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House of Representatives Standing Committee
on Family and Community Affairs

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Committee Secretary
Standing Committee on Family and Community Affairs
Child Custody Arrangements Inquiry
Department of the House of Representatives
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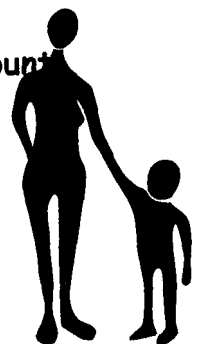
Dear Committee Members

This letter is a submission to the Committee's Child Custody Arrangements Inquiry.

I write on behalf of Dawn House Inc, a community based non-profit organisation that has been providing crisis accommodation, information, advocacy and support to women with children experiencing and escaping domestic violence in Darwin for the last 20 years. This service has expanded in more recent times to offer emergency relief, specialist counselling, community development and training, and community housing.

Over the last two decades thousands of women and children have been clients of this service, and since 2001/2002 almost every woman who seeks support requests assistance with family court matters.

(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

This organisation is opposed to any presumed division of children of separated parents. Shared parenting is currently an option available to separated couples, and those with sound communication skills and a commitment to the welfare of their children sometimes do make these arrangements.

When considering the best interests of the child, safety must be the priority. The Family Court currently considers each case and the needs of children individually and should continue to do so.

However the system does not presently adequately address the presence of violence in relationships. Children are affected differently by exposure to violence depending on their age. Yet, violence does have an impact on all children.

The two resilience factors that lessen and mediate the effects of violence are:

- that the violence stops, and
- that the victim is protected

The community, through our courts, has a responsibility to protect children from violence.

It is of grave concern that the Family Court currently treats spousal abuse as irrelevant to issues of parenting. Witnessing violence toward a person with whom a child has a domestic relationship is a form of psychological abuse. The perpetrator of violence has not only failed to protect the child or children from abuse, but has in fact exposed them to it. This, by definition, is a factor that must be considered relevant to the perpetrator's capacity to parent.

Recent research by Julie Stubbs et al shows that only 3% of interim court orders direct supervised or no contact court orders. Eighteen months later 28% of final orders are no contact or supervised. It is clear

that many children are at risk in the period between interim and final orders¹.

An interesting correlation is that the highest risk of violence, including murder, for women who have left violent partners, is during the eighteen months following separation. Hungry Jacks in Darwin is the favoured 'neutral, public' handover point for contact visits. It is not however 'safe', as many clients of this service can attest.

A presumption of shared parenting will force mothers to have to regularly negotiate with and be in the presence of violent ex-partners. It provides a potentially fatal tool in the hands of abusive men who go to extreme measures to control their former partners. A recent study found that 86% of resident mothers surveyed described violence during contact changeover or contact visits². All too frequently we read newspaper reports of men who shoot dead their former partners and children post separation.

In summary, the position of this service is that:

- A legal presumption of joint residence privileges the rights of parents over the 'child's best interests' principle that is entrenched in the Family Law Act
- It is not always in the best interests of the child to have contact with both parents - some parents are dangerous and damaging to their children.
- Domestic violence can be seen as a specific incident, but should also be recognised as a pattern of behaviour that may amount to abuse, even though some or all of those acts, when viewed in isolation, may appear to be minor or trivial.
- It is imperative that our courts investigate allegations of violence or abuse, not ignore them, and take the findings into account when determining residence and contact orders.

¹ Busche, Dr R. (2003) *Safety First for Children: Continuing the work towards Family Law Reform in Australia* Forum, Gold Coast, 29 July 2003

² Kaye, M., Stubbs, J. & Tomie, J. (2003) *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, p36

- The government should establish and adequately fund a national Child Protection Service for the family law system to assist the courts in the investigation of safety issues where violence or abuse is alleged.
 - The service should also be able to investigate and review the outcomes for children following orders that expose the child to risk of violence, abuse or other harm arising from the orders.
 - Where it is claimed that both parents are violent, a 'primary aggressor' should be identified by the court investigation.
 - Where violence is established on the balance of probabilities, there should be a rebuttable presumption of 'no contact' with the violent party, which would require the person who has used violence to demonstrate how contact would not pose a threat to the safety of the child, or other family members.
 - The abused parent should not be deemed to have caused or allowed abuse of a child.
 - A mandated statutory risk assessment should be incorporated in Family Court Reports to evaluate the likelihood of further violence and potential threat to the child or the child's primary caregiver.
 - In the interests of justice and to prevent further abuse by a violent partner, no litigant in a family court case should be permitted to represent her or himself.
 - Contact arrangements must be safe.
- (ii) **in what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents.**

Current family law provisions enable grandparents to make applications with respect to grandchildren when they cannot make agreements without court intervention, therefore the provisions do not have to be changed.

As a caveat to this statement, the court must listen to allegations of violence or abuse levelled at grandparents, and once again have the

authority to investigate their veracity with the best interests of the child as the fundamental premise.

It also needs to be stated that the parents and siblings of violent perpetrators frequently live in fear, and acquiesce to his directions and demands, including family court applications for contact.


- (b) **whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children**

I have grave concerns that the capacity to pay child support might be linked to contact time with children.

Child support payments can make an important contribution to the cost of raising children. However, they in no way bestow an entitlement on the payer to child contact - it is a responsibility that in itself does not beget rights. Tying child contact and financial outcomes for parents directs focus away from children's needs and interests to dollar outcomes.

Once again, the paramount consideration must be the welfare of the child, not the perceived rights of the parent.

Yours sincerely

A handwritten signature in black ink, appearing to read "Sue Brownlee". The signature is fluid and cursive, with a large initial "S" and "B".

Sue Brownlee
Coordinator