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Inquiry into Joint custody arrangements in the event of family Separation

Submission from the Central Coast Domestic Violence Committee Inc.

In regards to the Federal parliament's proposal to introduce amendments to the Family Law Act 1973 will have a presumption that children spend equal time with each parent. The Central Coast Domestic Violence Committee would like to make some comments regarding the need for any changes to this legislation

It is the committee's understanding that in many instances when parents' separate and violence is not present, parents have the capacity to develop this type of shared parenting arrangement successfully within the present legislation. There is adequate provision within the current legislation to provide for this type of arrangement. In fact where there is no violence we would support fathers taking a more active role the care and parenting of their children. If the intent of these changes is to assist fathers to be more involved in the care and parenting of their children then possibly for example an education campaign aimed at fathers would be a useful initiative of the federal government.

However, where there is domestic violence or child abuse these arrangements are not satisfactory and certainly not in the best interests of the child which is central to this legislation. As is well documented, national statistics reveal that at least 1 in 4 women experience some form of violence from their partner¹ and 1 in 5 children witness or experience violence in the home.² Physical abuse is fifteen more times likely in families where domestic

¹ ABS, 1996, - Women's Safety Australia

² National Crime Prevention 2000

violence is occurring.³ Exposure to recurrent traumatic experience in early childhood, including domestic violence places a child at much greater risk of long term psychological, emotional and behavioral problems.⁴

It is also known that violence by men towards female partners rather than visa versa is more likely to result in multiple assaults, injury, hospitalization, death (up to 60% of women who are murdered, die as a result of domestic violence, commonly post separation) and to continue post-separation.⁵ It is not unrealistic to expect that many family separations are as a result of violence in the home and post separation is known to be the time of greatest risk to women and their children.

Whilst the best interest of the child remains central to the current legislation, the proposed changes have the potential to put children at greater risk of harm where the pre existence of violence and abuse is not clearly identified. If the proposed changes proceed without specific consideration to violence and abuse against women and children, we see a number of issues that impact adversely on the victims of violence.

- Safety - The local courts will undoubtedly be reluctant to give children AVO protection or include them on their mothers AVO if the Family Court is going to be compelled to look at Joint Residency (It is difficult enough now to get children AVO protection). Whilst AVOs are a state government issue, it is well documented that difficulties arise around the primacy of protection orders when family law matters are dealt with.
- Cost to the individual and government - There will be more people going through the Family Courts if only to reject the idea of Joint Residency
- Economic deprivation - Child Support payments and Centrelink payments will be effected if it is a 50/50% Residency order. Most women will find themselves in a greater poverty trap than they experience at this time causing some to become homeless due to inability to pay for accommodation.
- Safety and Economic deprivation - There will be a proportion of women experiencing domestic violence who will not leave a violent partner due to the hardship it may cause or for fears for children's safety. Domestic Violence is also the single most common trigger for female suicide.
- Inequity at law -The issue of proof required to overrule the Joint Custody is a burden when there are increasing numbers of women being forced to represent themselves in Family Court Issues.

³ McKay, 1994

⁴ Perry 1994

⁵ National Crime Prevention 2000, Mirrless-Black 1999

- Injustice - NESB women with no Residency status in Australia will face deportation without the ability to claim that they are the appropriate carer of the children, if fathers are automatically deemed a carer irrespective of their behaviour.

In conclusion the Central Coast Domestic Violence Committee would like to see more discussion of the issue, more time taken to comment and explore the best options, and evidence based decision-making in relation to violence and abuse in families and Family Law decisions. In these instances a presumption of joint custody is clearly not in the best interest of the child.

Central Coast Domestic Violence Committee Inc. is a not for profit interagency organization with 60 member organizations from the community services sector who work daily with women and children affected by domestic violence and child abuse.
