children feel betrayed by him because he promised not to drink. He had said he really wanted to see them and if he had to give up the grog he would do it for them.

Their father orders them into the car and he drives in a way that really frightens the children. The older children are begging him to stop and the younger child is crying. Their father is yelling at them about what a slut their mother is as he drives. The children have a miserable weekend and their dad drinks all weekend. Their father drops them at the station to go home. The children have wanted to ring their mother but their father wouldn't let them use the phone.

The eleven year old had been crying for most of the weekend and the older boys are worried about her too. Their mum will notice something is not okay because of her crying even if they don't tell.

Their mother picks them up from the station and asks how did it go.

