

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

August 5, 2003

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

Re: Parliamentary Inquiry into Joint Residence Arrangements in the Event of Family Separation

To Whom It May Concern:

I am writing to voice my grave concern regarding the proposed changes to the Family Law Act. It is with over 10 years experience working in the Violence Against Women Movement that I am writing this letter to you today. My professional experience has demonstrated to me that in cases of domestic violence, abusers use children as a method of maintaining power and control over women. A Legal Presumption of Joint Residence would put the lives of women and children unnecessarily at risk, effectively invalidating the guiding principal of the Family Law Act, which is to look at the best interests of the child as the paramount consideration when deciding custody arrangements.

As stated in the research from the 1996 Australian Bureau of Statistics national benchmark study, one in five Australian women have experienced family violence by their current or former partner.¹ Women are often put in the position of taking on the brunt of their partner's rage in order to protect the children from physical violence. Women try to deflect their partner's rage from the children, in order to protect them from additional violence. The proposed changes would put women who are experiencing violence in the home, in a no-win situation. Whereby if they leave the home they will then be forced to put their children at risk by having their partner have unsupervised access. The abused partner will lose any control over protection of the children. Abused parents will have to choose between their own safety and the safety of their children, when making the decision to leave. Children who witness physical/emotional violence in the home are by-proxy negatively affected. It is safe to assume that children are fearful of a partner who is abusive in the home. Abusive behaviour is rooted in the need for power and control over another person's atonomy.

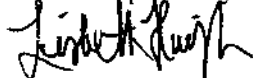
¹ ABS; Women's Safety Australia, Canberra 2000, Catalogue No 4108.9 at page 51 and see Table 6.5 at page 53.

Abusive partners will use any tools they can in order to maintain this control, they will and have used their own children to serve this end. The most dangerous period in the domestic violence dynamic is immediately after separation. The cycle of violence has been broken, the abuser has had their power taken away, and the need for regaining control over the abused through any means necessary ensures that the probability for an escalation in violence is heightened. A 2002 study found that of the 35 resident mothers, 86% described violence during contact changeover or contact visits.² With the lack of safe houses/neutral drop-off points, women put themselves and their children in unnecessary risk for additional violence.

The court process can be intimidating and overwhelming structure. For a survivor of violence, to have to go through this process at a time when they are most vulnerable, can compound the trauma already experienced. For women of Culturally and Linguistically Diverse backgrounds (CALD), the additional barriers of unfamiliarity of the legal system, weakened personal support system due to resettlement in a foreign country, probability of low language proficiency, can all contribute to a justifiable reluctance to leave the abuser. As mentioned above, abusers will use any and all tools in order to regain power and control in the abused life. I have seen this demonstrated in what I call "legal harassment", this is a term used to describe abusers who use the legal system as a tool to keep abused tied up in court, through unnecessary litigation, injunctions, court costs, ect.

It is for the above reasons that I urge this inquiry to dismiss "A Legal Presumption of Joint Residence". As the legislation stands, men are at no disadvantage in obtaining legal residence of children. Family violence affects all members of the home; the proposed amendments would only serve to keep women and children living with the threat of violence, even when they are no longer residing with the abuser.

Yours Respectfully



Lisbeth Haigh
Community Project Officer
Botany Migrant Resource Centre

² Kaye M Stubbs and Tomie J; *Negotiating child residence and contact arrangements against a background of domestic violence*. Working paper No 4, 2003, Family Law and Social Policy Research Unit, Griffith University, p36.