

# Chapter Five

## Experiences of Contact

This chapter considers the women's experiences of the actual exercise of child contact. The women that we interviewed described a number of problems they experienced when their violent ex-partner exercised contact. Some of these problems may be common among parents dealing with contact arrangements. However, other problems are particular to violent relationships and highlight a need for special consideration of child contact arrangements in the context of domestic violence. In this chapter we examine whether the women and children were subject to violence or abuse during contact or contact changeover, whether the exercise of contact with the children was used in order to have contact with the woman, how the children were affected by contact, the attempts women made to make contact safer, various breaches or threatened breaches of contact arrangements and attempts to enforce or vary the contact arrangements.

### 1. Contact Changeover and Issues of Safety

#### *A. Violence during the exercise of contact or at contact changeover*

The overwhelming majority of the women that we interviewed had experienced violence during child contact visits or at changeover time.<sup>1</sup>

Of the 35 women who were resident parents facilitating contact with the father, only five (14.3%) said that they had **not** experienced violence at contact changeover. Diane achieved this by having a secret address, living a considerable distance from the father so that there were no accidental meetings, avoiding all places and events where he might be present and using a contact centre for supervised contact which had very controlled times of arrival and departure. In other words, she had been successful in setting up arrangements that ensured that she had no contact whatsoever with the contact parent in spite of the fact that he was having contact with the child. It is also noteworthy that three of the women who said there had been no violence during the exercise of contact nonetheless described intimidating or frightening behaviour by the father of the children associated with contact. For example, Barb described experiencing verbal abuse and "physical changeovers." By the latter she meant behaviours such as her former partner slamming his fist on the car bonnet, shouting at her, and physically trying to force the children into his car. Of one of these occasions she commented: "[son] was screaming and [daughter] – it was horrible like. The kids were really distraught."<sup>2</sup>

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<sup>1</sup> Neilson reported similar findings in her Canadian study. She found that access commonly provided the opportunity for abuse to continue and that children were exposed to high levels of conflict on a continuing basis after separation (2001, p51).

<sup>2</sup> See also Belinda who described arguments and controlling behaviour on contact, as well as her ex-partner sitting in his car outside the refuge where she had fled with the children because he wanted to see the children. Sharon described being followed home after a contact visit in breach of her ADVO.

The remaining 30 women (85.7%) described differing degrees of violence occurring during changeover or during contact visits.

Some of this violence was directed at people who were supporting the women during contact changeover. This behaviour consisted of threatening, bashing, punching, driving cars at, harassing or spitting on friends, new partners or relatives who were providing protection or assistance to the women during changeover.<sup>3</sup> For example, Claire said that the family who were facilitating the contact changeover initially stopped after three months because it was “wrecking their lives.” The father of the children had phoned them, harassed them, and sat in front of the house in his car watching them so that their children were afraid to go out of the front door. This harassment of those supporting the women is not surprising given that research has shown that one of the classic strategies adopted by perpetrators of domestic violence is to isolate the victim from social supports that might otherwise diminish her vulnerability to the abuse.<sup>4</sup>

Like the pre-separation violence outlined in Chapter Two, the violence directed at the women during contact demonstrated a wide range of abusive behaviours. Physical abuse included punching, hitting or slapping her in the face, ribs, stomach or other parts of her body, beating her, grabbing her by the throat, pushing her, dragging her along by the hair, holding her in a head lock, holding her hostage, causing injury by forcibly pulling objects out of her hands or from around her neck, driving along with the car door open so that it hit and knocked her to the ground, and drugging her drink. In some cases an ex-partner had destroyed a woman’s property, often in attempts to enter the house or, at least to frighten her. Such behaviour included kicking or smashing down doors and smashing windows. The psychological abuse associated with contact included stalking, threats of physical assault or death, threats to kill the children, threats of sexual assault, emotional or verbal abuse, harassment in person or over the phone, threats of suicide, and theft of a woman’s car.

For many women, the abuse around contact was both physical and psychological. For example, Cath said:

*he’d come to pick up the kids one day and I had been seeing somebody and I wasn’t home at the time so he sat around and waited until I got home and when I got home he took me in the bedroom and beat the shit out of me because I was seeing someone – I mean he had a girlfriend that was fine... But [there was] not – not a lot of like physical violence and it was more um mental like just harassment.*

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<sup>3</sup> Tracey described threats against her father during changeover. In this case, her ex-partner had an ADVO out against her father, because he did not want him attending changeover. Megan described a friend being spat on and bashed because she was helping her pick up the children after contact. She also described her ex-partner threatening to bomb her mother’s house. Sylvia described her parents being threatened ‘a lot.’ Ellen said that her ex-partner drove his car at her new partner who avoided being run over by jumping out of the way. Jenny said that her ex-partner punched her current partner when the ex-partner was abducting the child. Helen described her mother being frightened.

<sup>4</sup> Astor (1991); Echevarria (1996); Dang (1990) p 232.

Almost all of the professionals had been involved with cases where there had been reports of violence after a contact agreement or order. One of the Family Court counsellors commented:

*probably the worst [cases] are where [contact] is just not about the kids really....It's just used as a reason to harass the woman and the kids are not important at all which, that's the most common awful one you see where you are quite sure that it's not about these children, it's about something else...They want to see the kids because it provides an opportunity for abuse of the ex-spouse.*

## **Using contact to abuse women**

### **Case Study: Vivian**

Vivian travelled from the Central Coast to Sydney (approx. 1½-2 hours drive) to facilitate contact between the children and their father. She was staying at the Central Coast because she was afraid to be in her parents' house alone with her ex-partner living quite close. When she eventually went to leave with the children he became angry, grabbed her arm and refused to let her go. She was very frightened because he had threatened to kill her and had, in the past, hit her and raped her. They argued for an hour with the children sitting in the car outside. He said "I'll fuck ya you know". In the end she agreed "to anything" because she "just wanted to get out." At that point she drove him home and he said that the children were staying with him. Because he had their passports and she was afraid that he might take them out of the country she slept in the car outside his house. He kept coming out to harass her during the night. Eventually he invited her into the house and then tried to get into bed with her several times. The harassment continued all of the next day with him refusing to allow her to take the children. Eventually she managed to obtain a recovery order from the Local Court to retrieve the children. Under the terms of an interim Family Court order, contact changeover now takes place at a supervised contact centre. Vivian would prefer that contact itself took place at the centre.

### ***B. Attempts to make contact changeover safer***

Many of the women we interviewed had tried several different options and venues for contact changeover in an endeavour to find arrangements that worked for them and their children.

#### *i. Changeover at residence*

The most common arrangement – used at some time by 18 women (45%) – was for contact changeover to take place at their residence or the residence of the contact parent. For a couple of women with older children they could still avoid contact with the contact parent because they closed the front door and let the children make the transition in and out by themselves. However, many of the other women expressed dissatisfaction with changeover at their residence as they were frightened of the contact parent or did not want his intrusion. For a number it had proved to be unsafe. Those women who were unhappy with this arrangement commented that they did it this way because he just came

around anyway, or that he insisted on it and it was easier to give in, or because it was court ordered.

*ii. Changeover at a centre or refuge*

Twelve women said that although the contact itself was not supervised, they were using, or had used at some point, a contact centre, or a women's resource centre for contact changeover. Most of these women described finding this type of service very helpful as it meant that they did not have to deal with the contact parent. This minimised the stress and danger for them and the trauma for the children. For example, Meena, who said that changeover used to be "very, very bad" (she was punched and intimidated during changeover), said that it hasn't been too bad since she started using a women's resource centre as a changeover point because she no longer had to confront him every time. Women also saw the more structured contact changeover provided through a centre as leaving less room for breaches of the contact arrangements.

Those using centres with strict arrival and departure times, and security, were also reassured that they could keep their addresses secret and that the contact parent could not follow them home or lie in wait for them on the way to contact. Unfortunately, however, even a number of the women who used refuges or centres for contact changeover were 'ambushed' or followed home after contact by the contact parent. For example, Tina described the contact parent lying in wait for her bus on the way to the centre, obstructing her way, and trying to snatch the child. He was not supposed to show up until ten minutes before contact but he was often there an hour early watching and calling out to the child. He did so in disregard of both the ADVO and the requests of the staff at the resource centre. Kim noted in her diary that she had been followed from the contact centre by the contact parent after changeover on a number of occasions. She also noted, "the futility of driving to [x] and having non face-to-face contact when he's at my door almost everyday was silly."

A number of the women commented that the contact parent did not want to use the centre and, in some instances, went out of their way to circumvent its use. For example, Sylvia used a women's resource centre for the contact return. Because the contact parent was an alcoholic and had restrictions on drinking during contact, the arrangement theoretically ensured that a third person could witness his demeanour. However, he frequently did not drop the child off to the worker but directly to the mother waiting outside the centre so that no one else could see that he was drunk.

Potential shortcomings of the centres were the distance that women had to travel to use them, the high turnover of staff so that the children had to be taken between the parents by strangers which was distressing to them, and the short length of time that supervised changeover was sometimes made available because of the level of demand for these services in the community.<sup>5</sup>

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<sup>5</sup> Teresa said that there was a high turnover of staff at the centre that she used and her very young son became distressed when he had to go with strangers who were ferrying him between parents. They were only able to use the centre for three months as there was such a demand and she thinks they should offer it

Decision makers should take care when ordering changeover at a refuge. One of the refuge workers raised concerns that a Family Court judge had ordered contact changeover at the refuge where the woman was staying with the children. This was despite the policy of not identifying the location of the refuge. The refuge worker commented: “And he used to come around here and pick the kids up and drop them off and it wouldn’t have mattered what we said about the refuge [being] a safe place and all the rest of it.”

### *iii. Changeover at the police station*

Six women had used a police station at some point for changeover. Three of these women nonetheless described experiencing violence during changeover. The advantage appeared to be that the police were there as backups when this happened.<sup>6</sup> For example, Teresa described the contact parent as “difficult even with the police around.” However, she said that “when he got stropky” the police put them in separate rooms, asked her if she felt comfortable about letting the child go on contact and then supported her decision. However, the security provided by the police had its limitations. Susan described violence occurring in the car park because the contact parent refused to wait outside the station. Some women also commented that it did not feel right for the children to be dropped off at a police station.

Some of the professionals were also concerned about the use of police stations for changeover. One of the solicitors in private practice commented:

*The one that I try very, very hard to resist and I really try and push people away from it, is using the police station as the place to change over, I hate the concept of the children associating meeting mum or dad at the police station and I’m surprised by the number of people who suggest it and haven’t thought about that as an issue as to how the children would perceive it. Their concern is their safety and they see the police as protecting them which is not unreasonable I suppose, but I hate associating the children with it, in their minds associating contact with the police being involved in any way. So the most common alternative is McDonald’s ...*

Other professionals were also concerned about the safety of changeover at the police station. For example, a co-ordinator of a women’s Domestic Violence Court Assistance Scheme said:

*And I mean like the police station has been used on a few occasions but um you know it’s not a very nice environment for kids and also the attitude of police.*

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for 12 because it takes you “that time to settle down.” Yvonne found changeover at a centre excellent, but that only occurred on one occasion whilst a DOCS investigation was proceeding.

<sup>6</sup> Carmen said it made changeover more structured and there wasn’t room for him to be late. For example, she is filing for divorce and expecting him to have a reaction and has gone back to using the police station for changeover because she likes the security of changeover taking place somewhere where he is less likely to cause problems and if he does, where there is back up for her. Tracey described the contact parent abusing and threatening her, spitting in her father’s face and refusing to hand the children over. Perhaps because of the police involvement he was arrested the following day.

*Like I – I remember this one woman saying to me she was assaulted at the police station. Because they – they were having the changeover in the police station and they started having an argument and the police officer said go outside with your domestic.”*

One of the refuge workers that we interviewed talked about a client who:

*was dropping off at [name] Police Station but it was so unsafe for her we gave her a cab charge every time she did it, so she could hold the cab there hand the baby over and back in the cab and leave...[I]t was so bad that a policewoman wouldn't actually accompany her outside the police station by herself she needs to go and get, like another male usually, to go with her because of her own fears about this man... He'd followed her a few times... And that was a Family Court judgment...She rang up here to sort of tell us why she was so late because she was waiting to get rid of him before she came back to the refuge, and he grabbed the phone off her and um was quite abusive to workers on the phone and all this sort of thing.*

#### *iv. Changeover at McDonald's and other public places*

Five women said that they had used a McDonald's for contact changeover at some point. The theoretical advantage of this as a changeover point is that it is a public place, it is well lit, it is child friendly and there are likely to be plenty of people around.<sup>7</sup> Nonetheless two women described the contact parent verbally abusing them during contact changeover,<sup>8</sup> and Ellen, who described being assaulted and stalked by the contact parent in the past, said that she did not feel safe at McDonald's but it is the venue that the child's representative chose.

Some of the professionals commented on the frequent use of McDonald's restaurants for changeover. One solicitor said:

*I know I wouldn't like to be a McDonald's manager because I do know that there have been dramas - you know kiddies being tug-of-warred through the car you know, trying to get the kids out and the kids won't go - they've run in and asked the McDonald's manager to ring the cops or something<sup>9</sup>*

Other women had used various public places for changeover. For example, two women described using a railway station platform at some point, three women said they used a hotel or tavern car park, and three of the women did changeover in the street.

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<sup>7</sup> Jenny said she wanted to have changeover at McDonalds because it is a public place and there are plenty of people. He had physically assaulted her and her partner and abducted the child on an earlier occasion.

<sup>8</sup> Nicole used McDonalds at some point but there were arguments and verbal abuse. There was a scene in public where he was yelling and swearing and it was no good for the kids and so she changed it. Joyce said that he made an enormous fuss in the middle of McDonalds when changeover was occurring and then told everyone it was her fault.

<sup>9</sup> A co-ordinator of a women's Domestic Violence Court Assistance Scheme commented: "I've heard women say that [the Family Court has] suggested they should do the changeover at a public place like McDonalds and um you know I just think that's outrageous...you know that our society should be able to guarantee more safety than that."

However, none of these venues had proved safe. Both women using a railway station had experienced verbal and physical abuse during changeover there. Both were women who had used supervised contact centres for changeover in the past and would prefer to be continuing to do so. All the women using a tavern car park had experienced verbal and/or physical abuse during changeover there. Kate, who used to have changeover in the street, described the contact parent smacking her in the face when he arrived at the changeover point because he had had an accident on the way and was in a bad mood. Parks and shopping centres were occasionally also used by some of the women, once again with limited safety.

Four of the women with older children used the children's school as a changeover point with apparent success in minimising the violence. This is because under such arrangements the parents need not have any contact at all, particularly if the contact parent has overnight contact and both collects and returns the children to the school, rather than to their mother.

#### *v. Using a third party to undertake/ assist with changeover*

Ten women had used a third party, generally a relative or friend, to effect changeover at some point. Only one of these women, Megan, described this strategy as an unqualified success. Megan described a history of severe violence associated with contact changeover as she has had her door and car smashed, and been choked, threatened, and bashed. She also described attacks on some of the people providing her with support. She now uses a third party to pick up and drop off the children from McDonald's on the basis that taking herself out of the equation would save "all the violence and the rubbish that has been going on for the last two years." She said that the arrangement has taken the worry and stress out of changeover for her and it takes place without abuse or trauma for the children because he doesn't have a history with the third person doing the changeover and it therefore takes place in a civilised fashion. She did comment that she has had to organise this herself and that "there are some women that wouldn't have the means to do that."

Problems that other women experience with using a third party include: the person doing the changeover being abused by the contact parent, the woman herself being abused when the third party is a relative or new partner of the contact parent, the difficulty of finding someone who is neutral and willing to undertake the task, and the fact that the third party is inconvenienced when breaches occur and might feel resentment towards the women rather than the perpetrator.<sup>10</sup> Rebecca commented that in consequence of involving them "you lose your family and friends."

A women's Domestic Violence Court Assistance Scheme Co-ordinator commented that some women choose not to involve family and friends because they don't want them getting hurt:

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<sup>10</sup> Marcia commented that the difficulty of using someone else is that when her ex partner doesn't show up and they are inconvenienced, they complain to her rather than her former husband.

*sometimes the family just don't want to be involved because they know what the defendant's like and they quite often cop the abuse as well and um so you know this woman last week said to me well, it's just as easy for me to keep being the contact because my parents don't want to be the contact any more because he just abuses us ... I was going to say she can handle him – well she can – she feels like she wants to protect her parents, she doesn't want them to cop that either so it's better for her to cop it than them. You know, so it's just – it's really a messy situation.*

Seven women took a support person with them on changeover, as opposed to doing the changeover through this person. This appeared to have the advantage of alleviating their fear of the contact parent's violence but it was no guarantee of safety. Both Tracey and her father were assaulted on contact changeover. Susan commented that this arrangement is hard on the support person and she is always conscious of their safety. However, she added that it is useful to have a witness to what happens at changeover, as well as someone to assist with her agitation and fear.

Sometimes the presence of a support person might actually aggravate the abuse. One of the Family Court counsellors was commenting on a woman who wanted to change the changeover arrangements when they said:

*the husband had just gone berserk and kicked the car and tried to take one of the children out of the car, he was just physically violent towards the woman in the car park when they were trying to do the hand over. And the only reason for it was that she had somebody else in the car with her, another adult in the car.*

#### *vi. Making contact changeover safer?*

We have found that those contact changeover arrangements that work best and are safest for the women (and reduce the chances of children witnessing abuse although don't necessarily protect the children themselves) are those that do not bring the parents into direct contact with each other.

A number of the professionals we interviewed seemed to be unaware of the problems women experienced with contact handover arrangements. For instance, several assumed that third parties such as other family members or friends could be found to assist in contact changeovers, or that changeovers in public places such as shopping centres, police stations or at McDonalds might be adequate to secure the mother's safety. Some also mentioned supervised contact centres, although there was also wide recognition that these centres were not widely available.

On the other hand a Child and Family worker with an Area Health Service commented:

*Well in these domestic violence cases um it means that [the women] can't get on with their lives. Um because they have got to see this person...[U]sually it's the case that the woman has to do the handover, and you've got this anomalous situation where someone will have an AVO that says that this person is not to come within cooe of them, but they have to be the one there to hand the child*

*over, so in that situation they are exposing themselves to further um harassment, I mean the person doesn't have to be blatant, they just have to glare at them to trigger intense distress. ... And sometimes what people do is they will just turn up at the gate and the other party will open the door and send the kid out. I mean it's a terrible, terrible situation.*

## **2. Children's Experiences of Contact**

### ***A. Abuse or neglect of the children on contact***

More than two-thirds of the women (n=25, 71.4%) who were resident parents expressed concerns about the treatment of the children during contact visits, and two contact parents expressed similar concerns in respect of residence. These women described parenting practices that they considered to be inappropriate or neglectful, and in a number of instances dangerous to the children's health and well-being.<sup>11</sup>

The children often witnessed the abuse of the mother during contact or changeover. They were sometimes more directly involved in that aggression. For example, Joyce said:

*What happened was ... at the changeover [when the father was to return the children] ... he was parked on one side of the road at his brother's place ... and I arrived about 15 minutes early but he was already there. The girls wanted to come back. He didn't want them to. He was going to drive off with them because he didn't want them to come back to me. There's constant emotional abuse of them as well you know, 'don't go near mother', 'she's awful', 'she's the one that left', blah, blah, blah. Um and [first child] came screaming over and told me to unlock the car which I did and she got in. She opened the back door for [second child] to get in because [ex] had come over as well. He's reached in, unlocked her door, grabbed her by the feet and started dragging her out...She's kicking and screaming and telling him no and he's dragging her out of the vehicle... He eventually got the girls out, [ex] sat down on the footpath, one in each arm. You know, it was really awful.*

Nerida said that on one contact changeover he dragged her down the stairs when she had the child in her arms and, in order not to fall on her, she had to throw the child up the stairs. He then grabbed the child and threw her in the back of the car without putting on her seat belt. He reversed down the driveway so that the child was flung into the front of the car and onto the dashboard.

Women's concerns about the treatment of children during contact or residence included: failing to attend adequately or appropriately to children's needs for food, toileting, bathing, sleep or medication or ignoring them; unsafe behaviours such as drug or alcohol use by the other parent, leaving children unaccompanied, or involving children in risky or inappropriate activities; interrogating children about their mother, or making

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<sup>11</sup> Neilson (2001) found that participants in her study reported 'that responsible parenting during access visits was more the exception than the rule', p215

threatening or abusive statements about the mother to the child;<sup>12</sup> inappropriate forms of discipline; and abusive behaviours or returning children with injuries.

Some of these neglectful behaviours seemed designed to annoy or upset the mother. For example, Dorothy commented that the contact parent adopted a policy of doing the opposite of what she asked him to. If she told him that the children had to take medication that day, he wouldn't give it to them. If she asked him to make sure they put their seatbelts on, he wouldn't let them. And if she asked him not to take them swimming because they had an ear infection, he would take them swimming. Kim detailed in her diary that the children would return from contact visits issuing threats from the contact parent such as "Daddy will punch your lights out" or "Daddy told us to go and get the gun and shoot you".

Some of the neglect was due to the fact that the contact parent was using contact to see the mother rather than the children. By way of example, Cath said that immediately after separation the father would come to pick up the children and would not take them – or even say hello or goodbye to them.<sup>13</sup> Instead he spent the duration of the contact visit harassing or being violent to her before leaving. Another contact parent told the resident parent in front of the children that he did not love the children and never wanted to see them again.

The professionals were asked to comment on the fears that women clients who had been abused might have for their children during contact visits. One Family Court counsellor made a typical comment:

*The other anxiety that the residential parent would encounter is that, while the children are in the care of the other parent, that the children will be subject to that parent's abuse, similar to what they've experienced.*

A solicitor in private practice commented that:

*[Many of my female clients who had experienced domestic violence] talk about the fear of continued abuse of themselves but that seems to be less or almost less important [than fear of abuse of the children]. If anything it is a very protective role that they perceive for themselves, protecting the children against harm, whether that is physical harm or that sort of harm that arises out of cross-examining the children about what mum has been up to, who she's seeing, what she's doing, finding out about mum.*

## ***B. Children unsettled by contact or disturbed about having to have contact.***

Many of the mothers gave their perceptions of their children's feelings about contact. Of course, these perceptions may not accurately reflect the children's feelings. For example,

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<sup>12</sup> Including telling young children that their mother did not love them.

<sup>13</sup> At least seven other women thought that the contact parent was primarily using contact to see her rather than the children. Diane thought he was interested in contact for immigration purposes so that he would have grounds for an application for permanent residence.

it has been shown that parents tend to minimise the impact that witnessing abuse has on their children.<sup>14</sup>

Given the above descriptions of possible neglect and abuse of children during contact visits, it is not surprising that 19 of the 35 women (54.3%) who were resident parents said that their children were disturbed and unsettled after contact. Of these children, all except five were children who had witnessed violence against their mothers. In addition, four of the children who were described as unsettled after contact had themselves been the targets of violence in the past.

The kinds of unsettled behaviour these women described as occurring regularly in their children after contact included being angry, being naughty, wetting the bed, being tired or sick, not eating, being unable to sleep, being hyperactive, becoming shy and withdrawn, and being confused. For example, Gina said that her children come back from contact confused as their father “tells them things” and takes out the bitterness that he cannot express to her on the children. She has to “debrief them” when they get back from contact visits. Her son stopped eating for around three months and she has had to arrange counselling for her oldest daughter and has explained to her how to keep herself safe when her father becomes violent and how to get herself out of the house if necessary. She commented that “I don’t think that these are things that any child should have to go through and I think that’s really unfair to the children but there’s nothing I can do about it.” Nerida said that her child who was almost seven years old had been affected by her father’s violence to the extent that she would not go to the toilet by herself or be alone in another part of the house until six months after her father had left. She reverted to being a normal child until contact recommenced 18 months later when she began barking under her desk at school like a dog and biting other children. Nerida commented that when she tried to explain in court that this was a manifestation of distress about having to have contact with her father the judge implied that the mother could equally have caused this behaviour.

Twenty nine of the women we interviewed commented on whether they believed their children wanted contact with the contact parent. Ten women whose children were disturbed after contact and eight others said that their children wanted to have contact with the contact parent (although in one instance one of the children wanted contact and the other did not). On the other hand, two of the women whose children were disturbed after contact and nine others said that their children did not want to have the contact that they were required to have. Of these eleven, six women said that their children had witnessed violence or abuse against their mothers, but only one said her children were the victims of violence.

Megan described her daughter refusing to go on contact after her father smashed down their door, smashed their car and terrorised everyone who was in the house at the time. The child pulled her eyelashes out, couldn’t sleep, would not stay in her bed alone for three months afterwards, started dirtying her pants, and expressed terror when she found out that she was to have contact with her father. Megan commented that “one of

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<sup>14</sup> Jaffe, et al (1990).

the things she's had to struggle with... is the fact that she doesn't feel that I am capable of keeping her safe. Because I can't keep myself safe." Pauline said that her oldest son had to be rushed to hospital with stomach pains when his father asked him to stay overnight and has told her that when he is older he will be strong enough to stop seeing his father. Barb said that prior to using a contact centre, changeover took place in the park. The children would always become hysterical. On one attempt one child screamed so hard that he vomited and the other had her leg hooked around the door of the car when they were trying to get her in. Eventually they tried changeover through a contact centre but the children still did not want to go on contact. She described scenes where the children were crying and had to be pulled off her. The last time she took her son on contact he clawed at her so frantically that he cut her wrist and drew blood. Her ten-year-old daughter threatened to kill herself by jumping from a moving car if she had to go on contact. Barb commented that at that point she stopped telling them that contact would be fun. Contact had currently broken down because the contact centre supervisors did not want to force the obviously distressed children to have contact.

Whilst some of the older children who did not want contact appear to have had their wishes respected<sup>15</sup> it is disturbing to note that some children have not. Sturge and Glaser note that "[i]n [cases of] domestic violence, where the child has memories of that violence we would see their wishes as warranting much more weight than in situations where no real reason for the child's resistance appears to exist."<sup>16</sup>

Some children in our study were described as being forced to face their father and let him know that they did not want to go on contact or being put under considerable emotional pressure to go on contact. For example, Joyce described the father having contact with his 11-year-old daughter reinstated even though she had made it clear through the DOCS officer, who gave evidence in the Family Court, that she did not want to go on contact. She was then forced to confront her father in person and tell him that she did not want to go. His response was that if she did not come on contact with him he would not return her younger sister after contact. He had tried, without success, to get the mother to drop the elder child off and then drive away so that she was forced to go on contact. The elder daughter still had contact with her father's family even though they had used that contact to try and put her on the phone to "Daddy who is crying." Claire said that after her daughter, who was then 11 or 12 years old, had indicated that she did not want contact anymore, her father waited until she got off the school bus and then abused her in front of the school. He also sent a fax to her through his solicitor saying that if she didn't go on contact with him she would be in contempt. He said to her: "I spent \$5000 on a barrister to get access and you do this." On another occasion Claire's daughter was vomiting because she did not want to go on a contact visit. The police rang Claire and said that she would jeopardise her residence if she did not take her daughter to

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<sup>15</sup> Nicole said that when her two eldest daughters no longer wanted to go on contact their father was going to force them and then realised that it would make his relationship with them worse in the long run.

<sup>16</sup> Sturge and Glaser (2000), p 624. This report was relied on by the English Court of Appeal in *Re L (Contact: Domestic Violence)*; *Re V (Contact: Domestic Violence)*; *Re M (Contact: Domestic Violence)*; *Re H (Contact: Domestic Violence)* [2000] 2 FLR 334. Sturge and Glaser remark that it is "damaging to a child to feel he or she is forced to do something against his or her will and against his or her judgement if the child cannot see the sense of it." The age and understanding of the child are also highly relevant.

the police station where contact changeover took place. When she got to the station the officer talked the child into going with her father.

Not all of the professionals felt qualified to comment on the effects of contact on children, although many commented generally on the effects of witnessing domestic violence on children. However, one Family Court counsellor said:

*where kids ... have witnessed violence at the changeover that brings up a different situation for them as well, because then they feel responsible for the violence, as if because of them the parents have to come together.*

### **C. Supervised contact**

The most obvious attempt to make contact safer for the children concerned is to ensure that it is supervised. Supervised contact covers a wide variety of situations. The contact may be supervised by a friend or family member of one of the parents, or by the resident parent, or the contact may take place under varying levels of supervision or facilitation at a children's contact service or other centre. Some centres provide only low vigilance supervision or facilitation whilst some can provide highly vigilant one-on-one supervision where necessary.

Three women said that they had initially supervised contact themselves, as they were too frightened to leave the children alone with the contact parent when they first separated from him due to his level of aggression and/or his drug use. Obviously such supervision placed the women in potentially unsafe situations or made them vulnerable to harassment by their ex-partner. One mother, Megan, was subjected to violence and had her drink drugged whilst supervising contact. Vivian commented that at "times I'd go over there and he wouldn't pay any attention to the kids at all and I thought – he'd just want to talk to me, 'come back' and you know."

Nine women mentioned that contact had been informally supervised at some point, usually by a relative or friend. In some instances these arrangements had broken down because the relative or friend was no longer willing to bear the burden of supervision. Dorothy had used a private agency to supervise contact, but reported that such an arrangement had broken down because her ex partner had shown up drunk, assaulted her, humiliated the children and the agency refused to provide further supervision. Her diary stated that: "There was verbal and physical violence during access. The father went to punch me in the head and went to choke me. Both my children were sitting on my lap at the time." However, the main problems with these arrangements arose when contact was supervised by a relative of the contact parent. Nicole was verbally abused by a supervising relative. Two women expressed concern about the quality of the supervision. For example, Christine said the relative was not a responsible person and the house in which the contact took place was not safe.<sup>17</sup> Nerida said that contact was intended to be supervised by her former partner's mother. However, she reported that contact was not

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<sup>17</sup> She reported that the family drank all day, the house was on a busy road and in summer the doors had been left open and as a consequence two of the children had been hit by cars.

always supervised and that the supervisor had watched the contact parent being violent to her without intervening.

Professionals generally confirmed women's accounts of particular problems arising when family members were required to supervise. It was suggested that family members became unwilling to continue to supervise contact following abuse, that some women were reluctant to submit their family to ongoing conflict and abuse by asking them to supervise contact or be a changeover point, or that the supervision was ineffective.

Other studies have found similar problems with informal supervised contact. For example, in New Zealand, Chetwin et al. determined that custodial parents who supervised access themselves were at risk, and the children involved were less safe and happy with these arrangements as they often witnessed conflict and abuse.<sup>18</sup> They also found that when access was supervised by extended family members the children were not always emotionally safe and most informal supervisors regarded their role as being a presence rather than providing active supervision.

Overall, only three women in our study said that their children had had, or were having, supervised contact through a contact centre.<sup>19</sup> Diane's 17-month-old child was having ongoing supervised contact with his father at a centre. The father had shaken and threatened the child before separation. The other two women had had supervised contact for a short period of time.<sup>20</sup> Barb, who had used a supervised contact centre, spoke very highly of the staff and professionalism of the centre, but said that contact had broken down because no matter how kind and loving they were, the children still did not want to go on contact. Joyce, whose children were again scheduled for supervised contact at a centre, said that she hoped that the centre would refuse to supervise the contact in relation to her eldest daughter who was 11. The child didn't want contact and Joyce did not want her to have to confront her father and tell him this.

Supervised contact often requires the agreement or co-operation of the contact parent. Two women said that they would have liked to use a centre but were unable to do so because the contact parent would not consent. Nerida said that supervised contact at a centre was ordered on an interim basis, but whilst she contacted the centre, the father didn't. This meant that at the final hearing the judge did not order supervised contact at the centre because the centre had not been able to assess suitability.

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<sup>18</sup> Chetwin, et al (1999).

<sup>19</sup> Note that some contact orders were for supervised contact for a short period of time and then for unsupervised contact. This is despite the fact that research has shown that it "takes at least six weeks for children to settle into the visiting process" and it "takes at least six months for the foundations of the relationship between child and visiting parent to be laid, re-layed or mended" (Strategic Partners Ltd (1998), at x). The average 'length of stay' in supervised contact services in 1998 was found to be five months (Strategic Partners Ltd, p 57).

<sup>20</sup> However, the centre had since refused to supervise the contact of Barb's child due to the child's distress at contact.

Supervised contact centres are not widely available in the Sydney metropolitan region or other areas in which the women interviewed resided. Indeed there are only seven operating centres in New South Wales of which the Australian Children's Contact Services Association is aware (only two of which are in the greater Sydney metropolitan region).<sup>21</sup> Some of those centres only provide changeover services, not supervision of contact. Nine of the women who did not use a centre for either contact or changeover said that they would have if there had been one that they could use in their area.<sup>22</sup> Diane, who used a contact centre, travelled for two hours to the centre and then waited for two hours outside the centre while contact took place before travelling two hours to her home.

Most of the professionals we interviewed were in favour of supervised contact centres but agreed that there were currently too few of them available and or that their hours were too restricted. However, many of the professionals who supported the need for more centres expressed concerns about the operation of such centres in cases involving abuse. Several stressed the importance of having well trained professional workers and reported concerns that charities and other volunteers were often unable to deal with the violence that sometimes confronted them. One refuge worker expressed concerns about inappropriate referrals from courts and gave as an example the situation where there was an ADVO in place for the protection of the children. Another concern is whether the centres are currently appropriate for clients from Aboriginal and Torres Strait Islander communities and whether the centres are able to cater to children and parents from culturally and linguistically diverse backgrounds.<sup>23</sup>

However, not everyone was positive about supervised contact centres. One Family Court counsellor described such centres as 'bizarre' and questioned the professionalism and 'bias' of the staff. A solicitor said that most of their clients were very positive about such centres. They noted that those clients who were negative were typically contact parents who were required to use the service but "who object to being bossed around or spied on or, you know, harassed."

Although the majority of women and professionals expressed a desire for more supervised contact centres, it is noteworthy that some were concerned that the very availability of such centres may mean that contact would be ordered that would not otherwise be considered to be in the child's best interests.<sup>24</sup> For example, Diane doubted

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<sup>21</sup> <http://www.accsa.org.au/services.html>. Site accessed 04/12/02. As at 10 October 2002, 35 Family Relationships Services Program (FRSP) funded Children's Contact Services were operating in Australia. The Federal Government Children's Contact Services (CCS) initiative, which is funded under the FRSP, is administered by the Family Relationships Branch of the Commonwealth Department of Family and Community Services. Funding for CCS is provided by the Attorney-General's Department. However, there are also a number of non-Commonwealth funded contact services in operation in Australia. For more detail see <http://www.facs.gov.au/internet/facsinternet.nsf/family/frsp-ccs.htm>. Site accessed 04/12/02.

<sup>22</sup> Megan said that she had wanted to use such a centre but was told that she could not without a court order. This is not usually the case. Statistics for 1997 - 1998 found that solicitors accounted for 40% of referrals to contact centres, Family Court for 22%, community legal centres for 9.5%, community agencies (10%) and welfare or social workers (8%). It is not clear how many of those referred had court orders (Strategic Partners Ltd (1998), p 21).

<sup>23</sup> Strategic Partners Ltd (1998), pp 52-53.

<sup>24</sup> See Harne and Radford (1994), p 83.

the value of contact for her child as the father had been violent to the baby. It is interesting to speculate whether contact would have been ordered by the court if there had been no supervised contact centre available. Another concern is that if supervised contact proceeds without “incident”, there appears to be an expectation that unsupervised contact will then occur although in some cases unsupervised contact would never be appropriate.<sup>25</sup>

It is difficult to determine whether the availability of such centres has contributed to a presumption of contact in cases of violence, or whether an existing culture of contact has generated a greater need for such centres. One worker said:

*I think if the Family Court has made it very much harder for no [contact] to take place, then something has to be put in place to facilitate contact. Something has to be put in place for contact to happen in a less emotional way so they have to look at supervised contact and hand over organisations and funding those appropriately*

Of course the use of supervised contact centres does have limits in cases involving violence and it may be that the cases that present the greatest danger to women and children are the very ones that cannot evoke even the limited protection offered by the centres. A refuge worker who was supportive of the centres raised a concern about cases that were not accepted by contact centres because they were assessed as being outside the guidelines, especially where this was due to abuse. Such cases usually had to fall back on unsupervised contact or family members. A worker from a supervised contact centre acknowledged this dilemma:

*if contact has to occur, how safe can it be for that mother to manage it without us. So we are in this quandary of you know being several things to a multitude of different people and agencies and whatever.*

### **3. Breaches of Contact Arrangements**

#### ***A. Abduction/non-return of the children***

Almost half of the women (17 of 35; 48.6%) we interviewed who were resident parents described the threatened or actual abduction or non-return of children by the contact parent.<sup>26</sup> Thus, women described threats to abduct the children (five cases), threats not to return the children after contact (one case), attempts to abduct the children (three cases),<sup>27</sup> the children being abducted from the street or from school (five cases),<sup>28</sup> the contact

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<sup>25</sup> Bailey (1999). Bailey found that most of the Canadian and U.S. supervised access providers that she canvassed thought that long-term supervised access was appropriate when unsupervised access is not a feasible future opinion.

<sup>26</sup> Neilson found evidence in the court records of actual or threatened abduction in 24% of partner abuse cases in one Canadian jurisdiction (2001, p51).

<sup>27</sup> Sharon's ex partner had tried to take children to South America. Gina's ex partner had made three attempts to take the children out of school.

<sup>28</sup> In Jenny's case he assaulted her and her partner and abducted the child in the street. Nerida's child was abducted from playgroup on about 6 occasions for periods of up to 2-3 days. Joyce's ex partner abducted

parent failing to return the children after a contact visit (seven cases),<sup>29</sup> and the father enforcing what one woman termed an ‘illegally obtained recovery order’ and then simply refusing to return the children (one case). Joyce said that after the court reduced contact because of what the contact parent was doing to her and the children, he began refusing to return the children. Once he took the youngest child from school for two and a half weeks and had her in hiding for a week and a half with someone that the child did not know. Joyce has had to obtain five recovery orders in three years and the court still allows him unsupervised contact. Megan described going to pick up the children after a contact visit but they were not there. The contact parent told her that she would never see the kids again and asked, ‘any last words you’d like to say to [daughter] as she’s growing up?’ She did manage to get the children back the next day with the help of a friend but both of them were assaulted in the process.

Six of the women who did not actually describe abductions or non-returns by the contact parent nonetheless described a high degree of fear around the possibility of abduction. Several of these women described taking measures to prevent this from happening. Pauline has refused to send the children on a contact visit to America. Toni made the contact parent sign every time he exercises contact to prove he has taken them. Carmen tried to ensure that the contact hours were short so that the contact parent had less of an opportunity to get on a plane and get out of the country.

If a child is not returned after a contact visit, the resident parent may apply for a recovery order. Only three of the women that we interviewed mentioned that they had sought recovery orders. Hazel had commenced an application for recovery of the children, but decided not to pursue it because he would simply have taken the children back at any time anyway. The children now reside with the father and Hazel has contact orders made by consent, but the father refuses to allow her contact with the children.

## ***B. Failure to Exercise Contact and Other Breaches***

### *i. Failure to exercise contact*

Almost half of the women (17 of 35; 48.6%) who were resident parents said that the contact parent had failed to exercise contact. Some described this occurring at irregular occasions, whilst others described extended periods of time when contact was not exercised. For example, Carmen commented that the contact parent had refused to see the children three or four times for periods of around a month and a half on the basis that if he couldn’t see her he didn’t want to see the children. When she asked him what she

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the child from school and the child missed one and a half weeks of school as a consequence. Delores former partner abducted the children from school and she didn’t see them for 35 days. Tina’s ex partner abducted her child from the street and so she had to get in the car too.

<sup>29</sup> Joyce that the children were not returned on a regular basis and once her former partner had them for 2 and a half weeks). Kate’s ex partner failed to return them after school holidays and fails to return on time after contact. Sandra’s ex partner had failed to return them from school holidays and Susan’s former partner had twice not returned the children after holiday contact and had phoned other people saying that he would return the children when it suited him.

was supposed to tell the children he said, “Tell them I’m dead.”<sup>30</sup> Nerida said that during the six months that the contact parent was supposed to have supervised contact he didn’t bother with contact at all. Anna commented that the contact parent got angry that she was not at home when he was exercising contact and thought she might be seeing other men. He therefore stopped contact altogether so that she would have the child all the time and would not have the opportunity to have an independent life. Rebecca said that the father exercised contact sporadically but had stopped altogether once he started a new relationship. Once he did not see his child for eight years, then turned up and wanted to see her for a few weeks in a row and then disappeared again.

Many of these women described the failure to exercise contact as having negative consequences for themselves and the children. For a number of women the failure to exercise contact occurred without adequate notice, making it extremely difficult to plan ahead or organise their lives. Furthermore it often meant waiting for visits that never eventuated, which was both frustrating and time consuming. Toni said that on three occasions she and the children had waited for her former partner at a railway station for two hours but he had failed to appear. In addition, it had been arranged that the children would spend one week in the Easter holidays with him but again he failed to meet at the railway station.<sup>31</sup> His failure to exercise contact also had financial consequences for Toni since he paid no child support and \$100 was deducted from her family benefit each fortnight on the basis that the children were meant to spend every second weekend and half the school holidays with their father.

Other women spoke of having no family support and thus urgently needing the time off from looking after the children. For example, Bronwyn described initiating the court order for contact arrangements because she wanted the father to feel his responsibility for his son. She had no family support, and was overwhelmed and needed help with the child. At some point she put the little boy into foster care so that she could have some respite, but had to discontinue that when she saw how much it was distressing her son.

A number of women described the pain or disappointment experienced by the children when the contact parent failed to appear for contact. For example, Delores said that the contact parent stopped having contact at the appointed weekend because he wanted to see his girlfriend which meant that “[t]he kids would be enthusing about seeing Dad and he just wouldn’t show up. And then instead of coming the next weekend he would wait another fortnight to come.” Vivian described her child being so upset that

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<sup>30</sup> Tina described her ex partner as not seeing the child for nine months, since he wanted every second weekend “or nothing”. Nicole commented that when residence was awarded to her, her former partner stopped his fortnightly contact and only saw the children during school holidays for six weeks a year. In Gina’s case her former partner discontinued contact when she altered changeover from her house to a women’s resource centre.

<sup>31</sup> Tina said that the contact parent was supposed to give her 24 hours notice if he could not exercise contact but he had simply failed to turn up 4 or 5 times without any notice, or he would contact the centre but not notify her.

their father hadn't seen them for several months that she asked a counsellor to call her former partner and request that he exercise contact.<sup>32</sup>

A number of the women and the professionals commented on the fact that “[e]nforcement is a remedy that is effectively only available to the contact parent, in that the court will not coerce a person into maintaining a relationship with their child”<sup>33</sup> For example, Yvonne said:

*How can that be a legal document and he can just ring up and say oh I've got to work, I don't want the children or he can like for example if he doesn't want the children this weekend he just rings me up and says I don't want the children but if I was to hold the children back he can take me back to court and charge me. That's what makes me so angry... people like me have to send them every weekend you know I can't just ring him up and say I feel like having a weekend with my children.*<sup>34</sup>

Two solicitors, one counsellor, a domestic violence court assistance worker and a refuge worker commented that the resident parent is

*positively obliged to provide contact to the [contact parent], so whether it be half past six in the snow, they have to turn up knowing that the father may or may not appear to collect the children, but if he fails to appear, the mother doesn't have a remedy.*<sup>35</sup>

A domestic violence worker at a Women's Health Service described the failure to exercise contact as “another power game thing”.

## *ii. Other breaches of contact arrangements*

Three of the 35 women (8.6%) who were resident parents commented that the contact parent had always stuck to the letter of the contact arrangements. However, the overwhelming majority had not found this to be the case. The primary complaint was that the contact parent failed to arrive at the appointed time or did not return the children at the appointed time. Almost half of the women (n=17, 48.6%) specifically commented on this and two had initiated contravention applications because of repeated lateness. Some women commented that the lateness had an adverse impact on the children. For example, Marcia commented that the child was often dropped off at midnight on a Sunday night, which affected his experience of school the next day. All women mentioned that the lateness and unpredictability had a negative effect on them and any third parties involved in changeover. For example, Bronwyn, whose experience is not uncommon, said that she

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<sup>32</sup> Once around Christmas they showed up five times to the contact centre or the police station (on public holidays when the centre was closed) and he did not show up.

<sup>33</sup> Rhoades (2002), pp 77-78.

<sup>34</sup> Yvonne also described having no family support and the contact parent refusing to take the children when she has had things on or has been sick. One occasion that she asked him to take the children he said “fat chance” and hung up.

<sup>35</sup> Carol Smart and Bren Neale have noted that although English courts have been critical of ‘implacably hostile’ mothers, they have not taken an equally robust attitude to ‘implacably irresponsible’ fathers (Smart and Neale (1997), p 336).

never knew when he would return the child as he would just walk in when it pleased him. She commented that she believed he was trying to make sure that she was not with someone else by surprising her and that the experience made her uncomfortable.

Conversely, several women described the contact parent dropping the children off unexpectedly early.<sup>36</sup> Sometimes this meant that the children were left at home alone until the resident parent returned. For example, Gina described the contact parent finding out that she had a new boyfriend. On one occasion he dropped the children off when she was away for the weekend and rang her to say that the children were at her home. It took her an hour and a half driving through pouring rain to return to the children.

A number of women mentioned that the contact parent breached conditions of contact that were designed to protect the children. For example, Vivian said that when she originally began dropping the children off for contact the contact parent would be too stoned even to speak – like a zombie or vegetable - and wouldn't pay any attention to the children. She supervised contact herself on those occasions and it was then made a condition of the contact orders that he not be under the influence of drugs or alcohol when he had contact. Nonetheless he had arrived stoned and once drove off leaving the children's bags on the side of the road because he was "too whacked to know what he was doing."<sup>37</sup> Sylvia also reported that her former partner was sometimes drunk during contact and that this was contrary to the orders.

Some women who had changeover arrangements designed to protect them by not bringing them into contact with the other parent described the infringement of these arrangements. For example: dropping the children off at her home instead of the agreed changeover point, her former partner sending his girlfriend to do changeover instead of a neutral person, lying in wait for them on the way to the contact centre or following them home.

### ***C. Facilitating contact by the Resident Parent***

At least 16 of the 35 women we interviewed who were resident parents described going to considerable efforts to facilitate contact regardless of their own personal feelings about the situation. They said that they did this either because contact was important to their children or because they were legally obliged to facilitate contact arrangements. Thus, women agreed to arrangements that compromised their own personal safety in order to make it easier for the contact parent to keep up contact, such as indicating that the child's father could come around to their homes and exercise contact whenever and how often it suited him, or personally supervising the contact visits so that they could be sure that the children would be safe whilst it took place. Toni waited several hours in public places when the child's father did not show up for contact in case he was late. In Tracey's case, supervised contact broke down in part because her sister was no longer willing to

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<sup>36</sup> Several women also describe the contact showing up early or at unexpected times in order to have contact with the children.

<sup>37</sup> Other women who have conditions of their contact orders that the contact is to be supervised by a relative or friend of the contact parent for the safety of the children comment that there is no supervision in practice.

supervise. She then allowed unsupervised contact in spite of being assaulted and abused during changeover because she thought that if the contact parent felt more in control he would behave himself. On one occasion she called his family to try and organise support for him on a contact visit so that it would not be too hard on him to have two small children that he had not seen for several months. Tina tried to organise special contact visits where the father could take the child to do something that they might both enjoy, such as attending a football game. Rachel offered to move out of her home for a month so that the contact parent, who lived overseas, could stay with the children when he came to visit them. Claire, who had a broken leg, organised other people to ferry the children to and from contact visits. Carmen bought bunk beds for the contact parent so that he could have the children overnight. Many women went to considerable efforts to prepare the children for contact, to persuade them that contact was something that they wanted, to insist that contact was something that they had to do, or to persuade them to stay on contact once they were there. For example, Barb said:

*I would say to him daddy's going to take you on a motorbike ride, daddy will take you anywhere you want to go you lucky little boy"...and then I'd think... he's most probably thinking "mum I've told you what daddy does and here you are pushing me to go with him."<sup>38</sup>*

Many women went to considerable financial expense to facilitate contact. Diane and Alison received no child support and yet travelled considerable distances on a weekly or fortnightly basis, bearing all the expenses of doing so, in order to facilitate visits at contact centres or gaols. Indeed, a large percentage of contact parents were contributing little or nothing towards the financial support of their children. Of the 29 resident parents who responded as to whether the contact parents was paying child support, 19 (65.5%) said that the contact parent was not paying them any child support. Many of these women supplied food, clothing and nappies for contact visits. Vivian did all of the driving for contact when the contact parent did not have a car. This was despite the fact that she knew that he had told the Child Support Agency (CSA) that he was unemployed, but was working secretly:

*He's more content like that I should have the least amount of money as possible. It's all the court stuffing around too because he knows that I have to pay for it and that I should have less – less money – he doesn't see that like the more money the better off the kids are... I don't know if he doesn't see how that affects the kids or what – I don't know.<sup>39</sup>*

Other women paid for the children's phone calls to the contact parent. Kim regularly paid the contact parent's phone bill so that it would not be cut off and if there

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<sup>38</sup> Tina said that when they decided the father would start exercising contact again she kept showing the child pictures of his father twice a day for a week before the child would agree to go and spend time with him. She comments that the child had not seen him for nine months, it was obvious that he did not want to go and that it was the most traumatic thing the child had been through.

<sup>39</sup> A number of other women remarked that the father was unemployed according to the Child Support Agency (CSA) although the women were aware that he was receiving an income in the "black economy". The CSA had told Susan that the father of her children had a nil income return although she observed him taking holidays, purchasing a new four-wheel drive vehicle and generally having a good lifestyle.

was an emergency with the children whilst he was exercising contact he could call her. Interestingly, many of these women remarked that the contact parent was not only providing no support financially, he was misusing contact arrangements in a way that was a further drain on the women's resources. For example, Nicole remarked that there was a time when all of the clothes she provided for contact were going missing and so she put in an order that all clothes must be returned. He then started returning them mauled by the dog or with cigarette burns in them.<sup>40</sup>

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<sup>40</sup> Tina remarked that because she was on the lone parents' pension she was supposed to ask him for child support. However, she got an exemption, which runs out shortly, because she was scared of him. Not only had he provided nothing for the child, but he actually made the situation worse by keeping half the child's clothes when he went on contact.

## Going to great lengths to facilitate contact

### Case Study: Megan

An example of the lengths some women go to is provided by Megan who, when she first separated, told the father that he could come around and have contact with the children whenever he wanted, which worked out to around three times a week. He was using drugs and his behaviour deteriorated. Eventually she had to get an ADVO because he was throwing bricks through her windows, breaking down the front door and threatening to kill her. She took the children to live in a refuge to keep them all physically safe. Whilst in the refuge she still allowed him to have contact in the face of everyone's advice, including her solicitor's, believing that "a father should have contact with his two children... it's really important." His response was to seriously assault her and abduct the children. Eventually he apologised to her and said that he was off the drugs and she immediately re-instated contact. An interim contact order was made granting him "contact as agreed between the parties". The reason for that wording was because he did not turn up to the interim hearing. He continued to harass her and be violent during contact and contact changeover. She commented that the Court counsellors did not believe her when she was negotiating the most recent round of contact arrangements and stressed that she is not interested in "being a bitch" and depriving him of contact; she just wants to keep her children safe. Eventually final Family Court orders were made but as he didn't turn up at the final hearing, the order made by the judge was again "contact as agreed by the parties". She "would have preferred to have had definite orders because like.. [the father] is a master and like I was saying – as agreed between the parties – he's got the perfect opportunity to ring me and say – you know and threaten me and carry on – [despite what] it says on the [ADVO] ..". She has drafted a written contact agreement with the help of a friend.

Thirty of the women we interviewed commented on whether they had ever failed to send the children on contact visits with the other parent. Of these, nine said that they had never denied contact, even when they felt it was not in the best interests of the children. However, Gina commented, that she was getting pretty close to denying contact because of the continued death threats and stalking that she had been experiencing since separation.

Thirteen women commented that there had been one or two occasions when they had not sent the children on agreed or ordered contact visits. In the overwhelming majority of cases the reasons the resident parent gave for not sending children on contact visits related to the well being of the children.<sup>41</sup> These included: the contact parent being under the influence of alcohol, the children being sick, the children being uncomfortable and distressed about having to go, the contact parent being verbally or physically aggressive such that the mother felt concern for the safety of the children, the child making sexual assault allegations, the child having a very important event to attend but being unable to rely on the contact parent to take them, and the resident parent

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<sup>41</sup> Findings that most parents who opposed the idea of contact or who refuse contact do so due to concerns about the child's well-being have been made by Hester and Radford, as cited above and Radford, et al. (1999), p 16.

discovering that she did not have the residence order she had thought she did and being afraid that the contact parent would disappear with the children. In Toni's case, since the contact parent refused to give her his address she had insisted on him signing a document to indicate that he had the children, and on those occasions when he refused to do so she refused contact. She said that she was worried that DOCS might think that she was an irresponsible parent if she handed the children over to him without any contact details and no proof that he had the children.

Only two of these women indicated that their reasons for denying contact on at least one occasion related to their own feelings. Alison said that she had not facilitated contact when she had a particularly busy weekend or was feeling unwell. In this instance, as the father is in gaol, the entire burden of facilitating contact is on her. She has to travel to the prison, wait outside and travel back, as well as bearing all of the expenses of the journey. Yvonne said that she had denied contact on two occasions, once when a DOCS investigation was taking place and once when her ex-partner remarried. In respect of the latter occasion she admitted "[t]hose were just my feelings. I was not thinking of the children."

Five women said that they now always facilitated contact, although there had been a prior period when they had not permitted it. In most of these instances this occurred before contact arrangements were in place and so there were no actual breaches of arrangements or orders. Indeed, these women had all complied with orders that were made later. Once again, the overwhelming concern of these women was the well being of the children. The reasons that women cited for denying contact included: an attempted abduction; a serious incident of violence; during a stage of heavy drug use by her former partner; immediately post separation until the mother was sure that the child would be safe; and while in a refuge.

In the three cases where contact was denied for a period of time after arrangements or orders were in place, the reasons included: the contact parent moving interstate and refusing to supply the mother, Susan, with an address in circumstances where he had threatened to abduct the children in the past; when sexual assault allegations had been made with regard to the child although Dorothy offered the father gradually increasing contact on terms which she thought would provide some measure of safety and comfort for the child, but he refused to accept those terms; and when Nicole's teenage children refused to go on contact for a period.

Helen was permitting contact in accordance with an informal agreement that modified the consent order between the parties, but was not complying with the original order. The formal agreement was a consent order that gave the father contact from 9 a.m. to 6.30 p.m. every second Saturday and Sunday (in other words, without overnight contact). The arrangements had been changed almost immediately after the consent order was made because the contact parent was working on Saturday and unable to exercise contact on that day. For three years the father had been having contact with the child from 10 a.m. to 5 p.m. every second Sunday. The reduced hours had come about because he was not feeding the child properly and so the arrangements were modified so that the mother could feed the child. However, the contact parent had suddenly demanded that the

original consent orders be complied with. This was something that Helen was reluctant to do because she believed that they had an informal agreement had been working satisfactorily for three years and was better for the child than the original orders. She had only refused contact in its modified terms one or two times and this was after she became aware that the contact parent had involved the young child in dangerous activities whilst he had refused to give assurances that he would not do so again.

#### ***D. Enforcement issues***<sup>42</sup>

##### *i. Contravention applications*

Despite the numerous breaches of orders by contact parents, most of the women who were resident parents that we interviewed had not sought to enforce the terms of the contact orders by bringing contravention applications. Some commented on the problems that they faced in implementing contact orders or agreements. These were, primarily, the prohibitive cost of going to court, the ultimate hopelessness of getting more court orders with no one to enforce them, and the fear of what the other parent would do to them if they took action. Sylvia described the frustration of going to Legal Aid, the Child's Separate Representative and the police and finding no one willing to help her about the contact parent continually arriving drunk, in breach of the orders, to exercise contact.<sup>43</sup>

By way of contrast, a number of the women who were the resident parent had experienced having contravention applications being brought against them by the contact parent. For example, Rebecca mentioned that one of her ex-partners would put in an application for contravention of the contact order at the slightest provocation. She said:

*And then after 12 months I think it got to the point – 'cause like you had to pick them up right on 6 o'clock and if you were five minutes late it was back to court, after all that you still went back to court. So I [had to] explain to the court – You know [about] ... the traffic or running out of petrol and you know one of the kids was sick or whatever. You know, I remember they came down with ...chicken pox and [he] took me to court over it.*

As mentioned in Chapter Four, Susan and her ex-partner had been to court on 34 occasions, only four of which were initiated by Susan despite his frequent breaches of the arrangements. She mentioned the prohibitive costs of going to court on each occasion – court costs, travel costs and time off work. This apparent disparity between the numbers of contravention applications brought by non-resident parents and resident parents has

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<sup>42</sup> All the comments made on enforcement in the interviews with the women were in relation to enforcement issues prior to the introduction of the compliance regime for parenting orders made by the *Family Law Amendment Act 2000* (Cth) [27/12/2000].

<sup>43</sup> She was also angry that the police wouldn't breath test him when he arrived drunk to exercise contact. She noted in her diary that her solicitor had written to the contact parent reminding him of the terms of the contact order which stated that he was not to consume alcohol 12 hours before seeing the child. However, they simply received a letter from the contact parent's new solicitor denying any allegations made in the letter.

been reflected in other research. Helen Rhoades found that 92% of contravention applications were brought by non-resident parents and 3% by resident parents.<sup>44</sup>

Interestingly, at least nine of the women we interviewed were contact parents in relation to some or all of the children, or had been contact parents at some point in time.<sup>45</sup> These women described not being permitted to have contact with the children at all, or rarely having contact – whether by phone or physically - even where orders were in place. Ellen’s diary describing her contact experiences consisted mostly of a list of failed contact visits and attempted phone calls which were either not answered or were ended by the resident parent before she spoke to her children. Most of the women who were contact parents had decided not to try to enforce the orders. For example, Hazel said that the resident parent simply refused to give her contact with the children. She once had contact where she met the children at a Westfield shopping centre but the father assaulted her during contact. She sometimes went to school in the afternoons so that she could see them without exposing them to the possibility of witnessing further violence by their father. Nonetheless her daughter was so afraid of the father coming to school and making a scene that she would only see her mother for ten minutes. The father had retained the children after contact and she had considered obtaining a recovery order, but decided it was pointless because he would only take the children again. Similarly, Marcia commented that she was “in a very difficult situation because if I go to court it’s going to cost me a heap of money to – and who’s going to police it in the end anyway?” Sandra had no contact with her children. She commented that “the papers that you get, if the father doesn’t want to read them and do what it says then there’s – the paper doesn’t help you. The paper doesn’t make him do it.”<sup>46</sup>

## *ii. Varying orders*

Some of the professionals spoke about clients trying to vary contact orders if there had been violence around contact. However, this is difficult and the onus is obviously on the woman to initiate any changes. It may be particularly difficult to obtain a variation if the original order was made by consent. Helen Rhoades has suggested that women may appear fickle or selfish “when they seek to alter the contact arrangements they have apparently agreed to.”<sup>47</sup> Several professionals mentioned that Legal Aid was often

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<sup>44</sup> Rhoades (2002), at footnote 59.

<sup>45</sup> Jenny was the contact parent for a few months after he had abducted the child and contact took place at her mother’s with her mother supervising to make sure that she did not take drugs.

<sup>46</sup> Rebecca was the contact parent in respect of her children for two years and they were allowed to view her across the street and then say hello and then she saw them in a park for an hour once a month. Claire is a contact parent to her sons and a resident parent to her daughter. Her former partner had contact with their daughter until around four years ago when she spent the weekend with him and he started abusing her mother and she chose not to go anymore. However, Claire had only had contact once with her sons in six years as they don’t want contact and they were aged 16 and 18. Melanie was the contact parent. The contact order gave her “reasonable contact”, but she had no contact at all. She went to her son’s school for very brief periods of time in order to see him.

<sup>47</sup> Rhoades (2002), p 87.

unavailable or difficult to obtain to vary a contact order.<sup>48</sup> A Family Court Counsellor talked about cases where there had been abuse of the woman at changeover and said:

*I mean, sometimes, sometimes they would seek an AVO or bring it back to Court, but it's a pretty tiring experience to bring things to this Court and I think often people just give up and go along with it or try and figure out ways to make it so that, you know, it's workable.*

The Counsellor commented that the first step in trying to vary the order would be to try to negotiate with the father of the children. However, that approach may not result in safer contact for the woman in which case she would have to make a court application:

*Changing the location probably is easier to change than making the order for supervision and/or reducing the times because he's likely to not agree to that, and they'd have to go before a Judge...I think it's extremely difficult to get a no contact order.*

One of the solicitors commented on how difficult it was to successfully vary a contact order in court:

*well varying the contact orders is often about the most difficult thing they can do.*

*Stopping [contact] altogether, as I said, is very, very difficult. So it's a matter of reducing it or putting something in place, some sort of an arrangement which will reduce the possibility of contact between the parents.*

Another solicitor talked about clients who had tried to vary contact orders to make themselves safer:

*A lot of them just go like first I'm abused by him and now I'm being abused by the legal process. A couple of women have said that sort of thing. Um and I can think of one situation where you are looking at court sanctioned violence basically where the court would not change the contact arrangements and she was then forced to bring her kids to contact and the drop off point was at Westfield and on two occasions she was physically assaulted by him.*

The solicitor commented that in that case, the woman's "Legal Aid grant had been pulled" and so they "assisted her with trying to get him breached on his ADVO". Some of the other professionals mentioned that where there has been violence around contact, the woman should attempt to obtain an ADVO, or if she has one already, to report the breach of the ADVO to the police. However, it is interesting to note that none of the professionals mentioned that the Local Court magistrate would have the power under section 68T of the *Family Law Act* to "make, vary, discharge or suspend" a Family Court contact order when making an ADVO. This lack of awareness or at least use of the

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<sup>48</sup> See also, Rendell et al (2000), p.74 and Rhoades et al. (2000), p 98. It should be noted that since our professional interviews took place the NSW Legal Aid funding situation has improved. However, legal aid guidelines require a material change in circumstances as one criterion for a grant of aid to bring an application for variation. This may prove to be an obstacle to women who have simply found the orders to be unworkable.

magistrates' powers corresponds with research that shows that very few professionals and magistrates are using the powers to make applications or orders under section 68T.<sup>49</sup>

#### 4. Summary

In keeping with similar studies, we found that most of the women that we interviewed had experienced violence during contact changeover or during contact visits.<sup>50</sup>

It would seem that when one of the parents has been violent to the other and contact is still considered to be in the best interests of the child, the best arrangements for changeover are those in which the two parents do not have contact with each other. These are the arrangements that come the closest to keeping women physically safe and sparing children the trauma of witnessing further violence or adult conflict.<sup>51</sup> This is in keeping with suggestions made in other research.<sup>52</sup>

One way of making contact and / or changeover safer would be the greater provision of child contact centres. However, it must be recognised that not all centres are able to provide the level of supervision required in some cases.<sup>53</sup>

It also should not be assumed that the provision of a neutral or safe changeover location, or even supervision, means that the actual contact is beneficial to the child. The link between spousal abuse and child harm may still be present even if the children are no longer witnessing the violence. In terms of the impact of contact on the children themselves, a significant proportion of women in our project describe their children as being unsettled after contact or disturbed about having to go on contact, and an overwhelming majority describe abusive or neglectful behaviour by the contact parent towards the children during contact visits or in the exercise of residence. Of grave cause for concern are those cases in which children have been forced, or placed under pressure, to go on contact with the abusive parent after they have clearly indicated that they do not want to.

Many women have had difficulties with breaches of the contact arrangements. Almost half of the women describe abductions or threats to abduct or the non-return of the children after contact, nearly half of the women describe the contact parent failing to exercise contact arrangements that were made, and a majority of the women describe the contact parent not sticking to agreed or court ordered times and places for contact changeover. In addition, women with conditions on contact relating to the non-consumption of intoxicating substances often found these to be breached. Women also

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<sup>49</sup> Kearney McKenzie & Associates (1998), p 17.

<sup>50</sup> See Hester and Radford (1996), pp 26- 29; Rendell et al (2000), pp 29, 36-38.

<sup>51</sup> Note that any contact between the child and the violent parent can provide the **potential** for further abuse of the child or other parent however many safety mechanisms are in place.

<sup>52</sup> Mouzos (2000), p 176.

<sup>53</sup> Eunice Halliday and Margaret Briant (1998), in the table of guidelines, have suggested that in cases of severe domestic violence, supported contact in a contact centre should not be used. Fully supervised or highly vigilant supervised contact may be appropriate and no contact would be appropriate "if any contact would cause harm to the child or adversely affect carer's ability to care for child".

experienced great difficulty enforcing the contact arrangements that they had in the face of these types of breaches.

Despite all these problems we found that the resident mothers generally have a fairly strong commitment to the value of contact between children and the other parent.<sup>54</sup> Indeed we found that many of the mothers were going to extraordinary lengths to facilitate contact. However, some of the mothers had become disillusioned with the value of contact in circumstances where the contact parent is neglectful or abusive.<sup>55</sup>

It is probably not possible to make hard and fast rules about the value to children of contact with a violent parent. Indeed, given that our research did not measure the relationship between contact and children's well being other than to ask mothers about children's behaviour at home after contact, we are unable to make specific findings on this.<sup>56</sup> Nonetheless, the mothers' concerns about the children's well being during and after contact lead us to suggest that, in cases of domestic violence, it should not be presumed that contact is in the best interests of the child. Obviously each case will need to be carefully examined on the facts. However, it may be that a better starting point is a presumption against unsupervised contact when there has been violence. Such a presumption is in place in New Zealand and preliminary studies suggest that this has resulted in a general trend towards safer orders for women and children in such circumstances.<sup>57</sup>

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<sup>54</sup> Rendell et al (2000), p 43; Rhoades et al (2000) p 82; Hester and Radford (1996), p 3, made similar findings.

<sup>55</sup> Interestingly, Helen Rhoades found that 65% of enforcement of contact disputes centred on resident parents' concerns in relation to the parenting capacity of the non-resident parent. Rhoades (2002), p 75.

<sup>56</sup> For a meta-analysis of studies that deal with non-resident fathers and children's well-being (although not specifically in situations of violence), see Amato and Gilbreth (1999).

<sup>57</sup> Such a presumption is found in Section 16B of the *Guardianship Act 1968* (New Zealand). The court must be satisfied that the children will be safe with the violent parent before the presumption is displaced. In New Zealand the *Domestic Violence Act 1995* also makes it clear that a protection order automatically extends to the children of the applicant. It is thus the case that if a protection order is in place the non-custodial parent cannot contact the children unless contact is permitted by a court order or written agreement. These provisions acknowledge that, witnessing domestic violence is in itself abusive of the children, that violence against a spouse can overlap with the direct abuse of children and that, given the dynamics of family violence, agreements reached by the parents may not in fact maintain the safety of the children. Chetwin, et al. (1999), p 81, found that these laws empowered custodial parents to resist pressure to make access arrangements that they felt would place their children at risk.

