



NATIONAL ABUSE FREE CONTACT CAMPAIGN

NAFCC is a national (and international) coalition of organizations who have formed to advocate on behalf of women and children going through the Family Court system with concerns about domestic violence and child abuse.

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Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
Parliament House
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Dear Secretary

Please find attached the submission of the National Abuse Free Contact Campaign to the Committee's inquiry into the Family Law Amendment (Shared Parental Responsibility) Bill 2005.

NAFCC notes that the Bill amends the Family Law Act 1975. The changes proposed by the Bill include:

- the introduction of a presumption of joint parental responsibility;
- the requirement for parents to attend dispute resolution and develop parenting plans before taking a parenting matter to court;
- increased penalties to enforce parenting orders;
- increased requirements for children spending time with grandparents and other relatives

NAFCC would be pleased to support this submission with oral evidence.

Yours Faithfully

Marie Hume
National Abuse Free Contact Campaign

The National Abuse Free Contact Campaign has made submissions to the inquiry process in previous Parliamentary Committee inquiries and this submission focuses on the substance of amendments arising from the House of Representatives Legal and Constitutional Affairs Committee.

The National Abuse Free Contact Campaign is concerned that the proposed changes would mean that:

- The best interests of children being overridden by parents' 'rights'.
- Children's safety and the safety of their family members being jeopardised

Key recommendations include:

1. Use of the term 'equal shared' parental responsibility rather than the term 'joint parental responsibility' to describe the presumption of the sharing of major decisions about a child by both parents; and
2. An obligation to consider whether it is in the best interests of the child and reasonably practical for a child to spend 'equal time', not just 'substantial' time with both parents;

Thus the Bill promotes parents' 'rights' to share equally in their children, particularly by requiring consideration of equal time arrangements. The Bill diminishes the weight given to children's views by making these a 'secondary' criterion. The Bill as it currently stands will further undermine the safety of children and their family members.

The Bill creates conflicting primary considerations (children to have meaningful relationships with both parents and children to be protected from harm) and an additional secondary criterion (willingness to facilitate a relationship with the other parent) for determining a child's best interests that are likely to lead to children being placed at greater risk of exposure to violence or abuse.

3. A specific cost provision where the court is satisfied that there are reasonable grounds to believe a person has knowingly made a false allegation;

The impact of this will put pressure on women to 'keep quiet' about violence or abuse and obscures the problem of false denials of violence. The Bill promotes the concept of 'false allegations of domestic violence' as a presumptive response to allegations of violence. This is despite a vast weight of research evidence that violence is much more likely to be under-reported than falsely reported. The imposition of penalties on litigants who have been unable to 'prove' violence, especially when the court disregards evidence of violence, will inhibit targets of violence from ever speaking about their experience and consequently targets will continue to be exposed to violence.

4. Changing the *Family Law Act* definition of 'family violence' to be 'objective' – may lead to the victim's experience of violence not being properly factored into decision making.

The Bill further raises the threshold of determining violence to take account of whether the judiciary think the target's fear is 'reasonable' despite their lack of knowledge of domestic violence and incapacity to objectively determine 'reasonable fear'. Inevitably members of the judiciary will draw on their own subjective experiences and prejudices and continue to discount, trivialise or deny violence and women and children will continue to be exposed to situations of fear, injury and sometimes, death.

5. Changes to Division 11, which deals with the interaction between family law orders and state family violence orders, may make it harder to change family law orders to protect people from violence and do not give effect to the Family Law Council's recommendations

The changes to Division 11 do not increase safety for targets and may make it harder for victims to gain and keep the protection of family violence orders. Already many Magistrates make domestic violence orders which apply 'except

for the provisions of Family Court orders,' again reflecting the profound lack of priority for keeping mothers and children safe and alive.

6. Making mediation compulsory without appropriate safeguards to deal with violence and abuse cases will impact on safety.

Forced mediation has a history of working against targets of violence and this is likely to continue, particularly where counselling sessions are directed towards reconciliation or agreements. Neither course of action is appropriate in violent relationships. The level of training of staff should require an appropriate tertiary degree and specific training in child development, child protection and family violence, whilst protocols should emphasise routine screening for violence and abuse.

7. the Bill includes a secondary consideration of parents' willingness to promote a positive relationship with the other parent which will impact adversely on families experiencing violence and abuse.

Mothers with abusive or violent ex-partners will have to choose between naming their experiences and risking penalties and being named as an unfriendly parent and treated adversely in court orders, or somehow 'prove' violence in a context where evidence of violence and abuse is routinely discounted or disregarded.

Child abuse, particularly emotional abuse, neglect and child sexual assault are forms of abuse which are particularly difficult to prove, and, in the case of small children in particular, commonly emerge through the child's direct disclosures to the non-offending parent. Yet parents are disqualified in Family Court as a credible source of evidence about children's disclosures of abuse or their own observations of children's injuries or behaviour. Parents alleging abuse will effectively go on trial and face penalties ranging from court costs, to fines to loss of care of the children.

Australian Institute of Criminology Homicide Data is described as follows

'Excluding cases with no apparent motive, female victims of homicide are overwhelmingly most likely to have been killed as a result of a domestic argument and/or the breakdown of a relationship.' (AIC 2005) The Homicide Monitoring data shows that an average of 76 women and 23 children are killed every year in Australia by ex-partners and fathers in a post-separation context, yet the Bill expands penalties for victims of violence who cannot prove to the court's satisfaction that they are living in fear.

NAFCC recommends that the 'best interests of the child' have a threshold benchmark of safety from abuse and violence or exposure to abuse or violence against a person in the child's family.

NAFCC recommends that in cases where a history of violence or abuse has been established, decision making around contact should prioritise the child's safety and that of family members ahead of any other consideration.

NAFCC recommends that all Family Relationship Staff and court officials presiding in family law cases have mandatory regular accredited training in child development, child protection and family violence.

Positive quality relationships between children and parents are not dependent on parents having equal time with children.

Substantially sharing parenting time is only successful in some limited circumstances - including where parents can communicate well about their children, live close together and respect each others views about parenting issues.

Families in rural and remote areas have less access to services and support.

These changes will significantly increase the risk of further violence and abuse to women and children escaping from violent relationships.

Despite national and international research repeatedly confirming that violence is prevalent, severe and under-reported in family breakdown disputes the proposed changes create further barriers to women and children achieving safety and in fact will penalise women who raise concerns about their and their children's safety.

Appendix

The facts

The 1996 ABS National Women's Safety Survey found that 23% of women who had ever been in a married or defacto relationship had been subjected to family violence.

A 2004 survey found that 34% of women who ever had a spouse, partner or boyfriend had been subjected to violence by their male partner (Mouzos & Makkai. Women's Experiences of Male Victimisation. Findings from the Australian Component of International Violence Survey).

The annual domestic violence death toll in Australia was 76 adults and 23 children in the 2002-03 financial year. 78% of murdered women die as a result of Domestic Violence.

The Private Nature of Violence against Women

Approximately 40% of women subjected to violence by their current partner do not disclose their experience to anyone (ABS 1996).

95% of women abused by their current partner did not report their last experience of abuse to the police (ABS, 1996).

75% of women abuse by their previous partner did not report abuse to the police (ABS, 1996).

According to the Australian Institute of Criminology 14% of women victimised by their partners reported to the police or judicial authorities (Mouzos & Makkai, 2004).

42% of previously partnered single women report experiencing violence, mostly from their ex-partner (ABS 1996; McInnes 2001).

The Myth of False allegations

Child Abuse:

“Child abuse allegations in the context of family law proceedings have been analysed in four Australian studies. These examinations find that allegations rarely are made for tactical advantage, false allegations are rare, the child abuse often takes place in families where there is also domestic violence, and such allegations rarely result in the denial of parental contact.” (Fact Sheet #1: “The myth of false accusations of child abuse.” Prepared by Michael Flood, March 2005)

Domestic Violence

The risk of domestic violence increases at the time of separation.

Women living with domestic violence often do not take out protection orders and do so only as a last resort. (Fact Sheet #2: The myth of women’s false accusations of domestic violence and misuse of protection orders. Prepared by Michael Flood, March 2005)