07 5576 1270

Submission No. 21

Date Received

RECEIVED
15 JUL 2005
BY: LACA

National Coalition of Mothers Against CHild abuse

NAT MACH

c/o PO Box 5125
West End
QLD 4101

Submission to the exposure draft of the Family Law Amendment Bill 2005.

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

Dear Secretariat,
Thank you for the opportunity to express our views regarding the exposure draft to the Family Law Act Amendment Bill 2005.
We look forward to your acknowledgement in receipt of our submission.

Yours Sincerely,

Patricia Merkin;
Sandra Battersby;
Ann Sparks.

On behalf of the members of the National Coalition of Mothers Against CHild abuse.

On June 21st, a report card on the Federal Government's Industrial Relations Policy proposed changes was presented by 17 of Australia's leading academic researchers in the field of industrial relations and labour market issues.
As stated in the report card:
"Overview
There are at least four critical labour market challenges facing Australians today, such as:

- Labour and skill shortages exacerbated by an ageing population
- The productivity slow-down
- Work-family tensions
- The growth of low-paid, precarious employment

On all the evidence available from this wealth of research, there is simply no reason to believe that the Federal Government's proposed changes will do anything to address these complex economic and social problems. The government's proposals will:

- Undermine people's rights at work
- Deliver a flexibility that in most cases is one way, favouring employers
- Do –at best- nothing to address work-family issues
- Have no direct impact on productivity
- Disadvantage the individuals and groups already most marginalized in Australian society."

They have come to these conclusions because:
"As independent specialists in industrial relations and labour market issues, it is our view that industrial policies should be informed and led by research and evidence. Accordingly, we have pooled our expertise to review the actual evidence- as opposed to spin, speculation and anecdote – about the impact on Australian workers and workplaces of the policies introduced by the Howard government."

In very much the same way, researchers have for some time produced extensive evidence that the family law reforms initiated since the 1995 Law Reform Act have been detrimental to children and mothers who have left a domestic violence household, and that the outcomes have been serious to their safety and well being. These reforms were not based on actual evidence for the need to address a definable problem in the legislation, but

more as the result of the lobbying by the men's rights activists. The resulting incidents of abuse and deaths of mothers and their children on court ordered contact have been overlooked in favour of giving heed to the highly emotive anecdotal, intensive lobbying by the men's rights activists. The irony is that these seem to represent the sector of Australian society that are most likely litigate and least likely to be able to be in a co-operative parental relationship after separation. We contend that it is because they are more likely to be the men that use violence in their relationships.

The following are excerpts from the researchers to substantiate our assertions.

The Family Law Reform Act 1995: the First Three Years; Rhoades, Graycar, Harrison, December 2000, ISBN 0-646-40886-0

- ...the shared parenting concept is totally at odds with the types of parents who litigate. (p. 1)
- Our research suggests that the reforms have created greater scope for an abusive non-resident parent to harass or interfere in the life of the child's primary care-giver by challenging her decisions and choices. As one counsellor noted, the concept of ongoing parental responsibility has become the new 'tool of control' for abusive non-resident parents. (p.2)

- Dewar and Parker have described specific issues orders as a 'two-edged sword', allowing more flexibility in negotiations over children and enabling agreements to be drafted in an understanding language, but also giving non-resident parents power to assert a degree of control over the resident parent that does not reflect actual parenting practices. (p.3)

- Our research suggests, confirming Dewar and Parker's study, that children's welfare is being compromised in the approach to interim decision making that has developed since June 1996 when the Reform Act came into effect. (p.4)

- That is, decision are being made on the basis of the parents' interests (or more accurately, the interests of the parent who is not the primary caregiver), rather than on the basis of the child's welfare.

- In practice therefore decision makers are often assuming that the best interests of the child will be met by maintaining contact rather than that being an issue for determination. In other words, there is now effectively a 'presumption' (although not a legal one) operating in favour of contact with the non-resident parent, despite the comments of the Full Court in *B and B* and despite the express requirement in the legislation to *consider* the best interests of the child. (p.5,6)

- In recent years, it has come to be acknowledged that the 'core business' of the Family Court now comprises cases involving violence or child abuse and that these are the cases most likely to be litigated, and least likely to settle. Our research confirmed findings from other research that show a substantial portion of interim contact orders involve allegations of domestic violence and abuse. It is sometimes suggested that allegations of violence are used for strategic purposes in litigation. However, research has shown conclusively that only a small proportion of such allegations fail to be established. The overwhelming majority of the 30 judicial officers interviewed for this project believed that most allegations were usually well-founded. The issue therefore is not about shifts in the veracity of allegations, but about changes in the approach to ensuring the child's welfare is safeguarded when concerns about domestic violence collide with the desire to encourage contact. (p. 6,7)

- The present approach to making unsupervised orders for contact at interim hearings represents a retreat from the Family Court's acknowledgment in the years before the reforms of the adverse psychological effects of spousal abuse upon a child's welfare. That recognition and case law have been effectively displaced by the right of contact principle. It is ironic that the body of case law developed without an express reference in the Act to the impact of domestic violence on children's welfare, yet one of the Part VII reforms was to include in the legislation a number of statutory references to the need to ensure the safety of children. (p.7)

Backlash, Angry Men's Movements, Dr. Michael Flood, 2003 The Battle and Backlash Rage ON, Why Feminism Cannot be Obsolete, Stacey Elin Rossi, Chapter 21.

- Men's rights and father's rights advocates do not accurately represent the views of the majority of divorced and separated men. While many men (and women) find the processes of divorce and separation to be hurtful, only a minority subscribe to the aggressively conservative agenda's of the anti-feminists men's groups. In addition, there are other fathers' organisations which promote positive and collaborative visions of men's relations with women and children, such as Dads and Daughters in the USA and FathersDirect in the United Kingdom (p. 264).

- Where anti-feminist men's and father's groups in Australia have had most policy success is the area of family law. Changes in family law made in 1995, particularly the enshrining of children's "right to contact" with both parents, were driven by persistent lobbying by persistent father's rights groups (p. 266).

Fatherhood and Fatherlessness, Dr. Michael Flood, TAI. November 2003

- **3.4 Dodgy methods and bogus statistics**

This paper has critiqued simplistic claims about the relationships between fatherlessness and social problems, particularly claims about family structure, divorce and children's well-being. But there is a broader problem in much of the rhetoric about fatherlessness: its flawed methodology. In populist texts such as Popenoe's *Life Without Father* (1996) and in public statements and materials by some fathers' advocates, discussions of fatherlessness are characterised by the confusion of correlation and causation, the reduction of multiple social variables to bivariate associations, the highly selective use of research evidence, neglect of contradictory or competing evidence, and treatment of small differences as if they were gross and absolute (Coltrane 1997, p. 8). Bogus statistics, with no factual basis, are used by some advocates for fathers' rights in asserting their political agendas.

Law Reform by Frozen Chook, Melbourne University Law Review, R. Graycar, 2000

- So, if the Part VII reforms were not a legislative response to an identified problem or to research data about what is in the best interests of children, where did they come from? I suggest that they were a response to the anecdotes constantly recounted to politicians; the stories of aggrieved non-custodial fathers who told (and continue to tell) bitter tales of gender bias against them by the legal system, and

particularly by the Family Court. The fathers' rights groups have been remarkably successful in capturing the attention of the politicians. The fathers' groups persistently claim that the Court is 'biased' against them. But their claims had (and have) no empirical support: the literature and the available studies show that the Family Court makes orders (in contested cases) in favour of fathers at twice the rate of those made by consent. The fathers' anecdotes that so captured the attention of the politicians (and I should emphasise that this is a non-party political issue: the legislation was introduced by the previous Labor Government) invoked the discourses of 'victimhood' and 'formal equality' in much the same way as happened in the lead up to the *Children Act 1989* reforms in the United Kingdom.....it is fair to say that when measured against some of the stated aims, these reforms have been unsuccessful in bringing about a change in parenting practices. Moreover, there have been some very serious outcomes that endanger children and their carers. Not least, contrary to the stated aim of having parents agree about parenting issues, there has been a considerable increase in litigation and, in particular, in the area of contravention applications...(p.6).

- There is considerable theoretical research on how the voices of the powerful drown out the voices of the powerless: in the context of divorce law reform, [illegible] And there are all sorts of pragmatic reasons for this. Since it is overwhelmingly women who are raising children after separation and divorce (not because of 'biased' courts, but because of a history of gendered patterns of caregiving), they are not as free as men are to spend time lobbying politicians and otherwise engaging in public activities. By contrast, if federal 'family' laws were changed to respond to documented phenomena such as the high incidence of violence against women amongst the separating population, and the poverty of women and children after divorce, there would be a perception that power (and money) were being taken away from men(p.9).

It is our experience as an organisation that represents protective parents who look to the family court for child safety; a significant number of parents who go to court do so seeking child protective contact orders because of a history

of domestic violence and child abuse in the relationship. They are also the partners who seek custody of the children for the purposes of continuing to punish the protective parent. As pointed out in Law Reform by Frozen Chook, [illegible] This continues to affect social policy and legislation in favour of the lobbying by the men's and father's rights groups. Ultimately, the continuing emphasis on their agenda is compromising the safety and well-being of Australian children that have escaped domestic violence and child abuse. Despite the claims that these groups represent the "victim" fathers of separated families, statistics demonstrates that whilst there may be some that are likely to have some valid claim, it can be argued that Australia suffers from a serious widespread domestic violence problem. The recent campaign by the Federal Government, "Violence Against Women, Australia Says No" is an acknowledgement of the detrimental effect that this problem has on Australian society at large.

As pointed out by the report card in regards to the changes in Industrial Relation, whilst this or any government continues to react to the "spin, speculation and anecdote", in this case that of the well-funded men's rights campaigners, then Australian children and their protective parents will continue to:

- Suffer from policies that are unhelpful;
- The cycle of domestic violence will continue to spiral;
- Children will continue to be forced to contact with a parent that has abused them and so continue to be traumatized;
- The abuse and deaths of children and mothers on court ordered contact will not be addressed as serious events;
- These events should be the catalyst that impacts legislative changes.

Despite the included wording in these proposed changes:
"except when it is or would be contrary to a child's best interests" in regards to contact, the reality is that at present, the further enshrining and pro-contact emphasis is merely creating more pressure to contact with abusive parents. There is not "teeth" given to what is contrary to the child's best interests. At present, children are forced to contact, unsupervised and supervised, where the contact is clearly traumatizing.

There is nothing in these proposed in the exposure draft to the Family Law Act Amendment Bill 2005 that addresses any of these issues.

07 5576 1270

Written by Patricia Merkin,

on behalf of The **Nat**ional **C**oalition of **M**others **A**gainst **CH**ild abuse.

Nat MACH.