NATIONAL NETWORK OF WOMEN'S LEGAL SERVICES
SUPPLEMENTARY SUBMISSION

TO THE STANDING COMMITTEE ON LEGAL & CONSTITUTIONAL AFFAIRS INQUIRY INTO EXPOSURE DRAFT OF THE *FAMILY LAW AMENDMENT (SHARED PARENTAL RESPONSIBILITY) BILL* 2005

MATTERS ARISING FROM INQUIRY HEARING ON 21 JULY 2005

This supplementary submission addresses issues arising from the Standing Committee on Legal and Constitutional Affairs Hearing on 21 July 2005, at which Ms Katrina Finn and Ms Joanna Fletcher of the National Network of Women's Legal Services (NNWLS) gave evidence on behalf of the National Association of Community Legal Centres.

QUESTIONS ON NOTICE

Amending s60B(1)(b)

Mrs Hull asked (LCA53 Thursday 21 July 2005) whether amending s60B(1)(b) by adding the word 'safety' would address our concerns about the prioritising of contact over safety. S60B(1)(b) would then read:

'(1) The objects of this Part are:

...

(b) to ensure that parents fulfil their duties, and meet their responsibilities, concerning the care, **safety**, welfare and development of their children.'

As indicated in our written submission and our oral evidence, the NNWLS believes that clear changes to Part VII of the *Family Law Act* are necessary to ensure that family members are protected from violence and abuse. In its current form we do not believe that the Exposure Draft does this for the reasons set out in detail in our written submission. Indeed we believe that, as currently drafted, the Exposure Draft risks further promoting contact over safety.

In our view, merely the adding the word 'safety' to s60B(1)(b) will not be sufficient to address the problems we have highlighted with the current system or the problems potentially created by the new provisions in the Exposure Draft. This is because placing the word 'safety' in s60B(1)(b) limits consideration of safety to 'parents' duties' to ensure safety rather than a right to safety or a requirement to ensure safety more generally. It also tends to obscure the reference to safety in a paragraph which deals with a range of other issues. This is particularly notable when compared with the prominence that is proposed to be given to the object of ensuring that 'children have the benefit of both of their parents having a meaningful involvement in their lives...' (s60B(1)(c)). We reiterate the recommendation made in our primary submission, which we extract below for ease of reference:

NNWLS Recommendation 1

That s60B(1)(c) not be introduced.

Alternatively, at a minimum, that s60B(1)(c) be redrafted by removing the reference to 'maximum extent' and to focus more clearly on children's rights (eg wording similar to that proposed for s68F(1A)(a) is preferable)

We emphasise that our concerns about the prioritizing of contact over safety reflect a belief that, having regard to the ample evidence on the negative effects on children of being exposed to abuse either directly or by witnessing the abuse of their parent, to truly promote a *child's best interests* safety must be given top priority in decision-making.

Applying s60KI(3) to the whole community

Mr Cadman asked (LCA55 Thursday 21 July 2005) whether this provision (which specifically relates to Aboriginal and Torres Strait Islander children) should be applied to the whole community to enable courts to receive transcripts and evidence from the same or other courts to allow them to draw factual evidence on violence. The NNWLS would certainly welcome a provision enabling courts to receive transcripts etc for this purpose. It is a constant source of frustration and additional trauma to victims of violence that they are required to re-prove their allegations in different courts.

However, we note that the current s60KI(3) appears to be limited to allowing courts to receive evidence 'for the purpose of s61F' – i.e. to enable courts to have access to material to assist it in understanding the 'kinship obligations, and child-rearing practices, of Aboriginal or Torres Strait Islander culture that are relevant to the child'. The rationale for the current provision therefore appears to be directed at different concerns and it may well therefore be necessary to create a completely new provision if it is to be directed towards admitting evidence of violence in cases relating to children of any background. It is possible that section 60KG may assist with this. However, we recommend that the Committee seek advice from the Attorney-General's Department on this issue.

OTHER ISSUES

Making law for 'normal' cases

We attempted to highlight in our primary submission and in our evidence to the committee, the risks inherent in making law for 'normal' cases. This can lead to consequences that have not been considered and are unintended for 'other' cases, notably cases where there has been violence or abuse. Separating families in which there has been violence or abuse make up a significant minority of all separating families and are over-represented in the family law system. These are the very cases in which the terms of the legislation have the greatest impact as they are more likely to fall to judicial decision, rather than agreements being negotiated. It is imperative that universally applied legal frameworks protect the most vulnerable people. As we have indicated, we do not believe that the Exposure Draft as it currently stands does this.

Withholding of contact as a precipitate of violence

Mr Turnbull asked us whether depriving parents of contact can lead to violence (LCA56, Thursday 21 July 2005). We would like to clarify our response to that question. The hallmarks of domestic violence are the use of violence as a tool of power and control. Any number of issues can be pointed to as the 'spark' for domestic violence – dinner being put on the table 10 minutes late, children being sent to contact with the 'wrong' colour socks on, a look, a word, almost anything. Ultimately responding with violence is a choice made by the perpetrator of that violence and it is that choice to respond with violence that is the 'cause' of the violence. It is notable that many perpetrators of domestic assaults do not 'lose control' in other contexts such as when they are involved in disagreements with friends or at work. One of the major risk factors for increased violence is separation – but we do not say that a woman should not leave a violent relationship because that will lead to more violence. Nor do we say that a woman should not put dinner on the table 10 minutes late because that will lead to violence. Withholding of contact may well create anxiety in the parent who is not seeing their child but it will only 'lead to' violence if that parent chooses to respond with violence.

S68F(2)(ba)

We would like to highlight to the Committee the issues we have raised in our primary submission (page 16) about the proposed introduction of s68F(2)(ba). This paragraph requires a court to consider in determining the best interests of the child 'the willingness and ability of each of the child's parents to facilitate, and encourage, a close and continuing relationship between the child and the other parent.' Parents who are concerned about violence or abuse and seek to protect their children in a way that is consistent with the new s68F(1A)(b) ('the need to protect the child from physical or psychological harm') will, by definition, be the very parents who are likely to be reluctant to facilitate a relationship with the other parent. We are very concerned that the provision s68F(2)(ba) may further undermine protection from violence in the legislation.

Rights to contact

There is a factual error due to the use of an incorrect word by Ms Fletcher on page 55 of the transcript of the hearing on 21 July 2005. The third sentence on that page should read:

"At the same time, they put in the principles rights to **contact** that had not appeared there previously."

We are seeking to have that corrected in the transcript and hope that the error would have been readily apparent to the Committee in any event from the rest of our evidence and our primary submission.

NATIONAL NETWORK OF WOMEN'S LEGAL SERVICES
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