Women Everywhere Advocating Violence Elimination Inc (Australia)

Women Everywhere Advocating Violence Elimination Inc (WEAVE Inc), formed in 2009, is a National Women's Alliance that aims to eliminate gendered violence (including sexual assault, domestic violence, stalking, sexual exploitation and trafficking). As a non-partisan coalition WEAVE Inc brings together groupings that have sometimes worked separately from one another, such as sexual assault services, women's health services, women's legal services, domestic and family violence services, and organisations working against trafficking. In drawing together key stakeholders that make up the 'violence against women sector' as well as survivors, and activist and interest groups, WEAVE embeds a wealth and diversity of experience and expertise within a single body.

WEAVE Inc Vision

To ensure that all women and children are able to live free from all forms of violence and abuse.

WEAVE Inc Values and Principles

HUMAN RIGHTS
WEAVE Inc employs a human rights framework that recognises that gendered violence is one of the most serious and widespread violations of fundamental human rights, in particular, the right not to be treated in an inhuman and degrading way, the rights to respect, physical, sexual and psychological integrity.

FEMINIST FRAMEWORK
WEAVE Inc works within a feminist framework that recognises that gendered violence is both a consequence and cause of gender inequity, embedded deeply within all levels of our society, and that efforts to end such violence must be accountable to women and promote women's empowerment and gender equality.

EQUITY, DIVERSITY & INCLUSIVITY
WEAVE Inc is committed to representing and working respectfully with the diversity of women in Australia. WEAVE Inc recognises, and seeks to advocate and lobby for, the particular and urgent needs of Indigenous women, women from immigrant, refugee and/or non-English speaking backgrounds, women with disabilities, as well

as the challenges faced by young women, older women and women in rural and remote areas.

WEAVE Objectives

(a) To provide leadership and advocacy at state and national levels in relation to all aspects of gendered violence.
(b) To bring together in a single body the key stakeholders concerned with all aspects of gendered violence in order to access and disseminate the wealth and diversity of knowledge within the sector as a whole.
(c) To contribute to and monitor policies, legislation and programs which impact on women and children experiencing gendered violence.
(d) To promote and prioritise equity of access to services for all women including Aboriginal women, Torres Strait Islander women, women from immigrant, refugee and/or non-English speaking background, women in rural and isolated areas, older women, young women and women with disabilities.
(e) To promote greater community awareness of gendered violence and its personal and social consequences using community development and educational strategies.
(f) To build and promote alliances and collaborative relationships with other key stakeholders and networks.
(g) To promote, further develop and disseminate 'cutting edge' knowledge of gendered violence arising from practice, research, community and activism.
(h) To connect with international developments in advocacy, research and practice concerning gendered violence.

Terms of Reference

The incidence of international child abduction to and from Australia, including:
(a) the costs, terms and conditions of legal and departmental assistance for parents whose child has been abducted overseas;
(b) the effectiveness of the Hague Convention in returning children who were wrongly removed or retained, to their country of habitual residence;
(c) the roles of various Commonwealth departments involved in returning children who were wrongly removed or retained, to their country of habitual residence;
(d) policies, practices and strategies that could be introduced to streamline the return of abducted children; and
(e) any other related matters.

This submission focuses on a specific subset of international child abductions where

- the mother has alleged paternal abuse of the child/ren
- the court has dismissed the allegations of abuse
- the court has ordered the child/ren to be in the care of the alleged abuser

Research has established some clear links in the characteristics of incestuous abuse:

- Incestuous abuse often co-occurs with domestic violence;
- Abusive relationships are more likely to end;
- Child sexual abuse can precede separation, or begin or intensify after separation (Hume 2003)

A 1997 study of a community sample of Australian women found that one in five reported child sexual abuse, with half of these reporting vaginal or anal intercourse. 98% of abusers were males. 71% of victims were aged under 12 and 41% of abusers were relatives. Only 10% of victims ever made a report (Fleming 1997).

The 2006 ABS Personal Safety Survey found that 12% of women and 4.5% of men reported being sexually abused before the age of 15 (p.12)

Child sex abuse allegations in Family Law proceedings have been the topic of a deal of research in Australia and elsewhere. Studies by Moloney, Smyth, Weston, Richardson, Qu & Gray (2007), Brown, Sheehan, Frederico & Hewitt (1998, 2001), Brown, Frederico, Hewitt and Sheehan (2001), the Family Law Council (2002) and Parkinson (1990, 1990a, 1995, 1998) have confirmed that issues of violence and abuse are prevalent in cases being heard in the courts and that allegations of abuse in the family law system are no more likely to be false than any other context of allegation (Hume 2003).

Despite the prevalence of child sexual abuse in the Australian community, the serious criminal nature of child sexual abuse and the severe harm it causes victims (Mullen & Fleming 1998; Mullen et al 1993; Muller, Sicoli & Lemieux 2000; Peters 1998; Yellowlees and Kaushik 1994; Zlotnick et al 1996) the family law system carries a culture of disbelief such that mothers alleging child sexual abuse are commonly identified as variously vengeful, delusional or overly protective of their children (Foote 2006). The Magellan court, which was established in the Family Court of Australia to deal with cases involving child sexual abuse allegations has

been found to also commonly reject allegations of child sexual abuse while chastising mothers and sometimes children for persisting with allegations when they were told not to by the court (Shea-Hart 2006, 2008).

The family law system has great difficulty in dealing with allegations of child sexual abuse for the following reasons:

- Children often do not disclose sexual abuse until long after the event when there is no physical evidence
- Children do not know the names of body parts and sex acts and find it hard to remember dates and details over time
- Children are often unable to avoid being with their abusers so disclosures mean punishment and retaliation
- Children, when they do disclose, do so to trusted adults in preference to strangers.
- Criminal courts will not prosecute when the victim is aged under 7 years and the alleged perpetrator denies the allegation
- The family court is instructed by its full bench to avoid making findings of a criminal nature
- The evidentiary test of Briginshaw v Briginshaw is applied to tip the proof on the balance of probabilities to the higher end, such that most allegations do not pass an evidentiary test.
- The family law system relies on state and territory child protection departments to investigate allegations of child abuse, but most state and territory departments are so over-loaded that referred cases are never actively investigated and are thus designated ‘unsubstantiated’.

Since 2006 the shared parental responsibility changes have seen a prioritization of parent-child contact. This has applied even in cases where child sexual abuse has been established by either admission or criminal conviction – see Robins & Ruddock FCA 2010; Rivas & Rivas FMC 2010; Asikis & Morikis FMC 2010 – as examples of cases where judgments are placing children in households where child sexual abuse has occurred.

The systemic inability of the family law and child protection systems to work together means that children who are being sexually abused will not be protected by either system (Family Law Council 2002; Higgins & Kaspiew 2011).

Mothers who have come to believe that their children are being sexually abused by the father have the following options:

1. Follow the direction of the court to accept that there is no child abuse and to ignore their child’s disclosures and injuries and foster a positive relationship between the child and the abuser, thus exposing the child to continuing sexual abuse.
2. Continue to support their child’s need to be protected from the abuser and face loss of residence of the child and/or jail time (See attached list of newspaper articles re parents being imprisoned).
3. Flee with the child and attempt to gain sanctuary in hiding in Australia or overseas.

As courts have been increasingly reluctant to stop children's contact with parents since the 2006 reforms, a growing number of mothers have been faced with the decisions outlined above.

WEAVEInc. can identify at least three cases where mothers have fled with children. All involved allegations of child sexual abuse.

Case number one is outlined in the following link to the South Australian mother's account of her experiences and her actions given to the AIC conference on child sexual abuse in Adelaide in 2003.
http://www.aic.gov.au/events/aic%20upcoming%20events/2003/~/media/conferences/2003-abuse/abuse.ashx
The child in this case later disclosed she had been sexually abused by her step-brother with her father's knowledge since the age of 7, as well as being the primary carer for her father as he died of AIDS. She now has been diagnosed as suicidal.

Case number two involved Swiss national Maya Wood who fled with her children to Europe after the West Australian family court would not accept her allegations about abuse of her children. When she was found, the children were placed in foster care in Switzerland and in Australia before eventually being returned to their mother's care. These children have also since been assessed as having been seriously damaged by the abuse, their periods in foster care and separation from their mother.

In the third case, (...) fled with her child after he allegedly disclosed sexual abuse by his father. She was imprisoned in Holland and in Australia and has not seen her child since they were found in Europe.

These cases follow a pattern where mothers raise child sexual abuse allegations, these allegations are not investigated and are rejected, the mothers are blamed for making the allegations and the father is awarded care of the children because the mother is deemed to be unsafe for the children by making them believe their father has hurt them. These are the basic features of the discredited Parental Alienation Syndrome which was invented by a pedophile supporter, Richard Gardner, who later suicided. PAS is not accepted for use in Australian family law courts but is continuously present as the rationale for placing children in the care of child sex offenders (McInnes 2003).

WEAVE Inc. considers that parents who abduct their children to protect their children from abuse should not be criminalized.

WEAVE Inc. makes the following recommendations for reform.

Recommendation 1:
Section 65Y of the Family Law Act should be amended to include a defence that the parent acted to protect their child from:

- risk of abuse

- psychological harm arising from exposure to a person who has previously abused the child
- psychological harm arising from forcing a child to be with a person who the child has alleged as having abused them

Recommendation 2:
Organizations and agencies which comprise the family law system should be accredited as 'child safe organizations'. http://www.childsafe.org.au/a-childsafe-organisation/

Amongst other things this means that all employees of the courts, mediation and counseling services, experts and family report writers and legal services who have involvement in children's matters should be subject to a 'Working with Children' Check. Any personnel who have been charged or convicted of offences of child abuse, including child pornography, should be prevented from having a professional role in cases involving children's matters.

WEAVE Inc. has become aware over time of a number of personnel across the spectrum of the family law system who have been charged or convicted of offences of child abuse. Such people should not be able to influence the exposure of children to continuing abuse.

Recommendation 3:
The Family Law system should be consistent with the principles of the 'Working with Children' check http://www.aifs.gov.au/nch/pubs/sheets/rs13/rs13.html and not place children in the care of people who would be prohibited from working or volunteering with children. The Family Law Act should be amended to specifically prohibit outcomes which place children in the direct care of people who do not pass the standard of the Working with Children check and who have been charged or convicted of offences of child abuse. A national police check of parties in all cases involving allegations of domestic violence and child abuse should be undertaken.

Recommendation 4:
Any assessments of mental illness or a party should require a diagnosis by a psychiatrist with accredited expertise to make such a diagnosis.

Family Court data on limited or no contact orders (FCA 2009) identifies that abuse and entrenched conflict accounted for 44% of cases where fathers were ordered less than 30% of time with their children. Mental health issues accounted for 31% of cases where mothers were ordered less than 30% of time with their children. Mental illness did not feature in the list of reasons for limiting fathers' contact.

This pattern continued for no contact orders, where mental illness was a reason for no contact with fathers in only 2% of cases and no contact with mothers in 31% of cases.

Although women (22%) are slightly more likely than men (18%) to have a diagnosed mental illness, according to ABS data (2007), this does not account for the significant gender disparity on mental illness in the Family Court data. As Foote (2006) and Shea- Hart (2006) identify, mothers' mental illness was a favourite 'explanation' for mothers making allegations of child abuse. WEAVE Inc. has seen numerous cases where the labeling of mothers has been by professionals, such as non-clinical psychologists or Independent Children's lawyers without the necessary qualification to diagnose mental illness – which is a qualification in psychiatry or clinical psychology. Labels of mental illness, whether rightly or wrongly applied, affect the willingness of legal aid organizations to further assist mothers who want to appeal decisions which expose their children to abuse.

The proposed changes to the Family Law Act will go some way to improving the approach to family violence and WEAVE Inc. includes below the recommendations from its submission to the Committee on the Family Violence Amendments in addition to the above recommendations.

1. Prioritizing the Safety of Children

Recommendation 1:
It is fundamental that the key focus of Family Law should be ensuring the safety of women and children from ongoing violence and abuse and that safety should be the primary threshold factor in decision making about children's contact with their parents and others.

2. Convention on the Rights of the Child

Recommendation 2:
It is important that the Australian Government's ratification of the United Nations' Convention on the Rights of the Child is confirmed in the *Family Law Act* and as such that the *Family Law Act* develops and undertakes all actions and policies to promote the best interests of the child, prioritizing the child's fundamental right to freedom from abuse and violence.

Recommendation 3:

WEAVE Inc recommends that specialised assessment processes should be developed at each stage of the family law system so that in-depth assessments can be carried out. This would enable the complexities of family violence to be properly explored and the on-going emotional, physical and psychological safety of women and children can be assured.

The Family Law Council's report on ***Family Law and Child Protection*** (2002) also argues that the current system does not adequately address the issue of child protection within the Family Court proceedings and has recommended the establishment of a national child protection system within the Family Court.

3. Requiring parties to disclose involvement of child welfare authorities

It is essential that full information about child protection notifications, assessments and proceedings be made available to the family law system in order for consideration to be given to such reports.
States and territories should be required to detail whether any active investigation of a report has taken place and the nature of the investigation. WEAVE Inc. is aware that many Family Court Form 4 reports do not meet the state department's triage criteria for investigation (at risk of immediate harm) as the child is often in the care of the protective parent, with a family court hearing pending. The outcome is that there is no investigation at all, but the family court is notified that the report was 'unsubstantiated' without revealing that there was no process of investigation and therefore no possibility of substantiation. Where an investigation has taken place and the abuse is substantiated and the child protection system has recommended restrictions on contact, decision-makers should be required to make orders consistent with the child protection recommendation, or otherwise provide detailed reasons why they have chosen to diverge from those recommendations. Previously judges have chosen to ignore child protection recommendations on the basis that the alleged perpetrator had not been subject to a natural justice process. This would not be possible of the judge were to begin from the priority of the safety of the child and her/his family.

In 2002, the Family Law Council first highlighted the significant problems between the two tiered system of state child protection authorities and the federal family law system.

AIFS (Moloney et al, 2007) report draws attention to the problems in the intersection of state and federal legal systems. Lawyers and family relationship sector professionals find child protection systems difficult to engage with when there are concerns about risks to children (p.15). This has been a longstanding problem.

AIFS (Moloney et al, 2007) report states: *"However, it has been noted that when State and Territory authorities become aware that a matter is proceeding in the federal family court, the case is not investigated, or if it is, only to a preliminary stage*" (p. 75).

The Family Law Council (2009) has also recommended the need for improved collaboration across state/territory child protection agencies and family court.

Laing (2010) has also highlighted the need for improved responses from state-level agencies:

- Not defer investigations because of family court
- Police – proactive policies of investigation, evidence gathering and ongoing protection of women and children.

The Family Law Council (2009) recommends improved coordination and collaboration between state and territory child protection agencies and the federal *Family Law Act*, including:

- transportability of state family violence injunctive orders;
- establishment of a national register of family violence orders;
- establishment of a network database which records family violence orders;
- a residual family court power to require state child protection agencies to become parties to family law court proceedings about children (p.58).

Recommendation 4:

Weave Inc recommends that an inquiry be established into the viability of a national child protection unit or that the Federal Government provide support and funding to state child protection systems to conduct specific investigations in family law cases where allegations of violence and abuse have been made.

5. Removing Disincentives to Disclosing Violence

The 'friendly parent' provision has caused considerable problems for women and children in their ability to raise allegations of family violence, fearing the negative consequences of being labelled an 'unfriendly parent'. There are numerous incidences where women have lost residence of their children to an abusive parent as a result of this provision.

Chisholm (2009) recommends that the 'friendly parent' provision should be amended *"…so it recognizes that parents sometimes need to take action to protect children from risk"* (p. 7).
"…it seems that the friendly parent provision, s60CC (3) (c)…has had the undesirable consequence in some cases of discouraging parents affected by violence form disclosing violence to the family court" (p. 103).

Recommendation 5:

WEAVE Inc strongly argues that the 'friendly parent' provision should be removed from the *Family Law Act*.

It is imperative that in making this proposed change that highly trained specialists in domestic violence and child abuse be employed by the Family Law system in assessing risk to women and children.

The AIFS study highlighted that the application of the presumption in interim hearings on the basis of little evidence was seen as problematic (Moloney et al, 2007 p.20).

Once an interim order has been made, it can be difficult to change at final hearing.

"The result will be that the interim decision, made on inadequate material, will in effect determine the final outcome" (Chisholm, 2009, p. 82).
"There is a temptation for the judicial officer to make orders that the children should spend equal time with each parent. Such orders may appear to have the advantage of being fair as between the parents, preserving the opportunity for each parent to argue at the final hearing that the child should mainly live with them. But such orders might impose an equal sharing arrangement on children where this is not in their interest.
The problem is that this approach leads to decisions which have more to do with preserving the rights of parents than doing what is in the best interests for the children." (Chisholm, 2009, p. 82).

Chisholm (2009) argues that it is impossible for interim court hearings to give adequate attention to violence issues.

This will require additional judicial and other resources. Chisholm (2009) has recommended (Recommendation 2.6):
"That the government consider providing family courts with the additional resources necessary to ensure that adequate attention can be given to children's cases in interim hearings, especially cases involving allegations of family violence" (Chisholm, 2009).

Recommendation 6:

WEAVE Inc would emphasise the importance of highly trained specialists in domestic violence and child abuse being used by the Court to determine domestic violence and child abuse and in identifying past experiences of abuse and violence and future risk to both women and children.
There is a need for a considerably improved capacity in courts to solicit or provide high-quality assessments that will assist them to make safe, timely and child-focused decisions, especially at the interim stage.

7. Training and Education

Education across the family law system for all professionals including the judiciary in family violence dynamics and child development is necessary. Weave Inc recommends comprehensive and ongoing education and training for judicial officers, legal practitioners, children's representatives, mediators, counsellors and those involved in preparing family assessments for family court, and child protection services in areas such as:

- Relationship and interconnectivities between domestic violence and child abuse.
- Effects of domestic violence and trauma on women and children
- Effects of domestic violence on relationship between women and their children, and impacts on parenting capacity
- Links between child abuse, domestic violence and separation and divorce
- Conditions that promote recovery from trauma for women and children
- Dynamics of sexual and domestic violence perpetrators

- Risks and forms of post separation violence
- Assessment of claims of change in perpetrator of abuse

The Family Law Council (2009) wants this training and education to be based on a "common knowledge base":

- Revise the booklet "Best Practice Guidelines for Lawyers doing Family Law Work" to incorporate detailed information on family violence.
- Good practice guidelines, models and tools.
- Guidelines for good practice for lawyers
- A framework for expert assessments, precedent orders and judicial bench books
- Expert panel and reference group endorse content of education and training on family violence for those involved in the system

Chisholm (2009) in Recommendation 4.3 states
"That the Government, the family law courts, and other agencies and bodies forming part of the family law system consider ways in which those working in the family law system might be better educated in relation to issues of family violence."
Of note is Chisholm's recommendation that experience and knowledge of family violence to be taken into account when considering the appointment of persons to significant positions in organisations forming part of the family law system.

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Mum jailed for denying access to boy's dad Australian, The (Australia) - Tuesday, May 5, 2009
Author: Caroline Overington

THE Family Court sentenced a mother to six months in prison for refusing to let a father see his 11-year-old son. The mother, who cannot be named because it would identify the boy, spent 16 days behind bars before the sentence was stayed on appeal.

The judge, federal magistrate Jim Brewster, acknowledged that the boy would be ``quite traumatised'' by the idea of his mother, with whom he had lived since 2001, being jailed. But, he said, he wanted to deter other parents from acting the same way. Parents would not be permitted to ``usurp the court and flout court orders'' and decide a child could not have a relationship with the other parent.

It is believed to be the first time in two years that a mother has been sent to prison for refusing to provide a father with access to his children.
In 2007, soon after the Howard government's changes to family law were introduced, a judge jailed a pregnant woman for denying a father access to their child on Christmas Day, Father's Day, and the child's birthday, saying her actions had been ``deliberate, calculated and malicious''.

The Full Court of the Family Court has since ruled that the sentence in the latest dispute was too harsh, releasing the mother from jail, and putting her on a two-year good behaviour bond.

The parents were in a relationship between 1995 and 2001; the child was born in 1997. The boy lived with his mother between 2001 and 2007, when the father was granted access.

But he didn't see the boy at all during 2007 because the mother took him from his home state, NSW, to Queensland and then Western Australia, where she enrolled him in school under the name of her new partner.

It took police in three states, aided by federal officers, a year to find them.

Sending the mother to jail, the judge said it was ``clear that it is not in (the child's) best interests that his mother should be sentenced to a term of imprisonment''. But it was in the ``interests of children in general that a punishment should be imposed which will act as a deterrent to parents acting in the way that the mother has done''.

The mother told the court she understood that ``not complying with the orders has made a bad situation worse''.

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http://www.news.com.au/dailytelegraph/story/0,22049,21463034-5007132,00.html

Mum jailed in custody battle Exclusive by Janet Fife-Yeomans
March 29, 2007 12:00
A MOTHER-of-two is behind bars for defying court orders in a tug-of-love fight with her ex-partner.

In what family law experts said was a rare case, the woman, 31, was given a heartbreaking choice by the Federal Magistrates' Court – let the father to see his children or go to jail.
Have you experienced a similar situation? Tell us via the feedback form below. We may not be able to publish some comments for legal reasons but we will read them all.
Magistrate Michael Jarrett adjourned the case for 15 minutes but when he returned to the bench, the woman, already on a good behaviour bond for refusing access to her ex-partner, remained unrepentant.
Mr Jarrett, sitting at Lismore in northern NSW, took the rare step of jailing her for four months.
She was last night in Grafton Jail and her children, a girl aged six and a boy aged eight, were with their father, 41, who was granted full custody.
Her new husband yesterday told The Daily Telegraph yesterday his wife was distraught.
"She has been crying," he said.
The families cannot be identified.
The father's solicitor, Steven Tester, said the magistrate had no choice after the mother refused a lifeline.
"No one wanted to see the mother go to jail. The point of these kinds of cases is that there are laws in place and they apply to everyone, Compliance is not optional," Mr Tester said.
"The Family Court heard evidence and allowed the father to have unsupervised access to his children.
"Despite the mother being warned about the likely result of her not complying with the order, she took matters into her own hands.
"The result is regrettable but ultimately it was the mother's choice."
Family law expert Michael Taussig QC said it was an extreme case.
"They are highly emotional cases and it has to be a blatant and flagrant breach of court orders before a magistrate will consider jail," Mr Taussig said.
It was the culmination of six years and 22 Family Court and Federal Magistrates' Court hearings since the couple split when the woman was a few weeks pregnant with their second child.
Her claim that her children would be in danger from their father, who has a number of criminal convictions, was rejected by the Family Court.
In December she was placed on a good behaviour bond by the Federal Magistrates' Court after she refused to allow supervised visits by the father and hid with the children for six months.
Her new husband said she intended to appeal and was preparing the case herself after being refused Legal Aid.

Mum would go to jail again for her children - EXCLUSIVE Daily Telegraph (Sydney, Australia) - Wednesday, July 11, 2007
Author: JANET FIFE-YEOMANS

A MOTHER who went to jail in a tug-of-love row with her ex-partner was quickly reunited with her son and daughter after her release from prison .

As she hugged her young children yesterday, the mother -- who made legal history -- told The Daily Telegraph that she would do it all again.

``I would but it's not easy,'' the woman, who cannot be identified, said.

``I'm just giving them as much love as I can.''

She was jailed in March by the Federal Magistrates' Court after refusing to allow her ex-partner access to their children, a boy, 8, and girl, 6.

She was already on a good behaviour bond for defying court orders when Magistrate Michael Jarrett, sitting in Lismore, took the rare step of jailing her for four months.

In May, the Full Bench of the Family Court, made up of three judges, halved her four-month sentence and released her immediately from jail.

Lawyers expect the judgment, yet to be published, to set fresh guidelines, raising the bar for the jailing of parents who contravene court orders.

In jail for two months, the mother received support from fellow inmates, who praised her for being ``gutsy'' in standing up for her children and baked her a 31st birthday cake.

Yesterday she revealed how she got through with prayer and believing she had done the right thing.

``It was very rough,'' she said of the first night in a cell, with her children ordered by the court to live with their father.

``Our families are the most important assets our country has and we need to keep them together. They had never lived with their father since we separated.''

Refused Legal Aid, the woman organised an appeal from her cell with financial help from family.

She said her children were ``extremely confused'' after the court ordered the father to return the children to their mother the day after she got out of jail.

```What can I say? They've had a really hard time of it ...,'' she said.

``Our children are precious but they are treated like slabs of meat by the courts in many cases and it's very sad.''

Steven Tester, the solicitor for the woman's ex-partner, said the children had ``a ball'' living with their father.

Court orders have now restricted the father's access to six hours a month.

Custody battles

Recent cases of desperate parents:

* June: Full Bench of Family Court overturns orders jailing a mother for four months, suspended for 12 months, for refusing to allow children, 12 and 8, to go with their father. * May: Full Bench of Family Court overturns jailing of a NSW mother and awards her custody of her two children.

* April: Father jailed for 12 months for four offences of contravening orders to return children to mother .
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Judge's ruling warns Brethren - EXCLUSIVE Age, The (Melbourne, Australia) - Wednesday, February 21, 2007
Readability: 11-12 grade level (Lexile: 1230L)
Author: MICHAEL BACHELARD, AGE INVESTIGATIVE UNIT

A JUDGE has given three members of an Exclusive Brethren family suspended jail sentences for denying a father an access visit to two of his children.

The judgement was an emphatic statement by the Family Court that it will not tolerate the Exclusive Brethren continuing to flout court orders in pursuit of the sect's policy of strict separation of its members from those who have left the church.

Justice Robert Benjamin imposed four-month suspended prison sentences on the children's mother , a son and her son-in- law .

"What happened in this case is that the court said to these people, 'Do not breach these orders', in circumstances where the finding was clear that the separation of the children and their father was at the higher end of emotional abuse," Justice Benjamin said.

"I made it absolutely clear. Yet some two or three weeks later, a breach occurred. In this case a term of imprisonment is entirely appropriate."

Justice Benjamin concluded that the family had put pressure on the children not to go on the visit.

"These children are entitled to have a relationship with their father, and the steps that the respondents have taken to prevent the relationship are extraordinary and appalling."

The son and son-in- law were found to have aided and abetted the mother , and got the same sentences.

Justice Benjamin suspended the sentences because of the otherwise good record of the mother , and the youth and good records of her son and son-in- law . However, they will go to prison if, in the next 12 months, they do not comply with the orders for access, or if the two young men go to the place where the children, aged eight and 13, are handed over.

The mother is not allowed to take any male member of the Brethren with her when she hands over the children, because the judge found men exercised power over women.

He also ordered the mother to pay all the costs in the case, including the father's and those of the independent children's lawyer.

The case arose from a December 21 judgement that the father be given regular access to the two youngest of the couple's eight children.. But when he went to pick them up at the mother 's house for a week-long visit on January 14, he found his son and son-in- law there, even though they were supposed to be at

church. The young children, a boy and a girl, told the father they did not want to go with him.

"I knocked on the door, the children came to the door and said, without emotion, that 'I'm not coming with you'. I said why. They said, 'I'm just not'. I said to (my daughter), 'The judge did say that it's OK'.

"And immediately at that point she turned around and looked up at her mother and gave a smile, which troubled me, as if some preconceived plan was in place," the father said.

"What I saw was (one young man) standing in the doorway with his arms folded . . . an overbearing attitude. (The other young man) was standing on the other side of the door . . . there were four adults there, and I saw intimidated children."

But the mother gave evidence that the children were presented for the father to take, their bags were packed and on the veranda, and she had told them they were allowed to go. During a two-hour stand-off, a police officer was called but could not deliver the children to the father.

The mother admitted under cross-examination that members of the Exclusive Brethren had deposited more than $50,000 into a bank account for her to pay her legal costs. Costs are escalating quickly after the mother briefed a senior Melbourne QC, Noel Ackman, to appear in a motion to have the judge stay his orders.

The mother said the money was a loan, and denied it was part of a "fighting fund" amassed by the Brethren to fight Family Court cases. "It's a system of society of love that you probably don't understand," she told the father's counsel, Terry McGuire.

She also admitted to speaking for about 10 minutes to Exclusive Brethren world leader Bruce Hales on January 24 - 10 days after the failed access visit. She described Mr Hales as a "family friend" and denied he had influenced her about the case.

A spokesman for the Exclusive Brethren has also denied that Mr Hales played any role in the case.

The spokesman, Tony McCorkell, said it was a "misconception that because a member of the Brethren is involved in, or a party to something, that the whole Brethren movement is involved".

Mr McCorkell said Mr Hales had been in Tasmania on January 24 for a Bible study meeting.

Mr Hales had "inquired after the welfare of the children and the business run by (the mother), which was left to her by her former husband and managing partner," Mr McCorkell said.

"Conversation was brief and in the presence of other Brethren," he said. "The Brethren feel for both parties and in particularly the children in this situation and have offered their prayer and support."

During evidence in the case, the mother laughed when asked if there was a photograph of the children's father in the house. Asked if she had told him that he became a grandfather late in January, she said: "That's not my responsibility."

"That's extraordinary," Justice Benjamin responded. "How sad it was that this house was so poisonous to the father that they could not even have a photograph of the father in their home."

The judge rejected the mother 's argument that the children were acting from free will, saying these "were not the views of these children but of the adults who surrounded them". He said he found the mother , her son and son-in-law evasive, and preferred the evidence of the father.

The mother also gave evidence that if according to her conscience the law of the land conflicted with God's law , she would reject it.

Justice Benjamin had earlier rejected an application by Mr Ackman, QC, for a stay of his orders. Mr Ackman argued that the children were entitled to exercise their free will not tosee their father, and that his insistence that he be given access "can hardly be a considered decision of a man who says this is in the best interests of the children".

After losing that argument, Mr Ackman launched a second action, this time asking Justice Benjamin to disqualify himself, on the grounds of bias, from hearing the case brought by the father that the mother had contravened the order. Justice Benjamin refused to disqualify himself.

The judge also refused an application by the mother 's other lawyer, Roger Murray, to close the court to The Age.

Australian, The (Australia) - Monday, August 22, 2005
Author: Amanda Banks, MATP
Jail warning for Family Court lies

PARENTS caught lying to the Family Court during custody disputes over their children are being sent a clear warning after three people were charged with perjury and given suspended jail terms.

West Australian Family Court judge Julienne Penny has referred at least three cases to the Department of Public Prosecutions because of blatant lies to influence custody proceedings.

The Australian Family Association says the cases are symptomatic of the stress and trauma of relationship breakdowns, particularly those involving children.

Association national vice-president Bill Muehlenberg said the cases presented a sentencing dilemma for the courts, which needed to impose a penalty that would deter the unhelpful behaviour but also take into account the interests of the children.

``We would back the whole thing up one step and say this simply shows the real tragedy that divorce is,'' Mr Muehlenberg said.

Justice Penny said one of the parents, who cannot be named for legal reasons, had made a barefaced attempt to mislead the court about his daughter's living

arrangements in two sworn affidavits. In April, he pleaded guilty in the West Australian District Court to two counts of perjury, which carry maximum penalties of 14 years' jail .

After hearing that the 30-year-old butcher had been under great stress and was concerned his former partner had been lying about her illicit drug use, District Court judge Kate O'Brien said a jail term was appropriate but could be suspended.

``It's not for you to try to undermine the role of the court by telling the court lies in order to affect the court's decision,'' Judge O'Brien said.

In a written judgment delivered in March 2003, Justice Penny said the father had failed to tell the court his driver's licence had been suspended and he had been fined for a third drink-driving conviction. He also lied by saying he and his daughter lived alone when a work mate had moved into his home.

In a second affidavit supposedly sworn to correct his lies, he falsely claimed he had not driven since losing his licence.

His work colleague and house mate, who last month pleaded guilty to one count of perjury and was given a 12-month suspended jail term, swore an affidavit supporting his lies and denying his criminal record. ``It is clear the father has little regard for the law and no regard for the truth,'' Justice Penny said.

Justice Penny ordered the girl, then aged seven, should move to live with her mother because of the parents' changed circumstances.

In a separate case last year, Justice Penny found the mother of a four-year-old girl had sworn affidavits in which she claimed her daughter was unwell and had been taken to a doctor when she had refused to comply with the father's approved contact arrangements.

The 29-year-old mother later accepted her explanation was a lie. She pleaded guilty in June last year to perjury and was sentenced to 18 months jail , suspended for 12 months.

The mother was also fined $800 after her refusal to allow contact led to a contravention proceeding in the Family Court.

Mother in jail over access row
Mum jailed for hiding daughter
Advertiser, The (Adelaide, Australia) - Thursday, August 24, 2000
Readability: 10-12 grade level (Lexile: 1160L)

A MOTHER has been jailed by a Family Court judge in Darwin until she reveals where she has hidden her eight-year-old daughter.

The judge had ordered the Darwin woman, who does not have legal custody of her daughter, to remain in prison until she discloses the child's whereabouts, a court spokesman said yesterday.

The woman, who cannot be identified, took the girl from a Darwin house last Thursday during a supervised access visit.

Family and Community Services, which had supervised the visit, found the mother but she refused to reveal the girl's whereabouts.

Federal police were called but also failed to find the child.

A court order was obtained and she was arrested on Monday.

Advertiser, The (Adelaide, Australia) - Saturday, June 13, 1998
Readability: 10-12 grade level (Lexile: 1190L)
Author: NATALIE SIKORA in Melbourne

THE mother of a five-year-old girl was behind bars last night for refusing her estranged husband access to their child.

The woman, 40, was sent to a women's prison yesterday for 11 days.

It is believed to be the first time in Victoria a mother has been held longer than a day or two over a custody issue.

A Family Court judge heard that the mother hid her daughter, kept her from school and repeatedly broke court orders to prevent her husband from seeing the girl.

The mother argued the girl should be kept away from the father because of cultural differences and alleged domestic violence and sexual abuse.

The child was given three hours a week with her father ~ but only ever saw him when Federal Police took her from the over-protective mother .

The bitter custody battle came to a head this week after court hearings and orders to arrest the mother escalated to almost a daily occurrence.

Justice Hubert Frederico remanded the woman in custody on Thursday until June 22 and said the girl should stay with her 56-year-old father.

His decision was hailed yesterday as a victory for the rights of fathers and children.

Justice Frederico ordered the child's grandmother to deliver the girl and her school uniform to the father two nights ago.

He also directed the welfare of the child be investigated by the Department of Human Services.

The father and child had been separated since his 13-year marriage collapsed about 13 months ago. He had seen the child only about twice in that time, lawyers said.

Under strict conditions imposed by Justice Frederico, the girl is not allowed to be bathed by her father unless his other daughter, aged 24, is in the room and she is also to have her own bedroom.

A national father's group, Dads Against Discrimination, praised Justice Frederico last night for the tough stance he had taken.

``It's a good decision in the best interest of the child,'' spokesman Lee Mitchell said.