



Domestic Violence Service of Central Queensland

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House of Representatives Standing Committee
on Family and Community Affairs

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Secretary:

Submission to

House of Representatives Standing Committee on Family and Community Affairs
Parliament House
Canberra
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Regarding the Parliamentary Inquiry into Joint Residence Arrangements in the Event of Family Separation.

These are examples of incidents as reported to us by clients

Even though strong allegations had been made of the partner sexually abusing their son and the Dept of Families supporting the allegations, it took years and a lot of money arguing through the Court to get a ruling saying the boy did not have to go to contact visits with the offending father. Even though all along the boy didn't want to go on the visits.

In another similar incident

The woman did not have the money to fight the case even though her son was being allegedly sexually abused by her former partner and the partner convinced the court because he had money "he was in the best position to look after the child." The child has now been taken interstate and the mother believes is still being abused. and she is not able to have contact with her son, and has no resources to take the case back to Court.

No matter what the decision by the Standing Committee the Domestic Violence Service of Central Queensland implores that the safety of the children is seen as the most important overriding factor and that the ability of either party to raise the abuse and participate in the Family Court process fully is paramount.

And where there is a history of domestic violence contact should only occur if a clear case can be made that it is in the best interest of the child.

Case study three - over a seven year period.

Mrs. X came to DVSOCCQ after years of abuse by her husband and she felt it was now starting to affect her children – two boys (7 & 5) and girl (baby). Mrs X applied for a protection Order and was granted one for her husband not to come to her premises. Her husband continued to breach the domestic violence order and was finally jailed on the breaches.

During this time the ex-couple was also trying to negotiate a Parenting Plan as Mrs X felt it was important her children had contact with their father. During informal arrangements the father would continue to abuse mum in front of the children and walk into the house uninvited and on two occasions actually broke into the house.

Mrs X ended up consulting a Solicitor and funding through Legal Aid was granted for a Legal Aid conference, Mrs X had started to notice changes in behavior of the boys after contact with their father and they started calling her "slut, f.....bitch "on their return. So Mrs X asked for supervised contact initially. After the second Legal Aid conference Mrs X was told by her solicitor not to raise the violence and the expectation of supervised contact was too high. Being a small town Mrs X had no other choice in Legal Aid solicitor and took the advice and the violence wasn't raised. As the solicitor put it "this would only make it harder to get an agreement". At the next Legal Aid conference the facilitator advised Mrs X if she didn't settle on any agreement this time he "would recommend she get no further Legal Aid." So Mrs X settle on a standard agreement where her ex-partner had contact every second weekend and half the holidays. The abuse of Mrs X continued but the breaches were hard to prove. She became more and more concerned each time the children came back from contact, especially the boys, as their behavior this was unruly and aggressive. After some time Mrs X asked the solicitor to apply to re-negotiate the order due to the behavior of the boys and was told "be happy with what you've got if you go back you may get less."

As the boys' behavior got worse Mrs X was not prepared to put up with the abuse and the violence from them and agreed the boys could live with their father. Two years down the track the boys are in foster homes, as their father was deemed unsuitable by Dept of Families and until the violence and abuse stops mum is not prepared to have them back in her home permanently.

The cost of this to society will be ongoing.

Not all relationships are abusive and violent but for those that are the presumption 50:50 residency makes the parents interests more important than those of the children and it provides a dangerous tool in the hands of abusive men who wish to control their women partners after separation.

Jordan's (1996) research on the effect of marital separation on men more than ten years after divorce found men still reported strong feelings both of anger at having been 'left' and attachment towards their ex-spouses. "A feature of the follow-up sample respondents, who had been separated from their ex-wife for between 11 to 12 years, was the high number of men who still reported strong feelings and attachments toward their ex-wife. Some 46% still felt angry towards their ex-wife, the same percentage as ten years before. Some 27% of the follow-up sample still spent time thinking about their ex-wife 11 to 12 years after separating."¹

In these circumstances how can fair and reasonable negotiations take place to get an outcome which is in the best interests and safety of the children? When the Family Court statistics show only 5% of cases are determined by Judges.

It has been our experience from the Domestic Violence Service of Central, where we have over 1,000 client related contacts a year that getting to the Family Court is not a reality for

¹ Peter K Jordan *Ten Years on: The effects of separation and divorce on men* Fifth Australian Family Research Conference, Family Research: Pathways to Policy, Brisbane 27-29 November 1996

many women. They may have the resilience, tolerance and funding to participate in one or two Legal Aid Conferences or a Family Court Conference, but due to the lack of Legal Aid assistance and their own lack of wealth or income; they cannot afford to go any further. Thus settle for less than the ideal as in case study three.

Women who have suffered abuse over a number of years or live in rural and remote regions with long distances to travel to the Family or Magistrates Court rarely in our experience become self representing in the Court system and settle very early in the process. A 50:50 presumption would put them at a distinct disadvantage from the start.

If the legal presumption for starting was one of 50:50 residency than many women from abusive and violent relationships would either:

- leave their children with the abusive partner and thus endanger the children further,
- settle for parenting plans which continue to put them and their children at risk
- force women to negotiate with partners whose used power and control in their relationship and will continue to use it after
- choose to continue to stay in the violent and abusive relationship out of fear of losing their children, which in most cases their partners have convinced them will happen. And as research shows us being brought up in violent households is a Child Protection issue.

The proposed presumption overrides "what is in the best interests of the children" as research into child psychology and behavior shows that it is paramount for the children to have a sense of stability and belonging. Being continuously shuffled between houses will not allow this. In fact we see examples of this now in families involved in fly in fly out work where the family is in a continuous state of flux due to different rules, boundaries and routines depending on who is in the household at the time.

In her study to Family Violence in the Family Court Brown found that 47% of men had allegations of abuse against them 40% had DVO's in Melbourne and 33% in Canberra. See Table One on next page.

She concluded

²Considering the above, the fact that partner to partner violence was given as the most common single cause for partnership breakdown, was not surprising. The second most common single cause, arguments, fitted with this. Such reasons for partnership breakdown are not the common causes of breakdown reported in other studies, (Wallerstein and Kelly, 1996, Relationships Australia, 1998), and reinforced the view that these partnerships had special problems. While an attempt to categorise the violence was not really successful, because most of it could not be categorised using the Johnston and Kelly typology, nevertheless, **30% of it did fit the category of episodic male battering. This suggested serious and longstanding family violence problems."**

² **Thea Brown** *Children and Family Violence in the Family Court: Research into Action* - 6th Australian Institute of Family Studies Conference

“Table One: Percentage Incidence of Partner to Partner Violence Among Families at Melbourne and Canberra

| <i>Violence</i> | <i>Males: Melbourne</i> | <i>Males: Canberra</i> | <i>Females: Melbourne</i> | <i>Females: Canberra</i> |
|---------------------|-----------------------------|----------------------------|-------------------------------|------------------------------|
| Allegations Against | 47% | unknown | 9.3% | unknown |
| DVO's Against | 40% | 33% | 7.3% | 7% |

In these incidents where violence and abuse has also been a factor, we know as perpetrators of violence lose power and control, the harder and more determined they will become to regain it. Thus, as the violence and abuse will continue as a factor, then the Police, Courts, Health and Community Service systems will also be put under pressure. To break this cycle victims and their children need to be allowed to have arrangements that decrease the abuse and danger not increase it.

Thus, the Domestic Violence Service of Central Queensland is opposed to a legal presumption of joint residence for separating families. Such a presumption offers a simplistic, 'one-size-fits-all' solution to families who are complex, have a multitude of needs and patterns and operate in a variety of ways.

Other concerns around the presumption include:

- In rural and isolated areas for separate parents to find employment, education opportunities or in some cases even housing, then they often need to be able to move from where their initial residency was. To prevent this from happening so the child could have joint contact would lead, in many situations, to a worse situation for the children and the families.
- In the rural areas of Central Queensland the idea that a child can swap between homes when these homes may be hundreds of kilometers apart would only lead to further confusion and instability for the child. It would also add an additional financial burden for transporting the children, two lots of school fees and all the associated expenses of raising and providing for children.
- It would also lead to 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, many people will self-represent, increasing delays and stretching the resources of the Family Court and Federal Magistrates Service.
- It may also lead parties to re-open finalised cases in the belief that a joint residence presumption law will bring them a different outcome. Community agencies are already reporting contact from women whose former partners are threatening to take them to court, or back to court, to get new arrangements for the children.

- The presumption also negates "in the best interest of the child and taking into account children's wishes.
- The presumption also reduces family's abilities to make their own decisions about parenting arrangements depending on children's needs, parent capacities, geographical distance between them, parent's work patterns, finances and housing.
- The child support consequences will also 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.

For some families shared care arrangements can and do work but only when:

- people live geographically close,
- if parents are flexible, cooperative and can negotiate,
- the level of animosity is low or non-existent

Often, however these are often the very reasons why they separated and divorced in the first place.

Comments on current arrangements

"The current systems is based on where parents cannot agree on arrangements for the children and the Family Court has to decide it is bound by law to look at the **best interests of the child** as the **paramount consideration**."³

The Family Law Act also sets out four clear principles about parenting of children namely:

- children have a right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together; and
- children have a right of contact, on a regular basis, with both their parents, and with other people significant to their care, welfare and development; and
- parents share duties and responsibilities concerning the care, welfare and development of their children; and
- parents should agree about the future parenting of their children.⁴

The Court must also consider a number of other factors⁵ such as

- any expressed wishes of the children
- the nature of the relationship of the child with each parent
- the likely effect of any changes in the child's circumstances
- the practical difficulty and expense of a child having contact with a parent
- the capacity of each parent to provide for the needs of the child
- the child's maturity, sex and background, including issues of race, culture and religion
- the need to protect the child from physical or psychological harm
- the attitude to the child and to the responsibilities of parenthood
- any family violence which has occurred."

³ see section 65E of the FLA

⁴ see section 60B(2) of the FLA

⁵ see section 68F of the FLA

In theory the consideration of all the above matters, one would envisage lead to successful outcomes for children and their carers. However, we know in reality many women do not raise Family Violence and in fact are advised against doing so by their solicitors so as not to antagonize the former partner to try and get a reasonable outcome before "their money runs out". Legal Aid in Queensland offers limited funding towards Parenting Plans and Parenting Orders, thus many of the difficult issues are not raised.

When examining what other factors should be taken into account in deciding the respective time each parent should spend with their children post separation DVSOCQ believes that where domestic and family violence or child protection issues, such as sexual, physical or psychological abuse or neglect have been indicated then the onus should be on the offending person to prove why they should be granted contact with the child. Thus, working from a child protection focus.

These are examples of incidents as reported to us by clients

In an incident we supported a woman through, even though strong allegations had been made of the partner sexually abusing their son and the Dept of Families supporting the allegations, it took years and a lot of money arguing through the Court to get a ruling saying the boy did not have to go to contact visits with the offending father. Even though all along the boy didn't want to go on the visits.

In another similar incident

The woman did not have the money to fight the case even though her son was being sexually abused by her former partner and the partner convinced the court because he had money "he was in the best position to look after the child. Who has now been taken interstate and the mother believes is still being abused.

In what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents.

Where historically the children have had time living with or close to their grandparents or other carers, relatives or significant others this should be taken into account when looking at whether this contact should continue or possible residency.

Where relationships have been abusive then the grandparents or other significant people often take a larger role in the parenting of the children and a tactic of the perpetrator would be to try and cease this contact or to threaten to, thus bringing greater pressure to bear for the victim to give in to unsatisfactory arrangements or stay with the abuser.

Where both parents are seen to be failing in giving proper care and attention to the children then the role of these significant others is very important.

Is the existing child support formula working fairly for both parents in relation to their care of, and contact with, their children.

DVSOCQ experience is that for many women who have moved out of domestic and family violence situations where power and control are any issue they don't receive child support or when they do then other control measures are tried to be enforced by the ex-partner on them.

"Many women do not receive their child support entitlements

In 2000, a survey conducted of Child Support Agency (CSA) clients revealed that only 28% of payees reported always receiving payments on time, while 40% reported that payment was never received.⁶ The total child support debt grew at an average rate of 7% in the four years to June 2001, to a total of \$670 million.⁷ The age of child support debt increased over this period⁸ and the percentage of payers with child support debts rose from 56% to 74% in 2001.⁹ The older and larger the debt amount, the harder the debt is to recover from payers. The Child Support Agency failed to collect nearly \$770 million in 2000-2001 and the debts written off by the Child Support Agency during this period rose by 27% to \$74 million.^{10 11}

Women often accept this situation so as not to endanger themselves or their children further. It has, also been our experience that except in the most serious cases of abuse the women still want their children to have contact with their father but they don't want this opportunity to become another opportunity for abuse.

Of single parent families, 75% - 85% are headed by single mothers.¹² Being the resident mother of children is still the most likely 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.¹³ In a 1993 study, husbands surveyed three years following their marital breakdown had returned to income levels equivalent to pre-separation while wives' income levels had dropped by 26%.¹⁴ More recent studies have revealed a statistically significant relationship between gender and financial living standards after divorce.¹⁵

⁶ Tammy Wolffs and Leife Shallcross, 'Low Income Parents Paying Child Support: Evaluation of the Introduction of a \$260 Minimum Child Support Assessment' (2000) 57 *Family Matters* 26.

⁷ Australian National Audit Office, *Client Service in the Child Support Agency Follow-up Audit*, Audit Report No 7, 2002-03, 126.

⁸ Australian National Audit Office, *Client Service in the Child Support Agency Follow-up Audit*, Audit Report No 7, 2002-03, 127.

⁹ This can partly be attributed to a legislative change in 1999 which introduced a minimum child support liability of \$260 per annum for all payers unless the liability was assessed as nil.

¹⁰ Attorney General's Department, *Child Support Scheme Facts and Figures 2000-2001*, 2002.

¹¹ (National Network of Women's Legal Services, Briefing Paper - A Legal Presumption of Joint Residence

¹² Australian Bureau of Statistics, *Labour Force Status and Other Characteristics of Families*, Australia, Cat No 6224.0, AGPS, Canberra, 2000.

¹³ See R Weston, 'Changes in Household Income Circumstances', in P McDonald (ed), *Settling Up: Property and Income Distribution on Divorce in Australia*, Australian Institute of Family Studies (1986) 100; R Weston, 'Income Circumstances of Parents and Children: A Longitudinal View', in K Funder, M Harrison and R Weston (eds), *Settling Down: Pathways of Parents After Divorce*, Australian Institute of Family Studies (1993) 135.

¹⁴ *Settling Down: Pathways of Parents After Divorce*, above, note 11 at p 137.

¹⁵ R Weston and B Smyth, 'Financial Living Standards After Divorce' (2000) 55 *Family Matters* 11.

Research has also shown that the degree of financial disadvantage experienced by women post-separation may be exacerbated by a number of factors; spousal violence,¹⁶ division of marital property,¹⁷ lower rates of employment¹⁸ and lower earning capacity¹⁹.

¹⁶ Women experiencing spousal violence were considerably more likely than women who experience no violence to have financially disadvantaged household incomes. Further, studies showed that women experiencing spousal violence are more likely to receive a minority share of property following divorce.: See G Sheehan and B Smyth, 'Spousal Violence and Post-Separation Financial Outcomes' (2000) 14 *Australian Family Law Journal* 102

¹⁷ The financial burden of separation on women who have taken time out of paid work to care for children is not always reflected in a distribution of property that is sufficiently in their favour - M Harrison, K Funder and P McDonald, 'Principles, Practice and Problems in Property and Income Transfers', in K Funder, M Harrison and R Weston (eds), *Settling Down: Pathways of Parents After Divorce*, Australian Institute of Family Studies (1993) 192, 194.

¹⁸ In June 2001, only 21% of female lone parents were employed full-time and many are unemployed, Australian Bureau of Statistics, *Year Book Australia 2002*, Cat No 1301.0, 2002. Further the employment rate of lone mothers with dependant children is considerably below that of couple mothers, Australian Bureau of Statistics, *Labour Force Status and Other Characteristics of Families, Australia*, Cat No. 6224.0, 2000.

¹⁹ Women may have a weaker position in, and attachment to, the labour market, often due to the roles adopted during marriage that can involve substantial costs for their career development. They typically have a lower earning capacity than similarly aged men. See K Funder, 'Work and the Marriage Partnership', in P McDonald (ed), *Settling Up: Property and Income Distribution on Divorce in Australia*, Australian Institute of Family Studies (1986) 65;