

House of Representatives Standing Committee
on Family and Community Affairs

Submission No: 1599

Date Received: 8-8-03

Secretary:

8th August, 2003

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

ATTENTION: STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS
FAX NO: 02 6277 4844

Most people agree that, in an ideal world, children benefit from having both parents share in their lives. Unfortunately, however, the world is not ideal and the reality is that many parents separate as a result of violence and abuse, and children are victims of this violence too.

The impact of domestic violence does not cease on separation and can, in fact, increase in severity and seriousness. Hester and Ratford (1996) found that "... separation did not end the abuse and that it continued at the point of and during contact".

Child protection issues:

Research consistently confirms that living in a violent and abusive household poses an extremely high risk for children, both in the short and long term. The environment is characterised not only by the violence, but by the effects of the violence: overwhelming fear, compliance, no money for clothes or food, anxiety, control, manipulation, social isolation, alcohol or drug abuse, and often geographical isolation.

The effects on children, both physically and psychologically, of domestic violence are also well documented. Research shows that children's brain development can be affected from as young as six weeks old by violence and stress in the home and that these effects become cumulative over time (McIntosh, 2000).

Children demonstrate their fear and levels of anxiety clearly in their behaviour, and many, even very young children, can clearly articulate their feelings about the violence in their home and how it effects them.

A system that forces a child on contact visits, often where there have been allegations of abuse, and against the child's wishes (often crying and distressed), needs review. However, the proposed amendment potentially *increases* the risk to children.

Recommendation:

Any change in Family Law legislation needs to improve *actual* outcomes for the safety and well-being of children, and not be focussed on outcomes for parents.

Recommendation:

Any change to Family Law legislation should take into account the (sometimes very lengthy) involvement of other agencies, such as child protection agencies and professional counselling services. Alternatively, there needs to be a more thorough and realistic child assessment and counselling service with the Family Law Court. (Children will not, in a short interview with someone they don't know, often in emotional and stressful circumstances, feel confident, trusting and safe enough to speak openly.) Children's assessment needs to be ongoing over several months, and reviewed regularly.

Power, control and financial inequity:

In addition, people (usually mothers) who have been the victim in a violent relationship and then separated, are much less able to afford to pay legal fees to rebut the presumption of shared parenting.

The proposed change to the system will result in children being not only used as pawns (as is sometimes the case now) in the power and control stakes, but as commodities in the child support arena as well. Parents who have previously not wanted or cared about their children, may now decide that they want contact simply for financial reasons, i.e. to reduce their payments, or to gain payments.

In addition to the victim of violence being financially less able to contest issues in court, the impact of fear and intimidation further limits a victim's ability to challenge the perpetrator of violence during Family Law proceedings.

Perpetrators of violence make threats to both the victim and the children, pre and post-separation, which effectively silences and controls the victim during and well-after they leave the relationship.

Recommendation:

In order to ensure an equitable and fair system, there needs to be equal access to Legal Aid for Family Law matters.

Myths and facts:

Studies consistently confirm that women do not "make up" stories of abuse or violence to gain an advantage in Family Law matters, as is suggested by some groups.

Statistics confirm that, in fact, less children are granted contact *after* final orders are made, than in interim proceedings. Rhodes et. al. (1999) found that the Family Court denied contact in interim proceedings in only 3.6% of cases, however in final orders, contact was refused in 22.7% of cases. This in itself should be reason for extreme concern and caution in any proposed changes to the current system.

There are currently some lobby groups which appear to suggest that men are disadvantaged in contact arrangements. This is incorrect. The reality is, most parents make arrangements for shared contact with their children in agreement and by consent, outside of the Family Law context.

There are some lobby groups that also discredit the extent and effects of the reality of domestic violence, particularly in Family Law matters. Research does not confirm this position either: "A recent study by the Australian Institute of Family Studies has indicated that some 66% of separating couples point to partnership violence as a cause of marital breakdown, with 33% describing the violence as serious" (Australian Institute of Family Studies, 2000)

Furthermore, these groups suggest that women use the child protection "system" to their advantage in Family Law situations. However, Brown et. Al. (1998) state that there is a low rate of "false allegations of child abuse" in residence and contact disputes.

As parents cannot always do what is in the best interests of their children, we rely on the Family Court to make appropriate decisions, in the best interests of the child. Children's needs should be the focus of any legislative decision making process. The system of decision making (for children) needs to be appropriate and responsive to children's needs, with ways of promoting children's voices in the process.

Recommendation:

Any legislative review should focus and prioritise the needs of the child, particularly the child's needs for safety, after consistent, thorough and long-term assessment of the children.

Stability:

Anecdotal evidence from children and counsellors informs us that children feel most settled in a consistent and stable home environment. Spending equal time in two homes requires two sets of clothes, toys, lunch boxes, books, etc.

Would we, as adults, be prepared to move our home base every week and then back again on the alternative week? Why, then, do we think that children would benefit from this arrangement and expect them to feel settled and undisturbed?

Two homes could also result in a separation from friends and after school activities, during formative years where socialisation and peer relationships are very important to children's development.

Furthermore, having two residences may potentially increase distances for travel for children to school, unless the parents' houses are very near each other.

References:

Brown, T., Sheehan, R., Frederico, M. and Hewitt, L. (2001) "Resolving Family Violence to Children: The evaluation of Project Magellan, a pilot project for managing family court residence and contact dispute when allegations of child abuse have been made", Monash University Printing, Victoria.

Busch, R., (2002) "What's Love Got to Do with It? Children and Domestic Violence", paper given at the Mid North Coast Family Violence Conference "Unravelling the complexities of family violence... a holistic approach".

Edwards, R., (2002) "Family Law: Whose Rights are we Protecting?" written on behalf of the Combined St George, Sutherland and Eastern Suburbs Domestic Violence Committees.

Kaye, M., Stubbs, J. and Tolmie, J., (2003) "Negotiating Child Residence and Contact Arrangements Against a Background of Domestic Violence" in Australian Domestic and Family Violence Clearinghouse, from the Families, Law and Social Policy Research Unit, Griffith University.

McIntosh, J. (Dr), (2000) "Thought in the Face of Violence: A Child's Need", in "The Way Forward: Children, Young People and Domestic Violence" Conference proceedings, Partnerships Against Domestic Violence.

Rhodes, H., Graycar, R. and Harrison, M. (University of Sydney and Family Court of Australia), (1999) "The Family Law Reform Act 1995: Can Changing Legislation Change Legal Culture, Legal Practice and Community Expectations?" Interim Report.