

NATIONAL ABUSE FREE CONTACT CAMPAIGN

NAFCC is a national (and international) coalition of organisations who have formed to advocate on behalf of women and children going through the Family Court system with concerns about domestic violence and child abuse.

Marie Hume
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The Secretary
Senate Legal and Constitutional Affairs Committee
Parliament House ACT 2600

Dear Sir

Please find enclosed a submission from the National Abuse Free Contact Campaign with respect to certain aspects of the Family Law Amendment Bill 2004.

NAFCC would be pleased to support the submission with oral evidence at public hearings.

Please direct any inquiries to the Marie Hume, spokesperson for the National Abuse Free Contact Campaign.

Yours Faithfully

Marie Hume
Spokesperson
National Abuse Free Contact Campaign

Submission from the National Abuse Free Contact Campaign with respect to aspects of the Family Law Amendment Bill 2004

With respect to Rules as to Costs which provides that the defaulting party pays the costs of the non-defaulting party:

Recommendation 4: NAFCC recommends that parents who are non-compliant with orders of the court due to unresolved issues of violence or abuse or due to physical or mental incapacity should not be subjected to paying the costs of the other party.

With respect to the proposed amendments to provide a court with the power to vary, on its own motion, orders relating to children, at a hearing on a contravention application and to clarify the court's power to send parties in contravention proceedings to counselling and post-separation parenting programs.

Recommendation5: NAFCC recommends that the Bill be amended to provide that in hearings for contravention orders in relation to children, where issues of violence or abuse have been raised, that the court have the power to commission intensive expert assessment of the safety of all parties and to vary orders to ensure that the safety of a child and her/his family is the threshold determinant of a child's best interests and that all decisions regarding the child privilege the safety of all parties.

Research on domestic violence

Violence and abuse against women and children is a significant problem within our society. The ABS Women's Safety Survey in 1996 determined that at least 23% of women had experienced domestic or family violence. The 2003 Victorian Family Violence Database upholds this figure. Using the last ABS census figures of 2001 that accounts for 2.2 million women, 1.7 million over the age of 15.

The time around and after separation is most dangerous for women. (Pence 1989, Browne and Williams 1989 as cited in Mullender et al, 1994). The rate was higher (42%) among separated or divorced women when compared with the rate (8%) among currently partnered women.

Single women who have previously been partnered were at highest risk of assault with 42% reporting violence at some time during their relationship. Violence escalates at this time as the abuser recognizes that he is beginning to lose power and control by the separation (McInnes, 2001).

Recent research by the Australian Institute of Family Studies identifies that 66% of marital breakdown involve violence, 33% of which were identified as serious violence (Australian Institute of Family Studies, 2000). Family Court research has identified that 66% of cases proceeding to trial orders involve issues of violence and abuse (Family Court 2003).

Women are more likely to be killed by their current or former partner than by anyone else. In Australia the vast majority of victims of femicide (60%) are killed by their intimate partners in a private residence. (Bagshaw)

Significant precipitators for men who kill their female partners are desertion, termination of a relationship and jealousy.

In the South Australian study mothers stated that their abusive partners used the issue of child contact to continue their harassment after separation and divorce (Bagshaw)

One quarter of Australian kids have witnessed or experienced acts of violence against their mother or stepmother (Indermauer, D., 2000).

The year of age which a woman is most likely to experience family violence are also those that they are most likely to be pregnant and/or have dependent children. More than two thirds of women who experienced violence from a former partner had children in their care at the time.

Current problems in family law for women and children escaping violence and abuse.

The Family Violence and Family Court Research Program conducted by Monash University and the Australian Catholic University Canberra highlighted significant concerns about child protection and the Family Court. This research demonstrated that:

- Child abuse cases comprise the core business of the Family Court;

· Cases most likely to stay within the Family Court system were those with serious and multiple forms of family violence;

· at the mid point of Family Court proceedings (i.e. the pre-hearing conference) they were one-half of the residence and contact cases;

· In at least half of the cases there were no formal investigations into the allegations of child abuse by the State Child Protection services. This is despite the requirement that in cases of child abuse allegations made in Family Court proceedings, the matter be referred to the state child protection services;

· The Family Court itself has no investigatory function. This results in the Family Court basing its decisions on residential and contact arrangements on inadequate and poorly investigated evidence.

The Family Law Council's report on Family Law and Child Protection (2002) also argues that the current system does not adequately address the issue of child protection within the Family Court proceedings and has recommended the establishment of a national child protection system within the Family Court.

Problems with Interim Orders of the Family Court

The University of Sydney and the Family Court conducted research into the Family Law Reform Act of 1995. The Family Law Reform Act contained two significant amendments. Firstly the Reform Act added "the need to ensure safety from family violence" as one of the guiding principles of the Family Law Act. The second principle that was added was, subject to the best interests of children, "children have the right to know, and be cared for by both their parents" and "children have a right to contact, on a regular basis, with both their parents". The research conducted over 1997 and 1998 found that the 'right to contact principle' had been given greater emphasis than the domestic violence aspects of the reform and that this right to contact principle is not necessarily subject to the best interests of the child. Their research suggests that an interim order refusing contact has become more difficult to obtain since the Family Law Reform Act came into operation, despite allegations of domestic violence. The 'right to contact' principle has taken precedence over concerns about children's exposure to domestic violence and child abuse.

The study found that contact between a parent (usually the father) and a child was:

o denied in interim proceedings in only 3.6% of cases under the Reform Act,

o compared with 24.2% of cases determined before the Reform Act commenced.

However, in final determinations, when allegations of domestic violence could be properly explored, contact was denied in substantially the same percentage of cases:

o 22.7% of cases under the Reform Act and

o 20.8% of cases before the Reform Act commenced.

The study found that "interim contact orders are being made in circumstances where contact is not in the child's best interests, and when it may well be unsafe for the child and the resident parent."

The study also found that almost all Family Court judges and registrars believed there had been no increase in the number of cases involving domestic violence allegations since the Reform Act commenced.

The reality is that a claim of domestic violence does not necessarily impact on family law proceedings and that decisions made at interim hearings are based on inadequate information regarding domestic violence and child abuse.

It is apparent from this study that many interim orders made by the Family Court place women and children at increased risk of violence and abuse. Parties who are non-compliant due to fears for their own or their children's safety should not be subject to the proposed provisions.

The Australian Law Reform Commission reported in 1995 that unresolved violence and abuse issues led to the collapse of contact orders in many cases yet these amendments makes no acknowledgement of the need to address the safety needs of families subjected to violence in contravention hearings.

Problems with Consent Orders

Within the Family Law System there is considerable pressure for parties to reach agreements and establish consent orders, despite concerns about children being exposed to ongoing abuse and violence. Such pressure includes:

- Pressure to be involved in mediation, either as part of the requirement of a Court order, or as a requirement for legal aid funding, regardless of concerns regarding violence and abuse. In situations where there has been a history of violence and abuse in relationships mediation has been shown to be an ineffective method of dealing with power imbalances inherent in domestic violence. Inequitable and unfair outcomes can result. (Astor, H. (1991), Alexander R., (1994))

"The power imbalance between the parties often renders the victim of violence an ineffective negotiator against their usual aggressor and the presence of a mediator cannot redress the years of well-rehearsed intimidation and submission" (Rendell, K et al, 2002)

- The use of threats to discontinue legal aid funding if a parent is unwilling to negotiate an agreement.

Pro-contact culture present in mediation conferences. The pro-contact culture which permeates family law decision making impacts on family law mediation conferences. The assumption often is that some contact should be granted and women who wish to prevent or restrict contact are discouraged from this attitude and become aware that any future legal aid funding is unlikely if they do not agree to some contact arrangement. (Rendell et al, 2002)

- Legal advice given to women that they will not be successful in their attempts to prevent or restrict contact and therefore are advised to reach an agreement allowing for contact to occur.

Every Picture Tells a Story - Report on the Inquiry into child custody arrangements in the event of family separation.

The report repeatedly states that the push for mediation and away from the Family Court applies to families except where entrenched conflict, family violence or serious child abuse occur (p.63, 3.72).

However, NAFCC have serious concerns about the identification and screening processes that would be required to ensure all cases involving violence and abuse are identified. Such concerns include:

- discussion of the terms 'entrenched conflict, family violence or serious child abuse'.
- more thorough exploration of how risk will be established, including at what point, by whom, and with what kind of screening tool? It should be noted that all forms of domestic violence and child abuse are notoriously difficult to substantiate. Lack of medical and other forms of evidence are common. Substantiation of non-physical violence is even more difficult to identify and substantiate.
- what kind of screening or assessment tool might be adopted, what kind of training and expertise will be required of intake workers, and what processes exist to safeguard women or children who are unable to disclose abuse.
- At what stage would families undergo screening, and by what service or professionals?

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