

Submission No: 1283

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Secretary:

Macarthur Local Domestic Violence Committee

C/- Centre for Women's Health

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18 August, 2003

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

Dear Sir or Madam,

**Re: INQUIRY INTO CHILD CUSTODY ARRANGEMENTS IN
THE EVENT OF FAMILY SEPARATION**

The Macarthur Domestic Violence Committee (MDVC) is made up of community workers from government and non-government agencies and police working with women, children and families where violence is the major factor in their daily lives.

MDVC is a strong advocate lobbying for changes to protect women and children through legislation and at the grass root level, assisting women and children to access the legal system for their protection.

As a body of workers from many community organizations we see many women and for these women, the reason they leave their relationships, is a result of ongoing violence towards themselves and/or their children.

In the majority of families that we have contact with our collective experience as workers tells us that, 'a presumption in favor of joint residency' will be detrimental to their welfare.

Our experience is reflected in recent evaluation of Project Magellan ie that partnership violence was found to occur in some 75% of cases involving serious child abuse allegations.¹

In preparation for this inquiry we invited comments from women that had:

- experienced violence in their relationships and
- violence had continued to impact on their lives, as a result of Family Court ordered contact.

This submission will be interspersed with women's experience of violence, and workers experience.

- We asked women to think about their experiences of violence
- an automatic 'presumption in favor of joint residency'
- what impact could they foresee on their and their children's lives
- To raise concerns regarding the impact this change would have on their present lives and those of their children
- Workers were concerned about the long-term implications of domestic violence on women and their children, with the introduction of 'a presumption in favor of joint residency' if adopted.

¹ Brown, T et al; Resolving family violence to children: The evaluation of Project Magellan, Monash University, 2002.

Many non-residential parents may not want and/or have the capacity to be responsible for the day-to-day care of their children.

One client commented:

'on hearing on the TV their dad rang and told me he would not be involved in shared residency because he was working shift work, there would be no parental supervision and he couldn't reorganise his life'

It would be dangerous and unrealistic to take for granted that all parents are capable of identifying or wanting what is in the **'best interest of their children'**.

'he picked up a carving knife, chased Monica around the kitchen threatening to cut her toes off. This was very distressing for her and the other children. I had to get rid of a machete from the home.'

'Also last night his dad made threats to electrocute my son. That when he went to sleep he would go into his room and slash his waterbed, putting the hair dryer in the bed he would then watch him die.'

In the above matter the non-residential parent has a mental illness that is unsupervised and unmedicated. The mother was unable to stay in the house alone nor leave her children with their dad.

Our experience as workers indicates the period immediately after separation is the most dangerous for women, who have been the targets of violence, this is also reflected in research conducted by the Family Court of Australia. ²

Added to this many of our clients and their children on separation are vulnerable to further bullying. This occurs within the system that is supposed to protect them. But, instead pushes them into long term decisions for their children, that are not in the **'best interest of those children'** where there are allegations of domestic violence, child abuse or sexual assault.

The introduction of 'a presumption of joint residence' would automatically place these children in situations of ongoing danger and emotional harm.

These women and their children rely on the community, government and its laws to protect them.

'There are contact orders in place and according to these my children should have proper sleeping arrangements. The girls say they take turns sleeping with their father and at other times sleep in the lounge room.'

'the girls are plagued with vaginal infections.'

Many women are silenced by solicitors, police and the media in regards to their children's safety plastered with the label of being vindictive mother's, by inventing allegations of sexual assault to prevent their children having contact with their father.³

² Hore E, Gibson J and Bordow, *Domestic Homicide*, Family Court of Australia, Research Report No 13, March 1996

³ False allegations of child sexual abuse in Family Court proceedings make up only 9% of all allegations. This is consistent with international studies. M Hume, 'Study of the child sexual abuse allegations within the Family Court of Australia'

This residential parent has had to continue to send her daughters for fortnightly contact, even though she has concerns for their well-being. The child protection agency has been informed. These children do not want to attend contact but know their mother will get into trouble if they don't.

Presently, it is very difficult for women to change orders made by the Family Court. Women have to accept untenable situations regarding contact arrangements.

The current legislation was designed to prioritise what's in the **'best interest of the child'**. This is not, in our experience, reflected in orders made by the Family Court. If there is 'a presumption of joint residency' this would again further the abuse many children experience.

We have a real concern for what happens to the children in families where there is good cause for the presumption to be rebutted in the period following separation until court orders are made. The most obvious examples are families where there has been domestic violence, child sexual abuse, child abuse, psychiatric illness, gambling, alcoholism, or drug dependence.

Women are given information by solicitors, courts and police that to contravene Family Court Orders will result in their arrest. Frequently women find themselves being accused of contravening Family Court Orders.

Over the past 5 years contravention applications have doubled and now appear to have a more sinister application than that of a tool to further abuse and harass women. Most of these applications (62%) are dismissed or found to be trivial, and almost 95% are taken against the resident female parent by the non-residential male parent⁴.

⁴ Rhodes, Graycar and Harrison: *The Family Law Reform Act 1995: The First Three Years*; University of Sydney and the Family Court of Australia 2001

'All my children witnessed assaults upon me punching, pushing, shoving, slamming my face into a kitchen cupboard, and when I was pregnant pulling me around by my hair.'

'With the first attendance at the Contact Centre my son (6yrs) refused to get out of the car, in fact he locked it, the workers from the centre stayed inside the premises and insisted that I get him out of the car and bring him in.'

'No assistance was forth coming from workers and my son's father was waiting inside, I was fearful of contravening the Family Court Order so called the police for assistance. The Police attended and tried to get my son out of the car but couldn't, my son was so distressed that he wet his pants.'

'On the second occasion my son has become so fearful that his Paediatrician placed my son on medication and has provided a doctors certificate saying that he feels that the contact is 'interfering with my sons health and well being'.

'I have received a letter from the contact centre telling me that they would no longer accept my son for contact with his father.'

This particular client made an application for a grant of Aid to assist her application to cease contact. This application was rejected on the grounds that there was no merit. An appeal was made and again, it was considered not to have merit.

This mother has had to re-mortgage the family home that she shares with 3 other of her children to secure her youngest child's safety and not contravene the Family Court Orders.

If there was to be an automatic 'presumption in favor of joint residence' it would in our opinion, force many more children into deplorable living conditions, exposed to violence most of their childhoods.

'Children learn what they live.'

And, it is in **'Australia's best interest'** to provide a non-violent environment for all of our children.

We are aware that submissions have been prepared and submitted by many other community organizations addressing the other aspects of the proposal of the 'presumption of joint residency'.

We have read and endorse the submissions made by:
Macarthur Legal Centre
Women's Legal Centre

Yours sincerely,

Nicola Clark
on behalf of
The Macarthur Domestic Violence Committee