



MANLY WARRINGAH WOMEN'S DOMESTIC VIOLENCE COURT ASSISTANCE SCHEME

6th August 2003

Committee Secretary

The Standing Committee on Family and Community Affairs,

Child Custody Arrangements Inquiry

Department of The House of Representatives,

Parliament House,

CANBERRA. ACT. 2600

House of Representatives Standing Committee
on Family and Community Affairs

Submission No: 511

Date Received: 8-8-03

Secretary: _____

Dear Secretary,

Attached is the submission to the Committee on behalf of the NSW Women's Domestic Violence Court Assistance Program and the Manly Warringah Women's Domestic Violence Court Assistance Scheme.

The Scheme's work with many women across the State that seek residency orders in the Family Court. These women are mostly the primary carers of their children. Prior to the separation of the family, the fathers often are the financial support and have limited contact with the children. Our experience is that post separation, men make application for contact and not exercise the contact orders. There is no way women can make their ex-partners exercise their contact.

To make a presumption of shared residency is contrary to most family structures especially families that go the Family Court for intervention. It is not in the children's best interest and does not mean that the responsibility of the children will be shared by both parents.

Forcing children to live in two homes is not practical, economical or psychologically in the child's best interest. Children experience a sense of displacement and need to have a sound secure and safe base that they can call home.

I ask common sense to prevail and consider the points I make in my submission and make every effort to look at this from a child's perspective. This is a knee jerk reaction driven by men's groups and vocal media representatives. I would be available on behalf of the schemes if the Committee requires further information.

Yours faithfully,

Louise Chambers

Co-ordinator Manly Warringah Domestic Violence Court Assistance Scheme.

**SUBMISSION TO THE STANDING COMMITTEE ON FAMILY AND
COMMUNITY AFFAIRS
ENQUIRY INTO JOINT CUSTODY ARRANGEMENTS
NSW Women's Domestic Violence Court Assistance Program
Manly Warringah Women's Domestic Violence Court Assistance
Scheme**

The NSW Women's Domestic Violence Court Assistance Schemes are funded by The NSW Legal Aid Commission. Currently there are 33 funded schemes providing court assistance to women and children seeking protection orders in NSW local courts.

Amendments made to the Family Law Act in 1995 sought to encourage greater responsibility by both parents for the children after separation. The change in language attempted to shift the ownership of the children to the rights of the child to 'the right to know and be cared for by both parents' and 'a right of contact' with both parents. The current Family Law Act provides enough scope for parents to come to arrangements where it may be in the children's best interest for shared residency. Many families where the parents can communicate what is in the best interest of the children may come to such arrangements. These families often do not require the intervention of courts or may come to court with consent orders.

POINTS TO CONSIDER

The Family Court of Australia intervenes in less than 5% of family breakdown. The proposed changes to the Family Law Act to a presumption of equal shared residency arrangements is expected by legal practitioners approached by the schemes, to increase the need for intervention by the FCA and add to the already growing numbers of self represented litigants. *The proposed legislation would be inappropriate for children in highly conflictual families and more damaging for the children where there has been a history of violence.*

Many of the scheme's clients who seek protection in local courts have Family Court proceedings in process. Although the schemes are not directly funded to provide court assistance in Federal Courts, most workers will assist with support and more so with unrepresented women who due to the restriction of the NSW Legal Aid Commission have not qualified for legal aid and have insufficient funds. *The schemes would need to seek further funding from Legal Aid to assist women in the Family matters.*

The length of time that matters take to be dealt with in the FCA, results in interim orders being in place for months before a return date. The latest amendments (1996) have resulted in less 'no contact' interim orders made even where there has been domestic violence. *The presumption of shared residency could place children and their mothers at further risk to violence for longer periods.*

It is unclear how women will be able to financially support their children where they have reduced contact with their children as they may no longer qualify for Federal support through Centrelink such as rental assistance. Scheme workers have current concerns with the Child Support Agencies ability to assist women with payments. A presumption of shared residency would require a new formula to be developed so that children do not live in poverty with mothers dependent on government and child support payments. *How will the Child support Agency deal with fathers making applications for shared residency to minimise payments to the ex-partners?*

Many of the women that seek assistance from domestic violence schemes qualify for government funded housing. *Shared residency most likely will increase the demand on public housing with both parents applying for adequate housing for two full families.*

Consideration needs to be made for children from families with diverse non-English speaking backgrounds and families of mixed cultures. Most cultures recognise the important role that women play in raising children and the level of attachment that mothers have with their children. Splitting women from their children may have enormous impact on women's mental health adding to the already stretched public health resources. *Rebutting shared residency by mothers for their young children can have far reaching consequences in a society that traditionally values the need for maternal nurturing of young children.*

Such changes may impact on the full-time work potential of men who have traditionally linked their identity to their work. Traditionally, male employment is a basis for a 'good male role model' for children. Our experience is that men minimise their hours of employment whilst court is in process and then return to full-time employment. Men who care about their children, acknowledge the importance of the mothers role and generally would rather stay in their employment, to ensure financial security for their children. In families where male control is an issue, often men fight for their rights as fathers and then do not exercise them. *There is a need to consider legislation that will enforce contact once orders are made even within the existing framework.*

Under the Crimes Act 15a, defendants may enter into Apprehended Domestic Violence Orders without admissions. Many women who are in the local courts seeking protection need family court orders. It could be assumed that a presumption of joint residency will result in local court time filled with defended matters and less orders made to protect children from violence in the home when they are living with the perpetrator. *Women would be less likely to seek protection from police, choosing to stay in the family home where they are able to protect their children rather than go through the rigors of the court trying to prove their need and their children's need for protection. Police would be less inclined to take out orders understanding that victims will be less likely to provide sufficient evidence.*

Research has shown that women and children are more at risk when they leave violent relationships. Also, women often do not report domestic violence until the violence or the threat of violence is perpetrated against their children. 3% of Family Court core business is dealing with domestic violence or child abuse matters. Often matters go to the Family Court without any investigation of the violence. *Such matters should be properly investigated adopting existing successful models used in other States such as 'Project Magellan' before **any** contact orders are made.*

Increasing the time that fathers spend with their children does not translate into providing good role models in their lives. No legislation is going to change the behaviour of violent men or men who seek to control their ex-partners via their children. A presumption of shared residency is not in the child's best interest and is more likely to meet the needs of strong 'fathers groups' who feel if they must contribute financially therefore they must 'own' their children and control where their money is spent. *Policy makers should invest their time and resources in ensuring that family matters are dealt with more expediently with the **child's** best interest and safety a real priority not the interest of the more powerful parent.*