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**Committee Secretary
Standing Committee on Family and Community Affairs
Child Custody Arrangements Inquiry
Department of the House of Representatives
Parliament House
Canberra ACT 2600
Australia
Email: FCA.REPS@aph.gov.au**

Dear Secretary

Inquiry into child custody arrangements in the event of family separation

Please find attached the Council of Single Mothers and their Children submission to this inquiry.

Unfortunately the Terms of Reference and rather short time line were announced at a time when our organisation was in the middle of planning and hosting a national conference.

The enclosed submission is therefore brief, but highlights issues of major importance to the thousands of single mothers who access our service each year. We would appreciate an opportunity to attend a local hearing to elaborate on the main issues identified here.

The announcement of the inquiry and the subsequent media attention prompted many anxious women to contact us. Their main, and very real, fear was that such legislation was introduced it would be retrospective and they would be forced to resume or have ongoing close contact with someone they and their children were scared of.

Please consider the following insights and recommendations that have come from the real experiences of single mothers, many of whom are struggling to bring up children in quite severe financial poverty, and do it amazingly well in very difficult circumstances.

Given that Council of Single Mothers and their Children is the peak body representing the interests of single mothers and their children in Victoria, we trust we will be invited to make representations at the hearings scheduled for 28th August. Please contact Lynda Memery, Acting Coordinator on (03) 9654 9327 to discuss the next stage or for further comment.

Yours sincerely,

**Di Heffey
Chairperson
Council of Single Mothers and their Children Inc. (Victoria)**

Background

The Council of Single Mothers and their Children (CSMC) was established in 1969 by a group of single mothers campaigning for the introduction of the Supporting Mother's Benefit. The original aim was achieved in 1973, but the Council continues to lobby for social, economic and legal justice for Single Mothers and their Children.

Since this time, CSMC has become the peak organisation representing sole parent issues in Victoria. It continues to operate as a self-help organisation managed by a collective of single mothers, paid and unpaid workers and a large membership base of sole parents.

CSMC was established at a time when no financial support was available for 'unwed mothers'. The prevailing view was that adoption, giving the child to a married heterosexual couple, was the best option for the child. Unless family and/or independent financial support was available, most mothers had no choice but to hand their children to the state. Many never saw their children again.

Since that time, the legal and social concepts of 'the family' have broadened to more accurately reflect the diversity of family forms that exist (and have always existed) in Australia.

In 1994, (International Year of the Family), Hartley and McDonald wrote of the need to recognise the diversity of Australian families. They recalled the prevailing view of recent times thus:

"Separation and divorce were synonymous with coming from a 'broken home'. Children were automatically assumed to suffer long-lasting psychological damage, or worse still were ostracised, pitied, treated differently in schools, removed from their family networks or dealt with in ways which were far more damaging than the experience of their parents' separation or divorce. Many women who were sole parents had to contend with punitive social attitudes as well as poverty."

They went on to warn:

"Periodic verbal attacks on single mothers and discriminatory statements about children from sole-parent families indicate that such attitudes are still just below the surface (Australian Institute of Family Studies)."

Membership of CSMC is currently more than 900 individual women who are, or have been, or are about to become, single mothers or who are themselves ex-nuptial, widowed, divorced or separated women who are parenting alone. We also have associate and organisational membership (currently 150) who support the aims and objectives of CSMC.

Our work is done from a base of common experience and empathy with women who are in the same situation as ourselves, mothers who need:

- Accurate information, support and advocacy to access their rights
- Support to assert themselves in difficult situations
- Secure affordable housing, and most importantly
- The information and resources to provide for and safeguard the welfare of their children and themselves.

Pivotal to our service is friendship, support, information and referral offered in an atmosphere of mutual cooperation and self-respect. CSMC views building self-esteem as an integral part of our service as this in turn empowers people to help themselves.

The work of CSMC covers four main areas:

- Direct service delivery by the provision of information, referral and support for single mothers
- Community education through a quarterly newsletter and other publications, and the provision of speakers to a range of professional and community groups
- Social and political action and media liaison, which responds to government policy, research issues and media promotion issues
- Peer support and short training courses for single mothers in such areas as parenting, work force re-entry and unpaid worker programs

The work of CSMC is focused around our aims of:

- Offering the highest possible quality of practical assistance and emotional support to mothers during and after pregnancy
- Ensuring that children of single mothers have a fair start in life
- Promoting the understanding and acceptance of single mother families in the community so that they will be free from economic, social and legal discrimination and prejudice, and
- Pressing for better services and resources for single mothers and their children

The Victorian Department of Human Services Family Support Program funds CSMC. We also generate a small amount of revenue from organisational membership, sales of publications and special projects. We actively seek funding and grants from other government and non-government sources to undertake specific projects according to identified need.

Inquiry Terms of Reference

(a) given that the best interests of the child are the paramount consideration:

- (i) what other factors should be taken into account in deciding the respective time each parent should spend with their children post separation, in particular whether there should be a presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption could be rebutted;***

The Council for Single Mothers and their Children hears from thousands of women who are struggling to keep their families safe, housed, clothed, fed and happy following separation. A significant proportion of these women have separated from their partners due to abusive relationships. Many of them tell of ongoing abuse, which continues long after separation.

Many women who have left abusive men mistakenly believed that their partner was, and still is, a 'good father'. He may not physically hurt the children. Indeed, he may be very loving and involved in their care. Arguments and fights might never happen in front of the children, but there is now very strong evidence that witnessing, or living with, abuse in the home without actually experiencing it first hand is in itself a form of child abuse. Studies also show that spousal abuse can, and often does, escalate to include direct child maltreatment.

Often, women are given the horribly difficult choice by state-based child protection services to leave abusive partners or face formal action, such as having children removed from their care because of their 'failure to protect' them. Many do not want to leave; they simply want the abuse, the bullying, the violence to stop. They often believe that their own inadequacies invite, even cause, the violence. Too fat, too thin, too messy, a lousy cook, a useless mother...though she doesn't realise that no matter how hard she tries, there will always be "something wrong with her".

Many women also claim NOT to be victims of abuse: "He's never hit me", "He only shoved me around a few times", "He shouted a lot at me and the kids". A woman once told our contact worker that she could cope with her ex's physical assault but that his most effective weapon was his mouth. Black eyes heal but verbal abuse echoes inside the head for years. Shame and humiliation, as much as fear, often prevent abused women from naming their experiences. They just know they can no longer stay.

Programs that aim to prevent marriage breakdown can send ambiguous messages to vulnerable women who already feel guilty about 'breaking up the family' when the family may have been crumbling, and indeed harmful for the children, for years. **These families need and deserve support and positive encouragement, not derision, scorn or pity. The mothers need acknowledgment of the fine job they are doing, often in difficult circumstances, raising their children. They certainly do not deserve to be expected to negotiate around children's best interests as if they were equally powerful in the process.**

Children and young people are taught skills and strategies to avoid and even bravely expose bullying behaviour at school, in the workplace or in sporting clubs and social venues. It is easy to interpret such violence at home (as bullying and intimidation most assuredly is) as firm parental discipline, not an abuse of power. How do we know if a man's castle isn't his family's prison fortress?

In the Autumn 2002 Viewpoint, St Vincent de Paul's newsletter, Colin Robinson reminded us of Australia's:

'social, political and historical context that has privileged men over women (and that) Men reflect this privilege in traditional relations within the family which, in some families, results in the use of violence against partners and children.'

Women are often treated as part of the Pater's *familias*, his goods and chattels. When they leave the paid workforce to have children, they become 'a dependent'. Unfortunately, this time of vulnerability and dependency is when some women discover that their life partner was anything but dependable.

In 1994 the National Taskforce Against Violence found that the family home is statistically the most dangerous place for women and children in terms of assault or homicide. The most likely perpetrator will be her partner or husband and the most dangerous time in women's lives is when they try to leave, or state their intention to leave, their partners. Ironically, it was the alarming statistics of the Australian Bureau of Statistics Women's Safety Survey in 1996 that provided the impetus for the increased funding for men through the Partnerships Against Domestic Violence Program.

In 1996 the ABS Women's Safety Survey identified an unacceptable level of domestic violence in Australia. In response, the Howard government implemented and resourced Partnerships Against Domestic Violence (PADV). A substantial amount of funding (\$5.6 million last year) was earmarked for strategies to address men's violence. Many examples of the watering down of these strategies exist. One is the establishment of a 24 hour help-line for violent and potentially violent men to access. It has emerged as a support for men with relationship difficulties. Promotional material suggests that men are somehow victims of their own communication difficulties, citing suicide rates of separated men and their inability to cope with separation as evidence of that. Apparently naming violent behaviour as such will deter men from accessing supports so we must pretend it is not the problem or the reason that many women choose, or are forced, to flee their partners. As many as "70-80% of separations are instigated by women", (Mensline, 2002).

Perhaps, rather than repositioning men as victims who have been abandoned by their families, we should embark on a community advertising campaign similar to the TAC and Workplace Bullying campaigns, which have provided excellent community education about very serious community issues.

Many women and children experience ongoing abuse long after leaving an abusive partner. Their experiences in the Family Court System and other with other formal agencies such as Centrelink and the Child Support Agency demonstrate the community's continued lack of understanding of the inherent power imbalance in marriage-like relationships and the very subtle forms of abuse which can occur.

We should be constantly reminded of the African concept of the need for a whole village to raise a child.

Unfortunately, many policy makers and commentators are intent on focussing on family structure rather than family qualities, in the mistaken belief that the traditional nuclear family is the best home environment for all children. 'Evidence' is produced to demonstrate that children living in single parent households fare worse than those in 'intact' families.

Families come in all shapes and sizes. The term 'Intact' is itself indicative of a mind-set; one which suggests a breakdown, a deficiency or a problem, is associated with 'other' family forms. Rather than looking for 'deficiencies' in different family forms, a focus on a family's qualities rather than family structure is needed. As many as 40% of young people will live some of their lives in a home without one of their biological parents.

An 'intact' family headed by a violent bully is far more deficient than a happy, loving single-parent family. Recent research shows that children are much smarter than that and measure 'good' families by what they do, not what they are. (Pamela Kinnear, Australia Institute, 2002). They quite rightly don't care about how many grown ups of what variety there are, just that they provide a safe, happy, nurturing environment. Hardly rocket science but we need to keep reminding ourselves of that. If children are much more concerned with the quality of their families, not the family's structure, we should be too! **Children should not be considered as part of the matrimonial property to be divided 'fairly' between parents.**

It appears that such a conservative view is informing current federal, and perhaps to a lesser extent, state family and community services policies. As a result, organisations such as ours are facing increased internal and external pressure. Our membership has more than trebled in the past two years, expanding from 300 members in 2000 to more than 900 individual and 150 organisational members today.

Last year we conducted a membership survey and asked members to name the issues of most concern to single mothers. We received over 100 written replies and, overwhelmingly, women nominated isolation and lack of support as their biggest problems. More than half of the respondents cited isolation as a major difficulty and wanted access to a single mothers' support group.

(ii) In what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents.

We endorse the comments made by National Council of Single Mothers and their Children (NCSMC):

“Grandparents are already able to make applications under family law for contact with grandchildren. Grandparents and parents can also make arrangements by consent. There is no need for legislative change. Grandparents who are unaware of their legal rights may be informed by a public education campaign. Services assisting parties applying to the courts should explicitly address the needs of grandparents in their services”.

(b) Whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children.

Please also refer to the specific comments made in the NCSMC submission.

Despite genuine attempts to the contrary by many CSA personnel, the Child Support Agency operates in an atmosphere of animosity, distrust and resentment. The level of Child Support received and paid should not be conditional on the hours or days in a week a child spends with his or her parents.

Financial abuse is one of the least understood forms of spousal violence. It is often used as an insidious form of control over a dependent spouse and continues after separation. Our service hears of many cases where payments are delayed just before significant events such as Christmas or birthdays, so that special activities are not possible.

Many women agree to inadequate private collect because their former spouse has threatened to quit his job if the Child Support Agency is involved.

The Family Tax Benefit regime that was instituted with the GST has proven to be really fraught and demonstrates how a split of payments according to percentage of nights spent with various carers (including grandparents) over 10% of the year (ie; 36+ nights) can be cumbersome, create tensions, exacerbate conflicts and is unfair. For a more detailed account of this flawed policy process and its impact on families refer to *Discounting Care: Shared Care and Social Security Policy*, Keebaugh, S., *The Australian Feminist Law Journal*, June 2003.

Conclusion

Rebuttable Joint Custody is not endorsed by CSMC as a viable a policy direction. It is not necessarily in the best interests of children or their parents. Current Family Law provides for such an arrangement if families freely choose such a family configuration post-separation. Australia does not have a social and economic context of equality for men and women, particularly when they become parents. Australia has extremely inadequate maternity leave and childcare provisions compared to other OECD countries. It is therefore difficult for women to reenter the workforce when children are young. Their financial dependence and vulnerability means they do not participate in family life equitably and may be disadvantaged in any negotiations.

Such a presumption may also skew the decision making process about children. For example, if a marriage or relationship breaks down, the father may feel compelled or pressured to opt for 'joint custody' to show that he loves his children equally, even though he knows in his heart that they would be better off in a stable home with their primary care giver.

Recommendations

The inquiry will provide the Australian Government with a huge amount of information and a very broad range of opinions around the welfare of children post separation.

Careful analysis of the submissions considering their representation and their content will provide very useful information.

Most importantly, it will provide a starting point to consider what we don't know about families. Questions around the structural and process issues of family life and assumptions that are made about the development of children are extremely important.

Some questions to explore might include:

- If we assume adult male role models are crucial for boys, why do the sons of lesbian parents consistently fare better educationally and socially than the sons of heterosexual couples?
- Why is the institution of marriage seen as so important to preserve when it is the site of most of the violence and abuse suffered by women and children?
- Why is the choice to end a marriage more likely to be made by the wife even though she will more than likely live in poverty trying to provide for her family?
- Why is choosing to end a marriage seen as causing the marriage to fail?
- What is it about family life before separation occurs that might contribute to reduced outcomes for children in one parent families?

A comprehensive qualitative process is needed to really understand what's happening with families that makes them unbearable for so many people and are what children often survive rather than feel nurtured by. The voices of children must be considered.

An excellent starting point would be to talk to children (young adults) who have experienced a share care arrangement post separation.

CSMC is committed to supporting policies which genuinely attempt to improve the life chances of all children, particularly those who endure the stigma of 'otherness' such as cultural difference, disability or by being brought up by a single mother.