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National Coalition of MACH
Mothers Against CHild abuse

Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
Parliament House
Canberra ACT 2600
Australia

Dear Secretary,

Nat MACH has been formed by women; mothers and their children, who have been victims of domestic violence and child abuse, and have been or are still involved in the Family Court process.

We directly speak for the voices of women and their children who have not attained safety in family court orders and who continue to suffer from the system failures and the child protection crisis evident in Australia today.

As such, although we have not been formally contacted, may we ask that our contribution to this enquiry be accepted? As key stakeholders, we ask that our input be regarded with the weight it deserves as our members include Dionne Dalton, the mother who in April 2004 lost her children Patrick and Jesse, 17 weeks old and 18 months old respectively, when their father killed them on interim family court orders.

The submission by the National Council of Single Mothers and their Children and the Abuse Free Contact Campaign both outline important legislative considerations that we concur with. We would like to elaborate on what we envision as the predicted effects following on from the proposed amendments should they be passed in their current form. We forecast the impact of this Bill on what we have experienced in the system under the current legislation, with reference to the culture evident in the family court and the outcomes from orders.

Under the current legislation, we can attest to the fact that the safety of children has been relegated as a secondary consideration in cases of substantiated domestic violence and child abuse claims. The "right of contact' has displaced the safety concerns of protective parents too often with devastating outcomes.

For example:

1. Dalton vs. Dalton 2004- A baby boy and female toddler are now dead on court ordered contact when a judge, despite hearing evidence of the father's violence to the mother, grants him interim residence while the mother recovers in hospital from his violence;

2. C vs. C 2000- Unsupervised contact for a father is granted after a period of supervised contact. Four years later he went on to murder his own brother, knifing him to death in plain view of his brother's 6 year old daughter(December 2004). The now five year old boy, after this unsupervised contact, is undergoing intensive therapy following episodes of violent and frightening behaviours to other children. The young boy tells his mother that it's what daddy does to him.

3. J vs. B 1998- Two boys were sexually abused for 20 months on court ordered contact despite the mother's fears expressed to the court prior to this. She is forced to wait this long to gather the "proof" that he is committing these acts. The father to date continues to file applications for unsupervised contact despite the substantiations, two trials awarding the mother residence and his loss on appeal. The supervised contact has rendered the boys suicidal and the mother is exhausted. As she faces his latest application, she has been informed that she will not be given a 'no contact' order. The boys are currently forced to contact with the father at family court with a counsellor present. They are terrified of him and behave politely as amongst other things, they fear he will kill their mother as the father has stated to them in the past.

4. S vs. S 2005- Mother left father in 1996. In 2004, their child made disclosures of the father's exposure to him of pornographic material and "inappropriate touching" of his genitals in the shower. Dept of Child Safety substantiates the allegations. The mother stops all contact and the father applies to the Family Court for unsupervised contact, later full custody. The court orders supervised contact but the child is screaming, kicking and crying before contact. This behaviour is attributed to the "mother's lack of promoting contact" towards the father. She is accused of Parental Alienation Syndrome, a debunked theory still relied on in the Family Court. As the supervised contact is "not working" the court grants the father unsupervised contact. The child is also ordered to counselling, where the counsellor notices alarming increases in Tourettes' Syndrome in him. The child has been suicidal in the past and this weekend, the 25th to 26th of February 2006, is expected to resume unsupervised contact with the father per fortnight. The boy's schooling has suffered markedly and the trial is listed for April/May 2006.

5. B vs. B 2004- After fears of sexual abuse are substantiated by the Dept of Child Safety and police, despite their involvement for the mothers' case, with expert psychiatric concerns about the father; the judge in this Magellan case cut out the mother's expert witnesses and indicated that he was prepared to consider residence for the father. The mother is urged by her Counsel to consent orders in exchange for the children having unsupervised contact with the father to maintain their residence. They are all under 5 years of age. To date, they continue unsupervised contact with the father who has indicated he is preparing to return to court when the new amendments are passed into law, believing they will increase his chances for 50/50 custody. These very young children are in extreme danger under family court orders.

The proposed amendments do not address these devastating consequences. As explained to the Attorney general Hon. Phillip Ruddock in our letter dated Monday 5th February 2006:

> The current objects expressed in s 60B (1) (a) and (b) reiterate considerations already addressed in the current Family Law Act. That the chief considerations anticipated in s60CC(2) that (a) and (b) will **both** be primary considerations in determining the best interests of the child simply intensifies the already existing tension between the two. Under the current legislation, the need for the child to have contact with the non-resident parent has surpassed the need to protect the child from an unacceptable risk of violence and abuse directly or indirectly.
>
> Unless the legislation responds to this unintended development of the presumption of contact there will be no way to prevent further abuse and deaths of children on court-ordered access.

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> To be of any benefit and to diffuse the conflicting considerations, where **evidence** exists that indicates the presence of previous incidents of child and/or family abuse, the primary consideration **should be** the need to protect the child by providing orders that are congruent to the protection of the child. This can be achieved **if** the legislation demands that where there is evidence of violence, it be taken as the paramount consideration; part (b) superior to the needs over part (a).
>
> Regrettably, it is impossible to prevent child abuse altogether, but it is **unacceptable** that it has occurred on court ordered contact.

The pro-contact emphasis has been identified in the research project by Rhoades, Graycar and Harrison in The Family Law Reform Act 1995: The first Three years, December 2000, p.5; *As one judge noted in relation to practitioners' submissions: 'No-one is prepared to say, "no contact" anymore.*

This pro-contact culture was foreshadowed in reports by M Troup, The Family Law Reform Bill No. 2 and its Ramifications for Women and Children (1995) 5 Australian Feminist Lawyer Journal III at 118; and J Behrens, "Ending the Silence, But…Family Violence under the Family Law Reform Act 1995 (1996) 10 Australian Journal of Family Law (ibid).

We predict that this illegal presumption of contact that already exists, even in the face of evidence of violence presented to family court, will continue and increase to the physical and psychological detriment of Australian children and their carers who are victims of domestic violence and its proximal issue, child abuse. We call this presumption illegal because prior to the Family Law Amendments that ushered in this supposition in 1995, case law did not support this assumption.

1.17 This position [no presumption of contact] *was confirmed by the Full Court in B and B.*
1.18 Despite the decision in B and B, our research confirms Dewar and Parker's findings that there has been a shift in the focus of interim hearings, from asking whether access should be ordered, to how to maintain contact until the final hearing.
(*The Family Law Reform Act 1995: The First Three Years;* Rhoades, Garycar, Harrison; The University of N.S.W and Family Court of Australia, December 2000)

Ultimately, this has meant the death and abuse of children on court ordered contact, and many more forced to contact and even residence with dangerous parents. The legislation should therefore respond to this disaster.

Despite assurances that they do, we find that these latest amendments do not reflect the safety needs of this portion of vulnerable children that come before the Family Court. This is only achieved if the safety needs of children are regarded as paramount and this can be best realized by heeding the work and investigations by the researchers in this area. They reflect the reality of this situation and our organization confirms this from the experiences from our member base.

The basis for all amendments and approaches to the Family Law Act has been identified as primarily coming from the pressure that has been initiated from the father's rights campaigners. The impact has been far reaching and difficult to counter-balance. This has again been a feature expressed and detailed by various researchers on the subject of the family law. Interestingly, this is also an element on the societal landscape evident internationally. Their lobbying, often accompanied by public stunts, has drawn attention to their claims that are echoed in the amendment proposals even in Australia.

Most of these amendments reflect the grievances and claims we hear from our ex-partners and these same arguments are drawn into the Family Court. However, the arguments, claims and grievances are not supported by the results and reports by the researchers in this field. More importantly, they are resulting in a human cost that is unacceptable in the extreme.

An example of the grievances and claims by the father's rights campaigners is their assertions that women regularly make false allegations of child abuse and family violence primarily to gain a tactical advantage in family court proceedings.

"Over 122 international and Australian studies demonstrate that women are as physically aggressive, or more aggressive, than men in their relationships with their spouses or male partners, yet the Committee failed to directly acknowledge the level of false allegations used as a tool to denigrate fathers, instead preferring to follow the current dogma espoused by the domestic violence industry. "
(Disenfranchised fathers still unequal when it comes to child custody, Online Opinion Monday 6th September 2004, Sue Price- Men's Rights Agency)
http://www.onlineopinion.com.au/view.asp?article=2525

The statistical claims by Sue Price are unsupported and the research both domestically and internationally remain consistent with the results that false allegations in family court proceedings are rare (this can be verified and supplied to the committee if required or sought.)They also support the fact that domestic violence is gender based and the majority of victims are women.

Despite this evidence, these latest family law proposals include the provision for costs awarded against a party where there are unsubstantiated allegations of abuse. Currently, judges are not acting on substantiated evidence presented at children's matters. This amendment is in fact dangerous because it has the potential of silencing women and children that have separated from a father where domestic violence and child abuse exist for fear of costs. Already, there is tangible pressure from family law practitioners to our members to "not go there." Furthermore, we can attest to the consistent minimization of episodes of violence and abuse in cases before the family court. Where evidence is presented judges minimize this as "not being unbridled violence," a feature already present under the current climate. This amendment will create a further barrier for the victims who often suffer this crime in private. We find this schedule directly emerging from the mendacity of the father's rights advocates and predict further harm, suffering and misinterpretation in family court proceedings.

Whilst lobbying by men's rights campaigners may strike a chord, their emotive arguments cannot, **should not** be the basis for amendments to the Family Law Act because their arguments are not supported by the empirical evidence. That they attack the credibility and substance of the reports and their writers are warning signs pointing to the weaknesses in their arguments. Our experiences bear out that the situation is as pointed out in this submission.

A paradox has occurred in that, due to the persistence of the father's rights campaigners, it appears that when a **protective father** attempts to gain residence to protect his children in family court, it is more likely he will not achieve this; such is the strength of the mendacity that false allegations of abuse are high in litigation.

As the cases we present show, the cost in human terms for the victims of child abuse in Family Court have not been addressed.

It appears that since 1995, the reformers of the Family Law Act do not have a realistic view or understanding of the families that eventuate in the litigation process for contact and residence of the children. As shown consistently by researchers on the subject, they are families that primarily become involved because of issues to do with violence and child protection. Indeed, the Brown et al study (1998) *Violence in Families. The Management of Child Abuse Allegations in Custody and Access Disputes before the Family Court,* p 87 states:

"…the Family Court had become part of the child protection system…" and

"..child abuse cases comprise the core business of the Family Court…"

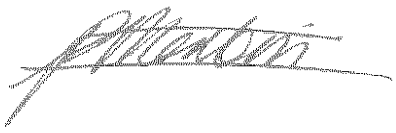
Not only is the reforms to the Act not kept pace with this development, but the judges themselves do not recognize this.

In a submission to the Australian Law Reform Commission's Review of the federal civil justice system (1999, No. 62 at 11.11), Justice Warnick, who sits in the Brisbane registry of the Family Courts commented, "I often feel that the Court these days in child matters is acting almost as an arm of the public child welfare system."

This has exposed victims of domestic violence and child abuse to the perpetrators. These latest reforms do nothing to address this. It appears by these amendments that parliament is not listening to this message. It is in fact a Matter of Public Importance.

Where there is something iniquitous, those with the ability have the responsibility to take action.

Yours sincerely,



Patricia Sandra Merkin,

On behalf of Nat MACH.
(The National Coalition of Mothers Against CHild abuse)