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Sent: Thursday, 21 July 2005 12:03 PM

To: Committee, LACA (REPS)

Cc: mchume; NCSMC

Dear Legal and Constitutional Affairs Committee, At the hearings in Melbourne on July 20 I undertook to Kay Hull MHR to identify the section of the Family Law Act 1975 which defines the grounds under which a person may have a reasonable excuse for contravening an order. See below.

Regards Elspeth McInnes, National Council of Single Mothers and their Children.
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FAMILY LAW ACT 1975

- SECT 70NE

Meaning of *reasonable excuse for contravening an order*

Submission No. 20.1
Date Received.....

- (1)

The circumstances in which a person may be taken to have had, for the purposes of this Division, a *reasonable excuse for contravening* an order under this Act affecting children include, but are not limited to, the circumstances set out in subsections (1A), (2), (3) and (4).
- (1A)

A person (the *respondent*) is taken to have had a *reasonable excuse for contravening* an order under this Act affecting children if:

 - (a) the respondent contravened the order because, or substantially because, he or she did not, at the time of the contravention, understand the obligations imposed by the order on the person who was bound by it; and
 - (b) the court is satisfied that the respondent ought to be excused in respect of the contravention.
- (1B)

If a court decides that a person had a reasonable excuse for contravening an order under this Act for the reason referred to in paragraph (1A)(a), it is the duty of the court to explain to the person, in language likely to be readily understood by the person, the obligations imposed on him or her by the order and the consequences that may follow if he or she again contravenes the order.
- (2)

A person (the *respondent*) is taken to have had a reasonable excuse for contravening a residence order in a way that resulted in a child not living with a person in whose favour the order was made if:

 - (a) the respondent believed on reasonable grounds that the actions constituting the contravention were necessary to protect the health or safety of a person (including the respondent or the child); and
 - (b) the period during which, because of the contravention, the child did not live with the person in whose favour the order was made was not longer than was necessary to protect the health or safety of the person referred to in paragraph (a).
- (3)

A person (the *respondent*) is taken to have had a reasonable excuse for contravening a contact order in a way that resulted in a person and a child being deprived of contact they were supposed to have had under the order if:

 - (a) the respondent believed on reasonable grounds that the deprivation of contact was necessary to protect the health or safety of a person (including the respondent or the child); and
 - (b) the deprivation of contact was not longer than was necessary to protect the health or safety of the person referred to in paragraph (a).
- (4)

A person (the *respondent*) is taken to have had a reasonable excuse for contravening a specific issues order by acting contrary to section 65P if:

- (a) the respondent believed on reasonable grounds that the action constituting the contravention was necessary to protect the health or safety of a person (including the respondent or the child); and
- (b) the period during which, because of that action, a person in whose favour the order was made was hindered in or prevented from discharging responsibilities under the order was not for longer than was necessary to protect the health or safety of the person referred to in paragraph (a).

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