From: Jane Aitken _ATSIWLAS [mailto:jaitken_atsiwlas@bigpond.com]
Sent: Wednesday, 6 August 2003 3:38 PM
To: Cadman, Alan (MP)
Subject: Parliamentary Enquiry into a Presumption of Joint Residence within the Family Law

6 August 2003

Hon Alan Cadman MP
Member
Parliamentary Committee for Family and Community Affairs
House of Representatives
Parliament House
CanberraACT2600

By Email: A.Cadman.MP@aph.gov.au

Dear Mr Cadman,

Re: Parliamentary Enquiry into a Presumption of Joint Residence within the Family Law

We refer to the projected Parliamentary Enquiry into Joint Residence Arrangements recently announced by the Prime Minister. We wish to draw to your attention our concerns about this proposal and we ask that you use your influence to ensure that such proposals are not accepted by the Parliament. We believe that this proposal is flawed for the following reasons:-

- It will place women and children who are victims of violence at increased risk of further violence. The presumption will force some children to live with violent fathers and will force mothers to regularly negotiate with and be in the presence of violent ex-partners. It provides a dangerous tool in the hands of abusive men who wish to control their women partners after separation.

This is of particular concern to the client group that we serve, that is, Aboriginal women. In Aboriginal families, family violence is estimated to be 45 times greater than that of the general population. It is also a reality that there are only two independently operating Aboriginal women's legal services in Australia, of which we are one. The ATSIC-funded Aboriginal legal services are not funded to provide Family Law services to clients and we know from our own experience that Aboriginal women do not readily access mainstream services for a range of reasons. Many of the women who attend this service do so as a last resort and often after suffering from years of horrific abuse at the hands of their partner. On this basis alone, it should be clear that this proposal puts the lives of Aboriginal women and children at risk.

- There will be an increase in litigation as parents who do not want 50:50 shared residence may feel the need to go to court. Given the lack of legal aid funding for Family Law matters, many people will self-represent, increasing delays and stretching the resources of the Family Court and Federal Magistrates Service.

- It may lead parties to reopen finalised cases in the belief that a joint residence presumption law will bring them a different outcome. Our service has already had contact from women whose former partners are threatening to take them to court, or back to court, to get new arrangements for the children.

- It privileges the rights of parents over the rights of children by overriding the paramountcy of the "child's bests interests" principle which is entrenched in the 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 children's wishes, capacity of the parent to provide for needs of the children, maintaining children in a settled environment and family violence. It also ignores the importance placed by the Family Law Act on the need for indigenous children retaining links with their culture.

- 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.

- We fully support the involvement of men in their children's lives, where this is appropriate. However, in families where the father was not a positive presence, where he was not involved in the responsibilities of raising the children or where he was abusive emotionally, physically or sexually to the mother or the children, it is our position that his post-separation time with the children should be limited.

- Many men already participate actively in their children's lives after separation. In these families, neither fathers nor mothers need the law to tell them to do this. Further, most mothers wish to share parenting duties and responsibilities cooperatively with fathers who were significantly involved with their children prior to separation.

- It reduces the ability of families to make their own decisions about parenting arrangements depending on children's needs, parents' capacities, geographical distance between parents, parents work commitments, finances and housing.

- It does not reflect current caring practices in intact families where mothers are still predominantly the primary carers of children and undertake most of the domestic work. Shared residence would mean arrangements for some families

post-separation would be significantly different from pre-separation arrangements.

- It ignores the evidence from research that shared residence works for some families where there has been a history of cooperation, a history of shared care prior to separation and where parents voluntary enter into these arrangements irrespective of the law.

- The child support consequences will force single mothers, already amongst the most impoverished group in the community, to plummet further into poverty and consequently increase the number of children also living in poverty.

- It will present practical difficulties for many separated parents and children and the burden of running two households will be too great for many families.

We would ask that you use your best endeavours to convey our concern to the appropriate parties to prevent this proposal from reaching fruition.

Yours faithfully,

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