



Grafton Women's Refuge Co-Operative Society Ltd.

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House of Representatives Standing Committee
on Family and Community Affairs

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

On behalf of Grafton Women's Refuge, our Board of Directors and staff, I welcome this opportunity to address the Standing Committee and raise some of the concerns that we have regarding the proposed changes to the Family Law Act.

The proposed changes to the Family Law Act are of deep concern to any professionals working with children in pre and post-separation environments or as advocates. The proposed parental right of 'shared care' is not inclusive of what is in the best interest of the child(ren). In addition to this, proposed changes severely undermine the importance of a stable environment for children and one where the possibility of exposure to violence may be sanctioned by the court and where the child's best interest need to negotiate a minefield of parental rights.

I would like to present the following points for your consideration:

➤ **Environmental stability as a primary developmental concern for children.**

Children's emotional, mental and physical development must be of primary consideration in change to legislation that has such far reaching effects on their lives. How a child sees him or herself in this world, how they understand relationships and how they understand and value themselves is very much part of experiential learning by the child in early developmental years. The child's environment, inclusive of the relationships that exist in that environment, are very much a part of the foundations for that child's understanding of the world and how they fit into it. This is the context in which Family Court decisions are negotiated and why the primary interests of what's in the best interest of the child are paramount. It is unrealistic to assume that children can negotiate two sets of friends, schools, households, rules, etc without adding to the stress, complexity and confusion of that child's environment and their lives.

➤ **Impact of domestic violence and family violence:**

1996 ABS data showed that 23% of women who have ever been married or in a defacto relationship had experienced violence in that relationship¹. The study does not indicate multiple times that violence was experienced by the same partner, or if violence was experienced by multiple partners. The study does not indicate violence from other family members. However, this data does indicate that violence is a significant experience for women in relationships. It can also be assumed that for many children, witnessing violence and or being abused in the home is also part of their experience.

Neither the Family Law Act or its application should normalize violence in any way. Rather, the application of Family Law should be one legal boundary that holds both parents accountable for the best interests of their children and makes decisions accordingly. I believe that the proposed changes will have a practical impact on children's lives by negating the impact of domestic violence in the court decision making process in favour of parental rights. I believe that the proposed changes clearly

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are a move toward clarifying parental rights at the expense of an assumption of what is in the best interests of the child.

- **The likelihood of the Family Court process or decisions increasing or perpetuating violence.** Shared care may be very appropriate where families have a history of shared-parenting and a history of co-operative parenting pre-separation. The current application of the Family Law Act does **not** discriminate against families that can negotiate such arrangements.

However, a general application of 'shared care' severely underestimates the complex issues of family violence. The court process and the assumption of shared care has the potential to become part of an (unwilling) tool in the perpetuation of domestic violence.

It may be possible that the best interests of both parents are incongruous with the best interests of the child(ren). This is definitely the case where sustained violence in the home pre-separation is likely to increase post-separation and where children are potentially used as a tool to continue control and manipulation strategies.

Currently, shared residence is the least common post-separation arrangement (3% of children from separated families in 'shared care' in 1997ⁱⁱ). The proposed changes would likely add significant complexity to the Family Court process and the time line in which decisions and appeals are made. In a practical sense, the implementation of 'shared care' would be seen as a parental right! We can assume that regardless of what is in the best interest of the child, that parents would view in exactly that way – their right of ownership over that child.

Currently, the application the Family Law Act is congruous with shared parenting concepts and takes into consideration relevant factors that implicitly impact on the life of the child. These include the need to protect the child from physical or psychological harm, the attitude/responsibilities of parenthood and family violence that has already occurredⁱⁱⁱ. This is a fundamental part of the Act and is necessary to provide a framework of 'best interest of the child'. It does not unfairly bias either parent, and it's child focused assumption should not be easily undermined by an assumption of parental rights as a primary focus of the Family Law Court.

Thank you for your consideration of the seriousness of this issue and the impact Family Law will continue to have on children and their future.

Sincerely,

Sandra Tanner
Manager,
Grafton Women's Refuge

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ⁱ ABS, Women's Safety Australia, Canberra 2000, Catalogue No 4108.9 page 51, Table 6.5 page 53.

ⁱⁱ ABS, Family Characteristics Survey Ct 4442.0, AGPS, Canberra 1997.

ⁱⁱⁱ Family Law Act, section 68F).

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