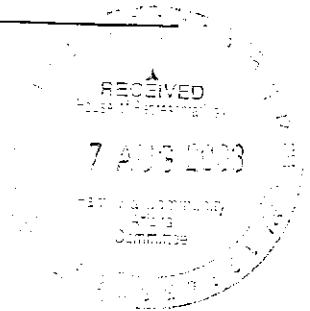


R E D F E R N L E G A L C E N T R E

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



28 July 2003

Dear Secretary,

Redfern Legal Centre manages a Women's Domestic Violence Court Assistance Scheme. It was commenced in 1991 in recognition of the fact that women seeking legal protection from domestic violence through the courts were unsupported, overwhelmed and disillusioned with the legal system. The aim of the Scheme is to assist women in a holistic way by improving their access to the legal system to obtain legal protection and to provide access to a support system that can help with housing, emotional and financial needs. Evaluations have shown this Scheme to be highly effective in improving outcomes and providing a holistic service that has met both legal and non-legal needs.

We are making 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.

73 Pitt St	Phone (02) 9698 7277	General enquiries	Interviews by
Redfern	Fax (02) 9310 3586	Monday to Thursday	appointment
NSW	email info@rlc.org.au	9 am-9 pm	Monday to Thursday
2016	http://www.rlc.org.au	Friday 9 am-6 pm	6:30pm-8:00pm

A.C.N. 001 442 039

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 McInnes¹ wrote: '...people who can co-operate 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.'

Family breakdown is a cause of violence

According to the Australian Institute of Criminology², 'the family is viewed by 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.'

¹ Dr Elspeth McInnes, deLissa Institute of Early Childhood & Family Studies, University of South Australia

² J Mouzos and C Rushforth 'Family Homicide in Australia (2003) Trends and Issues Paper Number 255

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'.³

We would propose that Australia adopt a similar approach.

Yours sincerely,



REDFERN LEGAL CENTRE
Lyndal Gowland
WDVCAS Co-ordinator

³ Steve Golding, Senior Policy & Project Officer Domestic & Family Violence Prevention Unit
Attorney General's Department, 2003