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Secretary:



ASCA

ASCA (Advocates for Survivors of Child abuse) is concerned about the proposed amendment to the Family Law Act. We are submitting this paper to the Committee on Family and Community affairs for consideration under the Parliamentary Inquiry into Joint Residence.

ASCA is a national organization that represents the interests of adult survivors of childhood abuse, including not only sexual abuse but also physical and emotional abuse. Many of our members have been victims of domestic violence or subjected to sexual abuse by family members or other carers in a domestic setting. ASCA and its members deal daily with the repercussions of traumatic childhood experiences, which if left untreated can last a lifetime. We believe that the proposed amendments to the Family Law Act would put more of our children at the risk of comparable trauma by creating further opportunities for domestic violence and abuse.

We do not believe that the current law needs to be amended. The existing act already has adequate provision for shared parenting, an arrangement that ASCA believes is only the arrangement of choice in a minority of cases. Currently shared residence is the least common post-separation arrangement. In a 1997 study by Australian Bureau of Statistics, only 3% of children were in 'shared care' arrangements.ⁱ Research undertaken in UK showed that shared care was more likely to be organized to suit the parents than the childⁱⁱ. The proposed amendment over-rides the paramourcy of the 'child's best interests' principle by privileging the rights of parents over that of children. Current provisions of the Family Law Act already include mechanisms for shared residence as a child's right when it is in the child's best interests. A legal presumption of shared residence should not be promoted to suit one or other parent if it puts the child at risk. Abused children don't get a second chance.

There is one problem that has more devastating repercussions than any other matter that ASCA deals with. It involves parents who lose the custody of their child/children to the person who has been accused of abusing them. While often such an accusation cannot be



fully substantiated it does not mean that that abuse did not occur. In by far the majority of cases children do not lie about abuse or make abusive stories up. With particular regard to sexual abuse, 85% occurs in the home.ⁱⁱⁱ In cases of incest, reported to officials, 98% of children's statements are found to be true.^{iv} Were the figures available we believe that the same trends would be seen for other forms of abuse. ASCA has no doubt that in certain situations of shared residence, children would be forced into a situation in which they would be exposed to ongoing abuse, albeit 50% of the time.

Currently, in most States if a parent is abusing a child, the non-abusive parent is faced with one of two options:

- To refuse to leave the offending parent, in which case the State is likely to remove the child from the family or
- To leave the offending parent, for the sake of the child. In such a case the non-offending parent is left to defend their accusations of abuse in the Family Court of Australia.

Cases brought under the Family Law Act are private law cases. Despite the assumption that the State Protection Authority will pursue such a case this rarely happens. The State hardly ever continues in action against a perpetrator, even when substantiated claims have been made to the relevant authorities. Currently the Federal Government offers no formal Child Protection Service. Any accusation becomes a personal one by the non-offending parent, rather than a State accusation. Some State departments (with the responsibility for protecting children) take the view that a 'protective parent' can take action in the Federal Court system. They assume that the child will be protected by denying contact to the perpetrator, so rendering the State's intervention unnecessary. This presumes that the non-offending parent will successfully pursue the case. Many times the non-offending parent is the mother. Being the resident mother of children is a great predictor of poverty in Australia. Research over the past two decades has consistently shown that women are more likely to experience financial hardship following marital dissolution.^v It should be noted that legal aid is often not available to the non-offending parent because legal aid is subject to a means test. Even if the parent in question satisfies the means test, without independent substantiation of their concerns they will not satisfy a merits test. Often cases do not reach court and if they do are not necessarily pursued to an

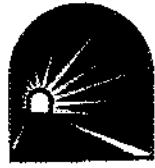


appropriate conclusion that protects the child. Situations of joint residence would see children living with their perpetrators on a regular unsupervised basis.

The child support consequences of joint residence would force single mothers, already amongst the most impoverished group in the community, to plummet further into poverty. This would in turn increase the number of children living in poverty, a factor in perpetuating abusive cycles. In addition the provision of two households would potentially put additional emotional and financial strain on either parent, exacerbating stress and throwing families into cycles of isolation and need, sometimes with the social repercussions of alcohol and drug dependency.

ASCA is concerned that a high percentage of cases appearing before the Family Court involve child abuse. A review of over 700 cases awaiting pre-hearing conferences in the Melbourne registry of the Family Court in 1997 found that 40% of children's cases involved allegations of some form of child abuse.^v Research by Prof. Thea Brown and her colleagues in Melbourne and Canberra found a similar pattern. Their analysis of cases between January 1994 and June 1995 found that one half of all cases, which went to a prehearing conference involved allegations of some form of child abuse.^{vi} In Canberra, 48% percentage of the cases of alleged abuse involved allegations of sexual abuse. Cases of sexual abuse are often complex, requiring detailed affidavits and supporting evidence. The cost of legal representation is often more cumbersome than many private individuals can afford. A legal presumption of joint residence would throw more families into the court system as the non-offending parent fought to block a shared residence arrangement. More would be subjected to increase legal expenses and the court system would become further overloaded.

With regard to domestic violence, a significant body of research shows that there is a high incidence of domestic violence in cases going to the Family Court^{vii} and that violence against women continues after separation. A 2002 study found that of 35 resident mothers, 86% described violence during contact changeover or contact visits.^{viii} In a situation of joint residency the opportunities for violence would be increased. The presumption would force some children to live with violent fathers and mothers to have to regularly negotiate and be in the presence of violent ex-partners. Children who are being sexually abused would be exposed to ongoing abuse at the hands of parental perpetrators.



ASCA

ASCA has several members who have suffered under the current Family Court arrangements. Under a legal presumption of shared residence other families would be forced into arrangements that are detrimental to the children while families already suffering inadequate arrangements would be put at even greater risk and that risk would be ongoing.

ⁱⁱⁱ *An investigation into Paedophilia*. Smith and Chapman 1999

^{iv} See r Weston, 'Changes in Household Income Circumstances', in P McDonald (ed), *Setting Up: Property and Income Distribution on Divorce in Australia*, Australian Institute of Family Studies (1986) 100

^v Alistair Nicholson, 'The Approach of the Family Court of Australia to Child Abuse Matters' paper presented at the 12th International Congress on Child Abuse and Neglect, Auckland, September, 1998

^{vi} Thea Brown, Margarita frederico, Lesley Hewitt and Rosemary Sheehan, 'Child Abuse and the Family Court' (1998) *Trends and Issues in Crime and Criminal Justice* no 91 2-3.

^{vii} Hunter R 'Family Law Case Profiles' Justice Research Center, June 199 at p.186

^{viii} Kaye M, Stubbs J and Tomie J; *Negotiating child residence and contact arrangements against a background of domestic violence*, Working Paper No 4, 2003, Family Law and Social Policy Research Unit, Griffith University, p 36

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