COUNTRY WOMEN'S ASSOCIATION OF NEW SOUTH WALES

SUBMISSION TO

THE HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS

INQUIRY INTO CHILD CUSTODY ARRANGEMENTS IN THE EVENT OF FAMILY SEPARATION

TO: Committee Secretary,
Standing Committee on Family and Community Affairs,
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(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 should be rebutted:

It appears from our research that there were 55 000 divorces in Australia in 2002, involving about 53 000 children. These bald numbers would indicate that there is no one solution to child custody that will fit all children. The current "flavour of the month" is true joint custody, with children spending real time with each parent equally. Television and radio and newspapers have all in the past weeks presented us with the evidence that such arrangements are not only in place, but that they are eminently workable.

We feel that if parents can so amicably agree to this sharing of their children's lives, they (the parents) will probably never need to have recourse to the pathways outlined in the family Law Pathways recommendations, out of which this enquiry has grown.

The average couple who separate, however, do not appear to fit the ideal 50/50 custodial arrangement. Even with great goodwill, parents who have separated or who plan to will generally find the conditions of such sharing idealistic rather than practicable. Remembering that the child's interests are paramount, there has to be a minimum of disruption to daily routines. Children need security and so same school attendance is preferable, ability to continue a smooth social life – participation in a team or activity after school and/or at weekends, routines with friends and with extra curricular activities – all have somehow to be maintained. This means that those who can no longer bear to live together still have to live near each other and deal with each other directly on a very regular basis. What then of either parent having to move for employment? Or if one establishes a relationship with someone who lives elsewhere? The move does not even have to be far away without travel and security hassles becoming important and even threatening to the arrangement.

Realistically, most people who separate do not do so with goodwill to the partner. Traditionally children have been used as weapons in the marital war. Only social educational programs right through the community are going to help overcome these attitudes. We realize that no one can change another person, but over time, educational programs, formal and informal, can help effect changes in attitude.

Again traditionally, the mother appears to win custody of the child, with fathers being given access. Perhaps this arrangement suited our society when mothers were the hearth guardians and fathers were the breadwinners. For how many decades now has this been superseded by both parents working and by women striving towards careers of equal value as their partner's? Child care arrangements both by government and by employers have to be more accessible and available, physically and financially, if there is to be equitable custody sharing. Anecdotal evidence suggests that time off to look after a child, to attend a sports day, to pick up after school, to leave work at the end of a reasonable working day (not having put in several hours unpaid overtime) are all demerits against a working mother; for custodial fathers the message is spelt out even more forcefully. Such workplace attitudes have to undergo a sea change if there is to be real sharing in the rearing of children and this applies whether the children are within a harmonious marriage

or sharing their parents in separate establishments. Such an attitudinal change will involve a societal overhaul and will not be in the short term. Governments could assist though in making discrimination against a worker carrying out a reasonable parental role just as accountable as discrimination on account of age, sex or religion. This Government keeps talking about family values – **action** is needed to give some substance to its words.

When violence or abuse is alleged, one of the difficulties facing counsellors, mediators, etc when families are breaking up, is the various levels of responsibility among government bodies. The Family Law Court, the police and the relevant State authority are all involved with overlaps of authority. Often, the outcome is the allegations are not properly tested. If there has been abuse/violence, it is right that the children of the union should be protected, by AVO or whatever legal mechanism can be invoked. On the other hand, if the accusation is not true, the wronged person finds that the allegations of such behaviour take on a life of their own, he/she is unfairly treated and the children are unjustly denied access to that parent.

For any parents facing separation, the appointment of a solitary Primary Dispute Resolution Officer can be seen only as token or window dressing. Again, the promotion by government of earlier conflict resolution and less adversarial behaviour through the good offices of family lawyers would carry more weight if it were not to be done through the legal practitioners whose incomes depend on family law, if there were counsellors enough and if there was sufficient legal aid for the couples who need it. As the situation stands, there are fine words, but again, little or no action. Even if there were sufficient counsellors and mediators in place, success is dependent on the willingness of BOTH partners to enter into mediation. Too many are not willing, feeling they will be cheated or talked out of their rights.

In the event of equal, joint custodies being agreed to, each parent should be deemed eligible for his/her share of Parenting Tax benefits. We understand that as the Tax Law now stands, such benefits can be claimed by only one parent.

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

Unfortunately, it appears that the relatives of the non custodial parent are currently unlikely to have much contact with the children of separated parents. Grandparents especially keenly feel such a loss from their lives; and one would think realistically that the children suffer a like loss. There is provision for relatives to use the court system to seek redress in such circumstances, but many feel that there is little point, that the court is already overworked and that the process is both time consuming and expensive. Like every single aspect of the whole issue of custody, so much depends on the goodwill and the honesty of all parties involved. Orders can be made, agreements entered into, but participants have to be prepared to follow these through. If the agreements break down, the recourse has again to be to the courts and many ex-partners and their relatives usually lack the time, energy and finance to persist time and time again.

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

Anecdotally, the current support formula does not work well too often. All separate but involved are Child Support, Centrelink and the Family Tax Benefit. Non custodial parents who do not pay the support demanded of them are being chased up a little more these days, but greater efforts have to be made, to garnishee wages, for instance, or to reduce the unemployment benefit by a certain amount. On the other hand, many of these non-supporting parents claim (and legitimately, it seems) that access to their children is denied them. When children are weapons, they suffer. Of course, the real focus, as this enquiry sets out, is the well being of children, but the parents are human, with the faults and foibles that go with being such. Sometimes the amount set down for child support makes future relationships for the paying parent almost prohibitive. It is fine to say that support should not be linked with access, but for many, many parents it is.

When we were researching information for our submissions into Poverty, Taxation and the proposed Welfare Reforms, we found that children and parents relying on child support and/or welfare were usually financially disadvantaged. The second families of the non-custodial parent were also disadvantaged in many areas, as one wage was partially supporting two families.

IN SUMMARY the whole Family Law system has to be integrated, including the State agencies that become involved (for example, FACS in NSW) and, where relevant, the Police. Part of this whole has to be the financial support offered through the taxation system and Centrelink. Somehow, through education, formal and informal, people have to be brought to understand that the child is the focus when arrangements are made for separation. Joint custody is the ideal, but in the majority of cases, hardly practicable.