



**Men's  
Referral  
Service**

A service of NTV

Service hours: 12 Midday to 9pm Monday to Friday  
Service line: 9428 2899 (Metro Melbourne)  
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**NTV - NO TO VIOLENCE**

BY: LACA

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Submission No. 11  
Date Received

Committee Secretary  
House of Representatives Standing Committee on Legal and Constitutional  
Affairs  
Parliament House  
CANBERRA ACT 2600

Submission No.  
Date Received

Wednesday, July 06, 2005

Dear Secretary

Re: exposure draft Bill and explanatory memorandum for amendments to the Family Law Act 1975 in relation to proceedings concerning children.

NTV – No To Violence, the Male Family Violence Prevention Association, is the Victorian statewide peak body of organisations and individuals working with men to end their violence and abuse against family members. NTV members come from a wide range of professional and community backgrounds and work in a range of settings including government, community based settings as well as private practice.

Activities of members include providing male family violence men's behaviour change programs, counselling services to men and their families, as well as educational activities within the broader community directed at preventing male family violence.

NTV provides a statewide male family violence telephone counselling, information and referral service – the Men's Referral Service. The Men's Referral Service operates as the central point of contact for men in Victoria who are making their first moves towards taking responsibility for their violent and abusive behaviour. The service also receives calls from women seeking assistance on behalf of their partners, male family members or friends, as well as from agencies seeking assistance for their male clients.

**Response to the Bill**

In previous correspondence and consultation with Family Court staff we have outlined our concerns regarding proposed changes to the Family Law System and the need to ensure the safety of women and children, and prevention of ongoing violence and abuse following separation.

We acknowledge that various pressure groups, including men's rights and fathers' rights organisations have influenced the Government in raising the issue of child access. However we are most concerned that much of this influence is not based on research or expert insight. While it is often claimed that the Family

Court is inherently biased towards men, that women regularly make false claims about past violence and abuse, and that family violence is either contained, non-existent or does not affect children, all credible research proves otherwise.

### **Prevalence of Family Violence in Australia**

One in five Australian women reporting being subject to family violence at some time in their adult lives.<sup>1</sup>

Evidence demonstrates that women are less likely to disclose, less likely to report to the police, less likely to go to court, less likely to seek support and less likely to name the act as violence.<sup>2</sup>

This is due to a number of factors, including fear of reprisal, the shame and secrecy surrounding this type of violence, women's ongoing economic or social dependence on a male partner, the trivialisation of intimate partner violence and women's belief or fear that they may not be taken seriously.<sup>3</sup>

Data from Women's Safety Australia indicates that one in five Australian women identified at least one experience of physical or sexual violence by a current or former partner since the age of 15. Specifically, that almost 195,000 or 2.8 per cent of women had experienced recent physical or sexual violence, and over one million or 17.1 per cent of women had experienced past physical or sexual violence.<sup>4</sup>

### **False allegations of violence or abuse**

In our experience in working with men who use violence towards family members, and women who experience violence, it is difficult, if not impossible, to 'prove' violence and abuse using legal frameworks and guidelines. As we are plainly aware, violence and abuse takes many forms and is seated in the context of men's capacity, and sometimes need to exert power and control over family members. Furthermore, men who use violence, or women who experience violence, often do not recognise the experience as violence, or even illegal.

Women are also often under enormous pressure not to report any past incidents of violence due to the threat of retribution. Many men we have worked with have threatened their partner, children or themselves with further violence or death if the violence is reported, or the women leave the relationship. As research has shown, less than 20 per cent of women exposed to violence report to authorities.<sup>5</sup>

Therefore, in this context, women will often be faced with the situation where they are fearful of further violence if they report it, and of having costs awarded against them if it cannot be proven.

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<sup>1</sup> *Women's Safety Australia*, Catalogue No. 4128.0, Australian Bureau of Statistics, Canberra.

<sup>2</sup> Heenan, M. & Astbury, J. (2004). *The Prevalence and Health Effects of Intimate Partner Violence*, Presentation to the World Conference on Health Promotion and Health Education 2004.

<sup>3</sup> *World Report on Violence and Health*. World Health Organization, Geneva, and *A Policy Framework: A Co-ordinated Approach to Reducing Violence Against Women*, Women's Safety Strategy, Office of Women's Policy, Victorian Government.

<sup>4</sup> *Women's Safety Australia*, Catalogue No. 4128.0, Australian Bureau of Statistics, Canberra.

<sup>5</sup> *A Policy Framework: A Co-ordinated Approach to Reducing Violence Against Women*, Women's Safety Strategy, Office of Women's Policy, Victorian Government, 2002.

It is difficult to prove allegations of violence and child abuse, especially, given the hidden nature of family violence, as there are often no other witnesses to such abuse and no medical or police reports. We therefore have significant concerns that the Government's proposals take a very punitive approach to women who raise such allegations in the separation process.

Given the difficulty of proving allegations of abuse and violence, the proposed reform of the courts being "able to impose cost orders against a parent who it finds has falsely alleged violence or child abuse to avoid the dispute resolution process"<sup>6</sup> creates a significant obstacle to a woman raising concerns about violence and abuse under the threat of such a punitive measure.

The proposal that "where there has been more than one deliberate and intentional breach of orders, the court must consider changing the parenting order in relation to which parent the child lives with and with whom the child spends time"<sup>7</sup> is likely to impact heavily on the capacity for parents to protect their children from ongoing violence and abuse. Given that women are not likely to report violence, less likely to be believed and experience ongoing threats, the only option available to them is to shelter her children from their violent father.

We note that the report "every picture tells a story" recommends that an investigative body be set up to "investigate allegations of violence and child abuse in a timely and credible manner...", however we are unaware of any proposed action that the Government intends to take in regard to this recommendation, and therefore are seeking clarification of the Government's intentions in regard to the protection of women and children from violence and abuse within the family law system.

### **Family Relationship Centres**

We hold considerable concerns that the Government's appears to be directing funds to the establishment of Family Relationship Centres thus focusing on those separated parents who tend to settle disputes anyway. We are concerned that the Government has made no announcements of how it plans to address the considerable barriers to women and children achieving safety through the family law system. It would appear that the Government is ignoring the area of greatest critical need – the safety of women and children from violence and abuse. The design of the FRCs shows an inherent lack of understanding and insight regarding family violence. No To Violence asserts that women should never be forced to confront a former partner who has used violence and abuse towards her. We also assert that only highly trained professionals in the area of family violence prevention are adequately skilled to recognise and respond affectively to violence within families.

### **Shared Parental Responsibility**

While NTV supports the good intentions of separating parents who are able to cooperate and agree to provide safe care for their child/ren, this provision will not address the risk of increased and prolonged entrenched conflict and distress between parties to the detriment of children's well-being. In short, the issue of

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<sup>6</sup> A New Approach to the Family Law: Implementation of Reforms: Discussion Paper, 10 November 2004.

<sup>7</sup> A New Approach to the Family Law: Implementation of Reforms: Discussion Paper, 10 November 2004.

women's and children's safety has not been addressed, while it has not been acknowledged that a parent who has used violence towards family members should not have an inherent right to associate with his children. The Government must acknowledge the primacy of human rights to safety in the definition of the child's rights.

### **Family Dispute Resolution (FDR)**

NTV notes that there is no detail about how the Court will determine what are 'reasonable grounds' to believe that abuse or violence has occurred or may occur, or who will ultimately decide or provide evidence and support. As noted, violence or abuse often occur in private, are under-reported and often minimised or denied. The possible increased requirements to document or prove violence or abuse creates risks that women will be discouraged from disclosing violence and abuse and/or that matters will be inappropriately forced into FDR processes.

Services that provide FDR will also play a role in screening for violence in families. There is evidence from research and past experience that screening is not successful or effective in preventing further violence.

A further problem is that the court's current processes routinely expose adults and children to continuing risks of violence and abuse. The Family Law Council has highlighted this in its reports on Child protection (2002) and letter of advice on Family Violence (2004). There is an annual tally of mothers and children killed by men who used the opportunity of child contact to kill their child/ren and sometimes mothers and other family members.

There is no capacity of individuals to protect themselves from death or injury arising from federal court orders requiring them to see or live with a person who was established on 'reasonable grounds' as violent or abusive. Therefore there should be a statutory compensation scheme established for surviving dependents of murdered parents or children, and living adults and children who suffer serious physical or psychological harm from another party as a result of court orders.

NTV believes that a sworn statement by a party that violence or abuse has occurred should be sufficient to establish 'reasonable grounds' to believe that violence or abuse has occurred or may occur.

An additional presumption of human rights to safety should be expressed, providing that the court specifically has responsibility to ensure that its orders do not expose parties or children to actual or threatened harm. The court's primary duty is to the safety of all respondents, not the perceived need to uphold the rights of parents in accessing children.

### **Presumption of Joint Parental Responsibility**

NTV asserts that there should be no presumption of joint parental responsibility, and consideration of parental responsibility should rest on each child's unique circumstances. All decisions must be taken in acknowledgement of the best interests and wishes of the child, with the issue of past experiences of violence or abuse to preclude fathers from residency or unsupervised access rights.

## **Substantial Time with Each Parent**

There should be no assumption that children should spend substantial time with each parent and the circumstances of each child should be taken into account in determining her/his best interests. All children whose parents have a dispute about parenting matters must have opportunity to express their views and have those views taken into account by Advisers or the Court in developing a parenting plan or making an order. Where children are pre-verbal, child development research evidence should be used to inform outcomes supporting children's healthy emotional and social development.

Children should have a right to reasonable continuity of living circumstances. That a range of indicators of 'practicability' need to be developed and considered in terms of the child's experience of the plan/order. Children should be protected from plans/orders which impose a regime of long travel times on the child, disregard the need for secure 'attachment' for healthy infant development, prevent or inhibit breastfeeding the child or impose medical risks to the child (such as when the child has a serious illness or disability which requires attentive and continuing expert care). Consideration must also be given when there is a potential to impose unreasonably high financial burdens on either parent, prevent or inhibit children from participating in regular recreation activities, interrupt/change children's place of education or prevent/inhibit children from spending time and participating in family events with other family members.

## **Parenting Plans**

NTV endorses supporting parents to agree to processes for consultation and for changing plans where this is possible. It is again concerning that there is no systematic attempt to include children in the determination of their lives through either parenting plans or orders.

There is also a need for children to be able to actively indicate if they experience significant distress arising from the plan or order. Where the terms of the plan/order provide for specific purposes of outcome for the child, there should be a review mechanism to check if the anticipated outcomes have actually been met and if there are any undesirable unintended consequences arising from the plan/order.

There should be provision for the review of a plan/order with respect to how it is working for the child. Where children experience significant emotional or behavioural or physical distress arising from the terms of the plan/order, there should be opportunity for systematic review and changes which assist the child's well-being.

## **Best Interests of the Child**

Despite the statement about the need to protect the child, the amendments collectively undermine the existing inadequate protections for children and adults from violence and harm in the family law system. The need to protect the child from violence is represented as subordinate to the child's 'benefit' from a meaningful relationship with both parents. These should be reversed. When a

child is murdered by a parent there is no opportunity for a meaningful relationship with anyone. Safety should come first.

The safety of the child and the child's family should be the first threshold condition of meeting a child's best interests. All considerations of a child's best interests by Advisers and the courts should work systematically through the indicators in this section of the Act.

The 'friendly parent' provision should be scrapped or at least enable protective parents to seek to protect the child without such actions being used as an argument to remove the child from their care. Where there is found to be 'reasonable grounds' of the past or current context of violence and abuse the decision-making process should focus on preventing, reducing and managing risks of harm. Courts should be required to make risk assessment the central feature of parenting disputes where domestic violence or child abuse has been present. They include the nature and seriousness of the violence; how recently and frequently such violence has occurred; the likelihood of further violence; the physical or emotional harm caused to the child by the violence; the opinions of the other party and the child as to safety; and any steps the violent party has taken to prevent further violence occurring. The occurrence of such violence should be the central issue of the court's initial inquiry and the assessment of the risk of further violence occurring should determine the shape of the parenting order.

### **Conclusion**

NTV insists that any responses to separating couples must take into account expert advice and direction from a range of helping professionals, but most importantly, family violence prevention workers and advocates.

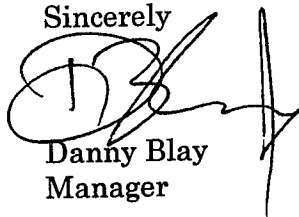
There is conclusive evidence demonstrating that violence within families is endemic, that it impacts detrimentally on children as well as women, that men are overwhelmingly responsible for the violence and that violence is an issue that is prevalent in most Family Court hearings.

Appealing men regarding their desires to have increased rights and access to children is not in the best interests of children when violence is apparent. Instead, the Family Court must become more proactive in challenging men to take responsibility for their use of violence and abuse and undertake a process of change.

Family Violence experts must play an active role in ensuring safety and providing training and advice regarding the development and implementation of new or amended programs and procedures involving separating couples.

I look forward to your reply.

Sincerely



Danny Blay  
Manager