

House of Representatives Standing Committee  
on Family and Community Affairs

Submission No: **577**

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Secretary: .....



## Rockhampton Women's Shelter Inc.

PO Box 5882  
Central Queensland M.C. 4702

Phone: (07) 4926 5603  
Fax (07) 4926 0341

ABN 37 410 817 152

8<sup>th</sup> August, 2003

The 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 committee,

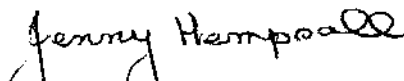
Please find attached our Submission to the inquiry into child custody arrangements in the event of family separation. Jenny Hemsall, Co-ordinator, and Kerrie Hooper, Community Worker, Rockhampton Women's Shelter has prepared this Submission.


The Submission has been prepared with the authority of the Rockhampton Women's Shelter Inc. Committee.

Should the Standing Committee wish to contact us at any time, we can be contacted on the above telephone number or address.

Thanking you.

Yours sincerely,

  
Jenny Hemsall  
Co-ordinator

  
Kerrie Hooper,  
Community Worker

Submission to the  
Parliamentary Inquiry into Joint Residence Arrangements in the Event of  
Family Separation

Presented by the Rockhampton Women's Shelter

Terms of Reference:

- (a) *given that the best interests of the child are the paramount consideration:*
- (i) *what other factors should be taken into account in deciding the respective time each parent should spend with their children post separation, in particular whether there should be a presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption could be rebutted; and*
  - (ii) *in what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents.*
- (b) *whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children.*

The Rockhampton Women's Shelter is opposed to a legal presumption of joint residence for separating families as such a presumption would represent a dangerous and dramatic policy shift by the Government to the current Family Law Act, which sets out clear principles about parenting of children and other factors to be considered by the Court.

We are objecting to the proposed changes specifically from our area of expertise, which is our client group of women and children who have lived in and have escaped domestic violence and where the perpetrator of the violence is the children's father.

The current Family Law Act, section 68T states "it is not always in the child's best interests to have regular contact with both parents. It is also not in the best interests of a child to have its **mother be the victim of violence**. Sometimes, there are good reasons for a child to have no contact with a parent". Will the proposed changes to the Act still consider the provisions of Section 68T of the current Act?

It is our belief, which is supported by our combined experience of some 15 years in this field, that proposal of joint residence, especially with regards to child witnesses, will only serve to put children at an increased risk. Research has shown that many women will stay in an abusive relationship because of the children and then once they become aware that the children are being harmed they leave. If this legislation comes in we may find mothers will decide to stay in violent relationships as this will be the only option they feel they have, to stay where they can constantly monitor their children's safety, to offer the maximum protection for their children. These children will continue to be exposed to the violence perpetrated on their mother. Research has shown that 80% of all male prisoners grew up in violent homes (1).

The following points outline our concerns relating to the proposed changes:

- The proposed changes appear to privilege the rights of parents over the rights of children by over-riding the paramount principle of the 'child's best interests' principle which is entrenched in the current Family Law Act.
- It ignores the factors listed in the Family Law Act which must be considered by the Court in deciding parenting orders, such as the children's wishes, capacity of the parent to provide for the needs of the children, maintaining children in a settled environment free from family violence.
- Current provisions of the Family Law Act already include mechanisms for shared residence being a child's right where it is in the child's best interests.
- Women are still predominately the primary carers of children.
- Acknowledging that single mothers are one of the most disadvantaged groups within our society, the proposed legislation will effect child support and force many families into poverty.
- While we recognise the importance of children having good role models, we believe that "good" is the operative word. The proposal of shared residency means that child witnesses of domestic violence would suffer greater amounts of exposure to a role model who is the perpetrator of domestic violence, that is, the behaviours that they would be learning would be violence, control and abuse. Child witnesses have already been exposed to violence, control and abusive behaviour towards, not only their mother, but also to themselves, their siblings, pets, and other family members. Many child witnesses come to believe that this violence is normal behaviour within the family unit.
- Child witnesses suffer tremendous emotional abuse and very often are terrified of their father and do not want contact with him, but because of their age the court considers them too young to express their own wishes. On several occasions we have heard lawyers and barristers, who are representing victims of domestic violence say, that children have a right to see their father. Who considers the children's right NOT to see their father if this is their wish?
- Just because children are thought to be too young to have a say in what they do or do not want, this does not mean that they are too young to experience genuine terror and fear of a violent person whom they have seen beating their mother and quite often are severely and regularly beaten themselves together with other siblings. Equally disturbing is our experience of working with a particular family where, once the perpetrator left the family home, the two young children started to disclose their Daddy's meanness to their aunt and maternal grandmother. The boy commented, "He hurt my fussy." The little girl also demonstrated what he was doing to her on a doll (putting his fingers inside the vagina). They also disclosed that the father used to let the little boy watch. They made many other allegations as well as these examples we have given. At our recommendation, one of us accompanied the mother to the Juvenile Aid Bureau, to be interviewed. The Officer said, "This case stinks to high heavens". His reason for saying this was because it was at the time when the mother was fighting for the perpetrator not to have contact with the children. The Officer who interviewed the children was about 6 feet tall and clearly the children were very shy and intimidated about being interviewed in

one parent maybe giving up his employment or Newstart Allowance with no further obligation to work or look for employment.

**Endnotes:**

- 1 Queensland Domestic Violence Task Force Survey, 1989.
- 2 M. Hester and L. Radford, *Domestic Violence and Child Contact Arrangements in England and Denmark*, 1996, Policy Press, Bristol.
- 2 R. Busch, *Written submission to Sir Donald Davison for the Bristol Inquiry*, 1994, (unpublished).

## Appendix 1 - Case Study

- Papers she and a worker had prepared for an interim hearing at the Magistrates Court were not filed by her solicitor, resulting in this mother not seeing her young children for 53 consecutive days. Had the case had been heard in the Magistrates Court, at this time, she may have been granted interim residency until a final decision was made. Instead the perpetrator has been main carer of the children for the past 18 months.
- She then had to wait several months before getting a court date with the Family Law Court to request an additional one day per fortnight with the children, which she did not get.
- Despite the fact that the perpetrator's solicitor wrote and said that she could see the children for Christmas Day *this did not happen as her solicitor did not pursue the matter when the father refused to let her see the children at Christmas. She consequently did not share Christmas with her children for two consecutive years.*
- Her solicitor did not give her any preparation or guidance on what to expect in the Family Law Court, except to say, "don't worry". He offered her no guidance or assistance with the preparation of her affidavits, resulting in her focussing on the past history of the relationship and the violence perpetrated in front of the children. At no time was she told to write her day-to-day routine with the children and other aspects of her parenting with the children during their time in her care. After a three hour grilling in Court by the perpetrator's barrister she became confused and was unable to outline any of her activities with the children or how she cared for them. The perpetrator had received substantial assistance with his affidavit, which had sections under headings, and with a three-page description of routines and day-to-day activities.
- The perpetrator only admitted to hitting her twice, one being a backhand across the face. Whereas her solicitor had failed to file police photographs, that she had paid for and given to him months before the court day. These photographs showed severe bruising around the face, strangulation marks, and bruising to numerous parts of her body.
- The perpetrator's case rested completely on her two admissions to Mental Health, ten years apart. The first occasion was due to a spiked drug and the second came about after seven years of living with Domestic Violence. Despite our client asking the solicitor if she required a current assessment from Mental Health to outline the circumstances of her two admissions and her current position, he did not request one.

When she attended Court for the final hearing the Registrar asked to see her mental health assessment and on finding out there was not one

he was, in his words, "appalled" and adjourned Court for another three months. This resulted in another delay in the matter, which has now dragged on for almost two years. She did not present well in Court due to having to be in the same room as the perpetrator and feeling very intimidated by his presence.

- Despite the Court previously having ordered that she have telephone contact with her children every Wednesday that they are with the perpetrator this does not happen. Sometimes the answering machine is on, other times they say the children are not there, or having tea. or an early night.
- The perpetrator uses change over times as an opportunity to further intimidate and harass the victim. He tells her she cannot have the children until she speaks to him. On another occasion when one of the children had a bruise the perpetrator accused the mother of having deliberately pushed the child over. Our client's mother or sister now always accompanies her at change over times as they have concerns for her safety.
- The intimidation reached a level where a support worker had to step in and contact the organisation where the couple were having mediation and counselling to request that they to speak to the perpetrator about his behaviour and the way he was using the suggested communication book as another tool to control and intimidate her.
- It is concerning that the children have told their mother on a couple of occasions "Daddy hits me on my doody." The five year old has also complained that his father punches him in the head and he is a baddy. On one occasion when he had to be returned to his father the boy said to his mother "I will kick you in the head if you make me go back to Dad." They repeatedly tell their mother they want to live with her and its too long at Dad's. This woman has put these statements in her affidavit, but because the children are "too young" to have a say there are fears that no one will take notice of them.
- While the final verdict of residency has still not been delivered it is painfully obvious that superior legal representation will be a deciding factor in the Court's decision, not what is fair or just.

a room alone with the Officer. He came out and said even though they did say something it was not enough for them to act on. The children are on a current Domestic Violence Order, which states the respondent must not come within a hundred metres of all of the aggrieved named on the order except for access! The Family Law Court has granted him access even though the children have expressed over and over they do not want to see him and there are still unsubstantiated disclosures of sexual abuse.

- We acknowledge that shared residency, in some instances; will work very well but not where there is an imbalance of power and control. Many perpetrators use residency and access visits as opportunities to continue to intimidate, threaten and control of their victim. International research has shown that violence escalates during the period after separation (2). New Zealand homicide statistics demonstrate that the highest risk category for women is during contact changeover. (3)
- If this proposed legislation is enacted there will be a substantial additional demand on legal services. In Rockhampton we are already experiencing a decline in solicitors prepared to take on Legal Aid clients. This limits the choice for legal representation for disadvantaged 'stay at home' mothers compared to a working partner who is in a position to access the best legal representation that money can buy. For example: one of our clients who was recently in the Family Law Court for residency found herself extremely disadvantaged by poor Legal Aid representation. Refer to case study notes, Appendix 1.
- While we have outlined one case study there have been many other instances where we have supported victims/survivors of domestic violence where perpetrators have used the children to manipulate the women through the children and the greatest cost has been to the children as they are often used as pawns to keep continued power and control over an ex-partner.
- Other more general concerns we have are what happens if the father is working and he has joint residency of the children: Does this mean they are to be put in the care of paid minders during his lengthy periods at work? If the children are going to school are they then going to be latch key children until he returns home? If the children are sick, will he be able to take time off from work to seek medical attention and mind the children at home?
- We are concerned about the effects of joint residency on children's schooling. How will joint residency effect schooling if both parents do not reside within a reasonable distance from the children's school? For a sole parent to be able to have school bus concessions they must send their children to the closest school. Many women do not have a lot of choices surrounding where they can reside, in these times of escalating property prices and rents.
- There will be a substantial impact on the Australian economy under these proposed changes. The current non-custodial parent may elect to discontinue work and claim a Parenting Payment. Under current Centrelink policy, if both parents have joint residency then they are both entitled to the Parenting Payment and then they would share the Family Tax Benefits. This means that