

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS
PARLIAMENT HOUSE
CANBERRA ACT 2600

House of Representatives Standing Committee on Family and Community Affairs
Submission No: 851
Date Received: 9-8-03
Secretary:

SUBMISSION TO THE COMMITTEE RE THE ENQUIRY INTO
JOINT RESIDENCY

Southern Sydney Women's Domestic Violence Court Assistance Scheme (SSWDVCAS) is a service funded by the NSW Government. The Scheme is one of 33 such services throughout NSW and the state wide Program is administered by the Legal Aid Commission (NSW).

SSWDVCAS supports women and children through the court process when they are applying for Apprehended Domestic Violence Orders at both Sutherland and Kogarah Local Courts. Sutherland Court has had the highest number of process issued AVO's in NSW for the past four years.

During the 2002 -2003 financial year the SSDVCAS had over 2,000 client contacts. Our service works with women and children pre court, at court and post court. We also employ a Domestic Violence Child Support Worker who provides early intervention for children who have experienced family violence. Many of these children do not access other support services due to the isolation and abuse they have endured.

It is impossible to work in the area of domestic violence and child protection without considering the subsequent impact on family law issues. It is crucial that children's safety, health and welfare is given the highest priority in considering any change to legislation. I wonder if this notion of a presumption of shared residency reflects the Family Court's legal responsibility to consider 'the best interests of the child' OR is it primarily to serve the needs of parents (particularly those who are unable to make arrangements for their children post separation in a cooperative manner).

Overseas studies have indicated that shared residency arrangements work when both parents are cooperative and experience very little conflict prior to, during and post separation. The residences also need to be in close proximity to each other.

In the many contacts our service has had with women and children, the great majority of women have expressed their strong wish for ex-partners to have ongoing, regular and routine contact with their children. This is the case even if the father has been violent to the woman and /or the children. Only in very severe cases of physical and/or sexual abuse do women express their anxiety and concern at the prospect of contact with the abusive parent. Even in these situations, mothers will view 'supervised contact' as an acceptable option. It is not my experience that women are denying contact to fathers, in fact quite the opposite.

I would also suggest that a violent and abusive father is not a good role model for male children. To consider a shared residency arrangement with such a parent would have a very negative impact on those children. The effects of domestic violence on children are now well documented and there is acceptance that it is more important for boys to be raised in a nurturing and positive environment by a non-violent parent rather than assume *any* role model is better than none.

Recent case study:

Woman and 3 male children - aged 12 years, 10 years and 7 years.

This family became clients of our service at court during an application by police for an Apprehended Domestic Violence Order. The husband had also been charged with assaulting the woman. The Police Officer liaising with the woman's ex-partner expressed concern about the abusive demeanour of the defendant whilst at court.

Family Law orders were in place already and directed the three children have contact with the defendant overnight each fortnight. The woman advised that she felt completely torn by the current arrangements because the 3 children were ambivalent about contact with their father. The oldest child was happy to see his father but did not wish to stay overnight with him. The youngest child did not want to go with his father and constantly asked his mother "do I have to go"? Both older children felt pressure to please their father despite their fear and also felt a responsibility to protect the youngest child whilst they were on contact visits with their father.

The children expressed that their father spent a large amount of time whilst they were with him asking questions about their mother's whereabouts and activities and also spoke in a very negative manner about her, using words like slut, hopeless, stupid, ugly.

To presume shared residency in this situation would not only risk the safety of these children, it would have an extremely negative impact on their day-to-day lives for many years. How could a presumption of shared residency possibly benefit these children? I suggest it could not.

Our service is opposed to a legal presumption of joint residence post separation. A 'presumption' overlooks the fact that families are individual, have a range of needs and operate in a variety of ways. It certainly overlooks the safety and long term welfare of children in domestic violence situations.

- As stated previously, it does not consider 'the best interests of the child' rather the 'interests of the parents'.
- The difficulty of running two 'complete' households will be a huge financial strain and one that many families will not be able to bear. Most women experience greater financial disadvantage post separation
- It removes the right of families to make their own decisions about parenting arrangements depending on children's needs, geographical distance between parents, work patterns, finances and housing.
- It ignores the mechanisms currently available under the Family Law Act which allow for shared residency when it is in the best interests of the child. It also removes factors which the Family Court must consider such as, children's wishes, capacity of the parent to provide for the needs of the child, maintaining the child in a settled environment and family violence.
- Specifically, it will place women and children who have experienced domestic violence at increased risk of further violence. The violent parent will use the opportunity to continue to control and abuse the family post separation.
- It will increase litigation in relation to Family Law matters as parents who oppose the legal presumption will feel the need to go to court. Apart from the lack of legal aid funding to support this increase, there will be even greater delays and overstretching of resources.

Beverly Lazarou

Coordinator

Southern Sydney Women's Domestic Violence Court Assistance Scheme

Phone: 02 9589 1200

Email: southern@cia.com.au

8 August 2003