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Secretary:



**Victorian Women's Refuges & Assoc.
Domestic Violence Services Inc.
(VWRADVS)**

Submission to the

**Inquiry into child 'custody' arrangements in the
event of family separation**

About Victorian Women's Refuges & Assoc. Domestic Violence Services, Inc. (VWRADVS)

VWRADVS is the Victorian peak body for women's domestic violence services. It represents a broad range of services. These include refuges, domestic violence outreach services, family violence networkers, indigenous family violence services, and statewide services – the Domestic Violence and Incest Resource Centre (DVIRC), Immigrant Women's Domestic Violence Service (IWDVS) and Women's Domestic Violence Crisis Service (WDVCS). These agencies provide a range of services to women experiencing domestic violence. As the peak body representing these services, VWRADVS advocates for the right of women and children to live free of violence.

Reasons underlying VWRADVS opposition to the introduction of a legal presumption of shared parenting

In regard to the terms of reference the Standing Committee is reporting on, VWRADVS has grave concerns about the implications for women and children experiencing domestic violence if a presumption of shared parenting were recommended by the Committee. Research indicates that families subject to family violence comprise a significant proportion of cases that are dealt with in the Family Court.¹ While acknowledging that a small percentage of separated families have successfully negotiated shared parenting arrangements (and often without the interference of the legal system), Victorian women's domestic violence services are extremely concerned by the potential implications of a legal presumption of shared parenting when parenting arrangements are in dispute.

Introducing a 'presumption of shared parenting' when parents separate assumes that this arrangement is in the 'best interests of the child'. Several other disturbing assumptions are at the core of this simplistic approach to resolving residency and contact issues that arise when parents separate. These include:

- An assumption that parent's right to a 'fair share' of their child is more important than that child's best interests or that child's wishes.
- An assumption that the child/ren will want to live with both parents.
- An assumption that all separating parents will promote the best interests of their children by maintaining a relationship of cooperation and a willingness to genuinely put the best interests of their child/ren first.
- An assumption that parents will make the necessary sacrifices to ensure a successful shared parenting arrangement – eg. both living near the child/ren's school, maintain two separate households with all the child/ren's requirements – and that these sacrifices will be shared equally by both parents.
- An assumption that, on the whole, men share equally in domestic workload.
- An assumption that male role models are always good role models.
- An assumption that both parents are good parents.

¹ T. Brown, M. Frederico, L. Hewitt & R. Sheehan (1998) *Violence in families – Report number one: The management of child abuse allegations in custody and access disputes before the Family Court of Australia*, Monash University, Clayton, Ch.5; R. Hunter (1999), 'Family Law Case Profiles', Justice Research Centre, p.186.

- An assumption that there are no cultural implications contained within a legal presumption of shared parenting.
- An assumption that all women disclose experiences of family violence.
- An assumption that a woman who has experienced family or domestic violence will have the emotional, financial and legal resources to effectively rebut a presumption.

In situations of family and domestic violence, it is not possible to make any of these assumptions.

Domestic violence services associated with VWRADVS assist women to work with residency and contact issues on a frequent basis. These services are of the opinion that a recommendation to introduce a legal presumption of shared parenting will present numerous problems for the women and children they work with.

Key concerns raised by women's domestic violence services in Victoria in response to a possible presumption of shared parenting relate to the protection of children's rights and safety and the safety of their mothers. Among these concerns include:

- the inability of women to emotionally, financially and legally resource a rebuttal of a presumption of shared parenting when they have experienced domestic violence and the consequences for the protection of their children
- safety issues for women and children at changeover times when there are high levels of hostility and the affects of this hostility and abuse on children

Women and children experiencing family and domestic violence *currently* face complex legal issues when trying to protect their children from an abusive, violent parent. The following three case studies demonstrate some of these current complexities and the affects on children. These case studies are based on real people's experiences (which some details and names changed to protect the identities of the families involved).

Case 1

A woman (Lucia) leaves her abusive partner (Frank) of 10 years, taking her 5yo daughter with her. Two months later, Frank refuses to return his daughter after a contact visit. The mother, with no knowledge of the legal system and with no literacy, is uncertain of what action to take. After approaching a few solicitors – with no knowledge of legal aid – Lucia decides to apply for full-time responsibility for the care of her daughter. The solicitor takes the matter to court and an Interim Order is made. The solicitor did not focus on the fact that violence was a key issue in the relationship, despite the mother having an Intervention Order against the father with supporting police and hospital reports. The court determined that it was in the best interests of the child to 'maintain the status quo' – ie, the father retained full responsibility for the care of his daughter, and Lucia was entitled to fortnightly contact.

This prompted Lucia to continue returning to the 'family home' in the hope of protecting her daughter from an abusive parent. She experienced further abuse and was kicked out on several occasions, which eventually led her to a situation of homelessness. She then approached a women's service for support. The service arranged for a change of solicitor – to ensure the violence was taken into consideration in the court case.

After leaving the home for the final time, Lucia did not return. She had fortnightly contact visits with her daughter. Frank moved his daughter through two many schools during a six month period – despite

having told the court he wanted to provide the child with stability. He was evicted from his home and the family lived in a hostel for a period of time. Lucia suspected substance abuse by the father, and was concerned her daughter was being neglected, but she had no evidence. She was too frightened to notify child protection – fearing an escalation of the violence and fearing the intervention of child protection services and the potential consequences for her own opportunity to continue parenting her daughter.

Her daughter's health and general well-being deteriorated – she arrived on contact visits with clothes that were too small and were often unwashed. She began to have behavioural problems at school, her educational progress lagged and she became isolated from her peers. She began to use abusive language towards her mother on access visits, for example, arguing that it was okay to call her a 'f---ing bitch' because that's what daddy calls her. Lucia struggled to sustain boundaries that her daughter had previously accepted. Her daughter experienced nightmares, began to resist basic hygiene routines (such as showering and cleaning her teeth) and started bed-wetting.

The court case dragged on for over 3 years in total, when the situation was finally resolved. At the Family Court counselling session, the father hurled a torrent of verbal abuse at Lucia – which the counsellor could not stop, so she requested to leave the session. The court had chosen not to interview them separately, despite the Intervention Order. The daughter stated explicitly that she wanted to live with her mother. The family report recommended that the child should reside with her mother.

Within a week of this recommendation (yet a further 3 months till the final hearing), the father returned the child to Lucia. He was no longer interested in caring for the child. The final hearing was a formality.

In this woman's case, it is not possible to assume that it would be in the best interests of the child to be cared for by both parents in a joint residency arrangement. It is not possible to assume that the woman would have the emotional, financial and legal resources to pursue a rebuttal of a presumption of shared parenting. It is not possible to assume that the father would be prepared to cooperate with the mother to ensure the best interests of his child came first. It is not possible to assume that the father would be a good role model to his child. It is not possible to assume that the child's wishes would be to live with his father.

Case 2

A Malaysian woman, with a 4yo daughter, had been encouraged by a considerably older Australian man to come to Melbourne. This man did not inform the woman until some time later that he was already married and that he could not live with her – despite the fact that she was having his child. While he initially rented a house for her, she was in a vulnerable and difficult situation, particularly when he became abusive and physically violent towards her. After giving birth to her child, the father refused to provide for them – other than in an ad hoc fashion. She was no longer able to maintain the house, she did not speak much English and she was unaware of her rights regarding child support entitlements.

She wanted to leave the relationship. The father, however, knew where she lived and continued to visit her on an irregular basis, taking his daughter on contact visits. She would have liked for him to arrange regular fortnightly contact visits – but he refused, stating that it was not fair on his family. The daughter became increasingly anxious about having to spend time with his father, stating that she was scared of him. The daughter had witnessed the father assaulting his mother. The child began to develop

behavioural problems, which became problematic when she was at kinder and she was playing with the other children. She demonstrated displayed bullying behaviour patterns.

The mother determined that the only way to leave the relationship was to start again in another state – risking homelessness. She successfully gained an Intervention Order against the father – which, of course, did not prevent him from seeing his daughter and, on occasions, the mother.

She sought legal advice with the assistance of her supporting agency and was advised that if she left without a consent order from the father, she could be instructed to return to Melbourne with the child. She attempted to get consent order through legal negotiations – but the father delayed the process. Eventually she gave up and decided it was too difficult to leave – even if she risked not getting a consent order.

Through the legal negotiations she also sought the father's agreement to an arrangement of fortnightly contact. But he refused.

She chose not to pursue the legal proceedings and attempts to deal with the situation on her own terms.

This woman's situation demonstrates some of the legal complexities of dealing with separated parents. It highlights the way the Family Law system already serves the interests of abusive men by allowing them to avoid assuming genuine responsibility for the care and protection of their children and simultaneously subjects former partners and children to ongoing violence, abuse and control. It also highlights the inequality with which women and men approach the legal system and the impact of that inequality for demanding and achieving just outcomes. If a legal presumption of shared parenting is recommended and adopted, these gender inequalities and injustices will clearly have a detrimental affect on the health and welfare of children in families experiencing domestic violence.

Case 3

A woman whose ex-partner was so violent and consistent with his violence that he was incarcerated for it, upon release (and during the time in prison) was ordered that in the interests of the children's safety he only be granted limited supervised phone contact. However, despite the extent of the violence, he was eventually over time granted unsupervised contact, but continues to be a threat of danger to both the woman and her children. The matter continues to come before the Family Court years later, even with support from services and child psychologists.

Again, it is not possible to assume that this woman would have the emotional, financial and legal resources to successfully rebut a presumption of shared parenting. Yet the father is clearly determined to increase his contact with the child.

In a case such as this, and in all cases where abuse and violence have characterised the parent's relationship, it would be more in keeping with the best interests of the child to introduce a rebuttable presumption of no contact with the violent parent.

VWRADVS supports the introduction of a rebuttal presumption of no contact that would order sole residency of a child to the non-violent parent when their partner has been abusive and place the onus on the violent parent to demonstrate the child would be

safe in their care. This would be based on the assumption that it is never in the best interests of a child to live with a violent, abusive parent.