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Secretary:

**Northern Family and Domestic Violence Services**

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Committee Secretary  
Standing Committee on Family & Community Affairs  
Child Custody Arrangements Enquiry  
Department of the House of Representatives  
Parliament House  
Canberra ACT 2600

30<sup>th</sup> July, 2003

Dear Committee Secretary,

This submission is in response to the terms of reference that have been given in relation to the Child Custody Arrangements Enquiry.

The Northern Domestic Violence Outreach Service has concerns around the safety of women and children if changes are made to the current Family Law Court rulings that will see automatic joint residence of children. As has been stated, this will apply to around 5% of families who have to resort to the Family Court where a decision cannot be reached by agreement between the parents to resolve issues around residence and contact.

What is not often discussed is that this 5% of families consists of a high proportion of those in family violence. As most studies show, the overwhelming majority of the perpetrators of violence in these families are men. In situations of domestic violence, it has been our experience that children are exposed to, and at risk, from violence themselves. Children are often witnesses either directly by seeing the violence, or indirectly through hearing verbal or physical attacks on their mother. In these homes, children are growing up in a climate of fear and have been found to display higher levels of behavioural and emotional problems than other children. The Court now takes as it's paramount consideration "**the best interests of the child**". Any move away from this as the paramount consideration towards an automatic joint residence arrangement has huge implications for families where domestic violence is experienced.

38% of the adult female population will experience violence during their life, with the majority of perpetrators being men (Women's Safety Survey, ABS, 1996). Our service believes there is a possibility that this statistic is under stated as it cannot account for any unmet service demand, and women who do not disclose their experiences. The Northern Domestic Violence Outreach Service defines domestic and family violence as any behaviour that causes physical, sexual or emotional damage, or causes women to live in fear. This can be physical assault, sexual assault, manipulation, financial abuse, psychological abuse, threats to harm / kill / damage property / remove children, put downs, verbal abuse, name calling.

From our knowledge of working with women and children who have lived with domestic violence, we have outlined the following implications.

**It is our opinion that the following implications are not in the  
"best interests of the child".**

- Some women continue to experience abuse/violence at contact hand overs, even though this arrangement may appear to be resolved through a child contact centre, or third party individual who attends to the pick up and drop off of children. This exposes the child to further forms of violence. This may be increased if the amount of times a child is "handed over" increases.
- Where women and their children need to relocate to another area for their safety, this places an enormous strain on the family when the child has to share residence between two households. In some instances this means that the safety of the woman and children is paramount to that of the father's "right" to see his child/ren.
- Some children have told their mother, who have in turn disclosed to our service, that during contact visits, their father says negative, hurtful things about their mother and often phrases these in unsavoury terms. We believe that this is damaging for a child to hear. This damage will increase, the more time that a child spends with the perpetrator of violence.
- Children that have witnessed domestic and family violence are often traumatised and frightened of the perpetrator of violence. We believe that it is not in the child's best interests to have to spend more time with a parent that is abusive and that they are frightened of. Furthermore, at such a time a child needs to have a primary care giver who the child can identify as a "safe" person. Given that studies have overwhelmingly shown that most perpetrators are men, the safe person for a child is going to be their mother.
- Domestic and family violence is difficult to "prove", as it mostly happens in the home, many women have been isolated, too frightened to tell their story, or threatened with further violence if they speak out. This means it is often difficult for women to be able to bring before the court evidence that their children should not reside half time with their fathers.

Overall, the belief that children can spend half of their time with both parents assumes that there are no power imbalances, or that one parent does not have control over the other. This is not the case with domestic violence. Often women experience threats that if they try to leave a violent relationship, the perpetrator will not allow them to take their children and if they do so they will go to great lengths to harm both them and/or the children. Perpetrators of violence often see their children as possessions to be fought over, and more often than not attempt to use the Family Law Court as a means to further abuse the mother who is often very afraid for both herself and her children.

**Therefore, we believe that the safety and "best interests of the child" should be considered before the "rights" of fathers having residence with their children.**

If you would like to contact our service for more information please do so on phone number (03) 9457 5087.

Yours sincerely,

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Northern Domestic Violence Outreach Team