

CANFaCS

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House of Representatives Standing Committee
on Family and Community Affairs

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

Dear Madam/Sir

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

We are pleased to present our service's submission to the Inquiry.

As Australia's only accommodation service funded to work with homeless fathers and their children, CANFaCS is uniquely placed to comment on the experience of homeless fathers with children in their care and to identify issues that may arise from the introduction of a rebuttable presumption of joint custody following relationship breakdown.

There are many issues that could be addressed in the context of the Committee's inquiry. However, as a small service with limited capacity beyond the delivery of our core services to families, CANFaCS intends in this submission to briefly address just three:

- The impact of homelessness on increased numbers of children of separated parents;
- Outcomes for children in high-conflict situations; and
- The lack of community supports for separated families.

We would value the opportunity to make an appearance before the Committee to expand on our concerns.

Yours sincerely

ANTHONY ROCHESTER
CANFaCS Coordinator

GERRY ORKIN
Chair, CANFaCS Management Group

Who is CANFaCS?

CANFaCS provides crisis accommodation and outreach support services to fathers with accompanying children who are homeless or at risk of homelessness. CANFaCS is a non-profit, community-based service that is incorporated as an Association in the Australian Capital Territory. The service opened on 1 February 2002 and is the only crisis accommodation service in Australia specifically funded for homeless fathers who have their children in their care.

CANFaCS is committed to strengthening family relationships and promoting self-care and the care of others. We recognise that separated and homeless fathers have particular support needs and that the quality of their ongoing relationships, especially with their children, can be greatly enhanced if these supports are available.

We acknowledge the important contributions that fathers can make to their children's lives and have as a guiding principle the achievement of positive outcomes for children in particular. Our experience is that support to fathers also indirectly increases the wellbeing of mothers, extended families and the whole community.

The CANFaCS approach can be summarised as:

- Client-directed and outcomes-informed;
- Focused on the promotion of self-care and responsible care of others;
- Strength-based rather than deficit-based;
- Focused on strengthening family relationships irrespective of family circumstances;
- Inclusive and respectful of difference;
- Professional, transparent and accountable to men and their children, and to their partners, ex-partners and others;
- Focused on early intervention and prevention;
- Based on sound methodologies and open to emerging experience; and
- Built on a belief in the positive contribution that men and fathers can make to their children and families' lives and to the community.

We provide:

- Access to safe and secure accommodation;
- Inclusive and accessible service responses;
- A case management framework that is strengths-based, client-directed and focused on achievable outcomes;
- Information on entitlements and responsibilities under family law, income support, housing and child support processes;
- Sensitive and respectful counselling, skills training and parenting education;
- Assistance to identify and access other services that may be of use; and
- Assistance to re-establish a secure and stable base from which to develop independence and self-reliance, and into which it is safe to bring children.

CANFaCS outreach services include home visits to support fathers at risk of homelessness and includes help with parenting or life skills e.g. help with discipline issues, playing with children, cooking and nutrition etc.

Fathers and homelessness

Advocates of joint physical custody argue that living with both parents after separation is essential for the healthy development of children. However, when one parent is homeless, this is not likely to be the case.

Most separations are initiated by women and when a couple separates one parent, usually the father, has to find a new place to live. Typically, this is a room in a shared house, in a friend's or relative's home, or, for those with adequate incomes, a rented flat or small house.

For some separated men, a lack of resources, absence of supportive social networks and other complicating factors e.g. depression, poverty, drug/alcohol dependence etc. mean they end up in hostels, on friend's couches or sleeping rough or in their car. Even if they manage to temporarily find better accommodation, these fathers are at high risk of serial homelessness.

Many newly-separated fathers experience feelings of shock, failure, confusion, grief and anger. Most are in conflict with their ex-partners and have fears about their on-going relationship with their children. In these circumstances the re-establishment of "normal" family life, symbolised by equal physical care of their children, becomes an urgent goal, in spite of the personal and practical difficulties this often involves, and in spite of the possible consequences that the pursuit of this goal may have for themselves, their ex-partners and their children.

To achieve this goal, fathers need to find accommodation that is suitable in terms of affordability, stability, safety, size, facilities and access to services, shops and schools. The more involved they are with their children's care¹, the more important it is that those factors are present in their living situation.

Finding family-friendly accommodation is currently very difficult in most parts of Australia, because we are experiencing a national crisis in the availability of affordable housing. Homeless people are facing longer wait times for public housing, there are fewer private rental properties available, prices have increased in all sectors of the housing market and emergency accommodation providers are facing increased demand for services (SAAP National Data Collection Agency 2003).

All of the fathers and children supported by CANFaCS are homeless primarily because of this lack of safe, affordable housing.

Our service is located in a 6 bedroom suburban house and operates at full capacity (typically 4 families live at the house). All the fathers who are accommodated at our house have at least 50:50 custody of their children, usually by agreement with their ex-partners, or because their ex-partner is absent through re-location, death or incapacity. There are often family law matters pending, and final arrangements for custody may not have been settled; in some cases there are child protection issues.

We also provide outreach support to up to 20 fathers who are living with children in temporary accommodation such as caravan parks, friend's or relative's lounge rooms or spare rooms. We try to never refuse service to a father, but we know that there are many

¹ Besides the direct benefits of adequate housing for fathers and children, mothers are more likely to be supportive of children staying overnight with fathers if they are living in suitable accommodation.

more homeless fathers in Canberra than we are able to assist, and that those we do assist may still wait for many months or even years before they find stable accommodation.

From our experience of working with homeless separated fathers in Canberra, we know that even when most do not have 50:50 joint custody of their children, many are living and parenting in crowded, unsafe and unsuitable temporary accommodation and that many children are being exposed to all the difficulties and risks that homelessness involves.

Our submission for the Inquiry's consideration is that our service experience is likely to be replicated on a larger scale as a consequence of the introduction of a presumption of joint custody after separation.

The impact of homelessness on children

Homelessness has a direct and severe negative impact on children. Compared with other children, homeless children experience poorer health, more developmental delays, more anxiety, depression and behavioural problems and lower educational achievement (Shinn and Weitzman, 1996).

Poverty, family welfare dependence and housing instability are especially harmful during the earliest years of childhood. This is of particular concern given that it is estimated that almost half the children living in short-term and emergency accommodation are under the age of five (NDCA). From an early childhood development perspective, this is a crucial time in children's lives, when resilience and basic social skills are being developed.

For all children, but especially younger children, the period following separation is a crucial time in terms of their adjustment to the divorce of their parents, and certainty and stability at this time are important, particularly if the separation has been characterised by high levels of conflict or violence (Wallerstein 1998).

Older homeless children face additional problems, including disrupted schooling, transportation difficulties, location-based eligibility problems and problems with developing and maintaining social attachments. Their ability to complete homework and participate in sport and other activities is also affected by unstable residential circumstances.

Joint custody and homelessness

If joint physical custody is enforced by parents with the backing of the law, and without sufficient regard to the unique situation and best interests of each child, it is likely that the demand for affordable family-friendly accommodation will significantly increase. In the absence of adequate stocks of housing to meet this increased demand, many more children will be exposed to the dangers that accompany homelessness.

In these circumstances, the lack of emergency accommodation services in Australia that can accept and work with fathers and children would urgently need to be addressed.

A 50:50 presumption also presents financial dangers for children of separated parents, putting them at further risk of homelessness and other negative poverty-related outcomes.

Children living across two households cost more overall to support, but family payments and child support are proportionately distributed; joint 50:50 custody will mean that property divisions, child support and family payments will be more evenly split across households (in

some cases regardless of the actual division of care and costs), leaving both parents with a reduced capacity to afford suitable accommodation.

Recommendations

- 1. That the introduction of a presumption of joint physical custody be considered in the context of the national housing crisis and in light of the impact of homelessness on increased numbers of children of separated parents.*
- 2. That the lack of crisis accommodation services for fathers with children in their care be urgently addressed as part of any move to a presumption of joint custody of children after separation, and that this issue be addressed even if a presumption of joint custody does not become the norm,*
- 3. That in the light of the impact of homelessness and inadequate housing on children, any consideration of financial arrangements after separation (including child support arrangements) take into account the ability of both parents to afford suitable accommodation, whatever custody arrangements are in place.*
- 4. That housing policies prioritise the needs of all parents caring for children and that governments ensure that adequate levels of affordable, child-friendly accommodation for families are available throughout Australia.*

Joint custody in high conflict situations

There is a clear relationship between a father's ability to effectively parent his children and his access to appropriate and affordable accommodation. But homelessness is just one part of the post-separation story.

For many fathers separation and homelessness occurs in the context of long-term pre-existing problems that may have themselves contributed to their relationship breakdown. Those problems include substance abuse, mental health issues, unemployment and debt, low levels of social participation, poor levels of core parenting skills, high levels of conflict with ex-partners, and, for some, issues of violence and abuse.

Wherever these problems occur they significantly affect separated fathers' ability to manage their relationships with ex-partners, to negotiate consensual and workable child care arrangements and their ability to provide for the financial, emotional and developmental needs of their children.

Currently most parents make their post-separation parenting arrangements in the light of their history of parenting in the relationship, their paid work commitments, their accommodation situation, their skills, capacities and interests, their availability for unpaid parenting work and their child's needs and interests (Graycar 1989, 1990).

The existing Family Law Act expects both parents to share duties and responsibilities concerning the care, welfare and development of their children, but if parents can't agree on how this is to happen, Section 68F of the Act provides a range of relevant factors to guide decisions that prioritise children's best interests.

While children generally benefit from close involvement of both parents before and after separation, this does not mean that all children, under all circumstances, will be better off with equal or near equal time in the care of each parent. This is particularly the case where

there are serious health or emotional problems for one or both parents, or historical and on going high levels of parental conflict.

Joint physical custody has been found to be workable only where parents have freely chosen the arrangement, where both are emotionally and financially stable, where both have suitable accommodation and live close to each other and where their work commitments are flexible. In other circumstances, forced joint physical custody has been associated with reduced cooperation and higher levels of conflict (Maccoby and Mnookin 1992; Hughes 2000).

Family breakdown has a significant impact on children and although poor outcomes are not inevitable, almost all children experience negative emotional responses that can include grief, sadness, anger, loss, guilt or confusion.

Conflict between ex-spouses is associated with poor adjustment among children and these responses are likely to persist in the presence of on going parental conflict (Amato 1994). Although continued contact with both parents may be beneficial when the experience is positive, it can also provide for continued or increased conflict between parents, which is bad for children (Amato 1993).

Our professional experience is that most of the children we accommodate at CANFaCS have been and continue to be exposed to parental conflict, and many exhibit emotional or behaviour problems associated with this trauma, in spite of the fact that they generally spend most of their time with one parent and that opportunities for exposure to conflict is limited.

CANFaCS can cite many case studies that demonstrate the poor outcomes for children and their parents where there are high levels of conflict.

In addition, the support requirements of high conflict families places significant strains on service systems. For example, a single separated high conflict couple may involve the long-term investment of resources by two different accommodation services, up to half a dozen government agencies (Centrelink, Child Support Agency, local government and State housing departments, child protect authorities, the Family Court and Legal Aid), as well as domestic violence services and welfare services.

We are concerned that the proposed change will see the application of joint custody to the children of parents who have the lowest levels of cooperation and the highest level of pre- and post-separation conflict. These parents are the ones that are least likely to be able to cooperate and to work together in the interests of their children. As a result, increased numbers of children separated parents will be exposed to more emotional harm.

Recommendations

- 5. That the best interests of children remain the paramount concern where parents cannot agree on custody arrangements, and where there are high levels of conflict, joint physical custody should not be imposed.*

Joint custody and violence and abuse

While our concerns apply to all situations where there is on going conflict, we are particularly concerned about the impact of joint custody on children from families where violence has been present.

Almost 25% of separated women say the primary reason their relationship failed was their

partner's physical or emotional violence or substance abuse (Wolcott & Hughes 1999). Australian data shows that the time around and after separation is most dangerous for women and that threats, violence and abuse continue after separation (ABS 1996:8).

The cases which come to the Family Court are, by definition, high conflict cases, which often feature allegations of violence or abuse (Australian Law Reform Commission 1995; Brown et al 1998, 2000). Numerous Australian studies (Family Law Council 2002; Hume 1996, 2003; Brown, Sheehan, Frederico and Hewitt 1998, 2001, 2001a; Rendell, Rathus and Lynch 2000; Kaye, Stubbs and Tolmie 2003) have identified serious continuing flaws in child protection processes in the Australian family law system, which result in orders that force one parent to send children to contact with the other parent who uses violence.

Children who witness or experience high levels of conflict and family violence can display greater anxiety and restlessness, withdrawn manner and attitude, adjustment problems, poor school performance, psychosomatic illnesses, cruelty to animals or other children and aggressive language and behaviour in their play.

Children learn by observation and by learning how adults deal with their problems. If parents deal with disagreements and conflict by using threats and violence then these behaviours can be normalised for their children, who may then behave in similar ways (either as perpetrators or victims) in their own relationships.

Again, our professional experience is that in many cases violence, threats and harassment continue after separation, and that these can occur no matter what the custody arrangements are; indeed, in some cases, these behaviours are used in order to coerce one parent into providing more contact against their wishes.

We are concerned that a presumption of joint physical custody will provide abusive parents with even more opportunities to coerce and control their ex-partners and will raise the burden of proof in cases where violence is alleged to an extent that will make it very difficult for victims of violence to seek and find protection for themselves and their children.

Recommendations

6. *We recommend that no changes be made to family law that raise the burden of proof where violence or threats of violence have been alleged, or that make it more difficult for victims of violence to seek and find protection for themselves and their children.*
7. *That legislation regarding the arrangements for residence of children must always include, as factors to be considered:*
 - *any history of family violence or child abuse;*
 - *the potential for further family violence or child abuse; and*
 - *facilitating contact with both parents only when it is safe and positive to do so.*
8. *Whatever the outcome of the Inquiry in terms of a presumption of joint custody, we strongly support the immediate implementation of the recommendations of the Family Law Council 2002 on child protection and the establishment of a Family Violence Unit within the family law system to investigate and inform the court on family violence issues in cases where violence or child abuse has been raised.*

The provision of community supports to assist joint residency

Separating couples need to be enabled to make decisions unique to their family's circumstances, particularly in relation to children's residency arrangements. Our experience has been that there is a dearth of community supports to enable families to make those decisions. These inadequacies are apparent in many areas:

- Long delays for Family Court counselling and mediation need to be addressed, as many separating couples currently don't have the opportunity to reach full agreement on issues of property or children's custody in a reasonable time-frame.
- Work and family balance is an important issue for all families, but separated parents have a particular need for flexible and adaptable working conditions. Initiatives that address long work hours, family-toxic workplace cultures and the unavailability of childcare are required, as these are significant barriers to couples sharing financial and childcare responsibilities both before and after separation. (Ninety percent of employed fathers at CANFaCS who have 50% or more residency have had to leave their employment to care for their children.)
- Currently, when both parents are unemployed, only one is entitled to a parenting payment through Centrelink. This results in an immediate economic disadvantage for one parent and creates hostility between separating parents at a time when cooperation is most required.

Parents on Newstart (usually the father) receives an unequal benefit and no pharmaceutical or travel concession. The fathers at CANFaCS in this situation often need food vouchers and other welfare supports to enable them to provide for their family.

If the introduction of 50:50 joint custody proceeds, family support payments will need to be increased to ensure that both parents have access to adequate financial supports.

- Many of the fathers at CANFaCS have benefited from training in parenting skills and have told us that it makes shared residency of their children significantly less difficult. Parenting courses need to target fathers, be available outside work hours and provide childcare.

The issues addressed in this section are just a few of the many areas of support that will need to be expanded if joint custody becomes the norm. If these issues are not addressed, many newly single fathers will be set up for failure when they have shared residency.

Recommendation

9. *That much better levels of community support be provided for separating parents, including increased funding for:*

- *legal aid;*
- *more community-based and family court counselling services;*
- *more post-separation parenting support services; and*
- *larger government financial contributions to ensure equality of access to resources.*