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27<sup>th</sup> April 2011

Committee Secretary  
Senate Legal and Constitutional Committees  
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Parliament House  
Canberra ACT 2600

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Dear Committee Secretary,

### **Family Law Legislation Amendment (Family Violence and Other Measures) Bill**

I am writing to express WIRE's support for the changes to the Family Law Act proposed in the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011, and to recommend that further changes be made to the Bill to ensure that the Family Law System does not jeopardise the safety of women and children.

WIRE strongly supports the measures proposed in the Bill to provide for women and children escaping family violence; it is WIRE's view that the safety of children and their primary carer (usually the mother) should be at the forefront of all Family Court policy, procedure and practice.

In particular, WIRE supports the following proposed revisions:

- The broadening of the definition of family violence.
- The broadening of the definition of child abuse to include witnessing family violence.
- The removal of the "facilitation" aspect of the "friendly parent provision."

#### ***Broadening the definition of family violence***

WIRE supports the broadening of the definition of "family violence" to include elements of coercion and control; that is, WIRE considers family violence to be constituted variously by emotional abuse, financial abuse, sexual abuse, and physical abuse and intimidation. Each of these forms of abuse constitutive of family violence can have devastating effects on a victim/survivor's mental and physical health, which can reverberate negatively throughout her life and the lives of her children.

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Many women contact WIRE expressing great distress because the Family Law System has not recognised that their experience of emotional abuse and physical intimidation constitutes family violence; sometimes they are told by legal representatives not to mention the abuse at all, and at other times the abuse is overlooked by the Family Court because it cannot be substantiated.

For example, a woman contacted WIRE suffering from Post-Traumatic Stress Disorder brought about by her ex-husband's emotional abuse and physical intimidation of her and her two young children; she was extremely distressed because the Family Court had disregarded her experience of abuse and ordered unsupervised overnight contact to begin the following weekend. The woman was terrified that the children would be subject to her ex-partner's abuse, and that they would suffer long-term psychological damage, just as she herself was suffering. She said that the whole idea of leaving her ex-husband was to protect her children, and she felt as if the Family Court was sanctioning the abuse of her children.

### ***Broadening the definition of child abuse***

WIRE supports the broadening of the definition of child abuse to include exposure to violence. A sentiment that we often hear at WIRE is that although a man may abuse his wife/partner, he is still a good father. WIRE objects to this sentiment, and considers men who perpetrate family violence by definition to be damaging fathers.

For example, a woman contacted WIRE concerned that her son was having emotional outbursts and physically assaulting her on return from Family Court-ordered contact visits with his father. She said that her son's father often yelled at her during contact handovers, sometimes gesturing to hit her but stopping just before contact with her face, and preventing the child from embracing her. When the mother expressed in the Family Court her concern about the effect on her son of the father's abuse of her, the magistrate said that it was normal for a child to "let off steam" at the end of a contact visit.

### ***The removal of the "facilitation" aspects of the "friendly parent provision"***

WIRE supports the removal of the "facilitation" aspects of the "friendly parent provision." WIRE supports mothers who wish to limit contact with their children's fathers owing to a history of family violence. That is, the "facilitation" aspects of the "friendly parent provision" places a women escaping family violence in an impossible position; she can either protect her children by limiting contact with the perpetrator and thereby go against the provision, or she can heed the provision and encourage her children to have contact with the perpetrator at the expense of their safety. In short, WIRE supports the abolition of the popular family law notion of the "no-contact-mother;" mothers have good reason for limiting their children's contact with fathers who perpetrate family violence.

For example, a woman who contacted WIRE was thinking about separating from her abusive partner; she was extremely worried about the impact of her partner's behaviour on her baby girl, and felt like her baby was not physically or emotionally safe with the father. When the woman sought legal advice she was astonished to discover that applying for a "no contact order" is frowned upon by the Family Court, and that it would be her responsibility to facilitate contact between baby and father in the event of a separation for fear of being seen as a "no-contact mother." This led the woman to decide not to separate from her abusive partner; that is, the woman would rather live with abuse than have her baby spend time alone with the father.

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### ***Further changes that are needed***

WIRE considers that a number of further changes are needed to better protect the safety of women and children in the Family Law System. In particular, WIRE recommends that:

- The safety of children and their primary carers (usually mothers) should be prioritised above all else, including considerations of shared parental responsibility and time-spent arrangements.
- The Act should make clear that exposure to family violence is a form of family violence.
- The Act should protect women and children from ex-partners/fathers who use the Family Court System to perpetrate further abuse, with particular attention paid to emotional and financial abuse.
- The Act should protect the safety of the primary carer (usually the mother) because this works to protect children from further psychological and physical damage.

### ***Conclusion***

In conclusion, I have suggested that WIRE strongly supports the proposed changes to the Family Law Act contained in the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011. It is WIRE's experience that the current Family Law System is not protecting women and children from family violence, and, indeed, functions often to place women and children in a position whereby they are subject to further abuse.

Yours sincerely,

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