

Council of Single Mothers & their Children

Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
Parliament House
Canberra ACT 2600
Australia

legcon.sen@aph.gov.au

22nd February 2006

Dear Secretary,

Re: Inquiry into the Family Law Amendment (Shared Parental Responsibility) Bill 2005

Please find attached the submission from the Council of Single Mothers and their Children, Vic, (CSMC) to the Committee's inquiry into the Family Law Amendment (Shared Parental Responsibility) Bill 2005.

CSMC notes that the Bill amends the Family Law Act 1975. Changes proposed by the Bill include:

- the introduction of a presumption of joint parental responsibility;
- the requirement for parents to attend dispute resolution and develop parenting plans before taking a parenting matter to court;
- improvements to enforcement of parenting orders;
- and better recognising the interests of children in spending time with grandparents and other relatives

CSMC has made submissions to previous inquiries, and the submission made in response to the discussion paper "A New Approach to the Family Law System, Implementation of Reforms" in December 2004 is attached for reference in conjunction with this current submission.

CSMC would be happy to provide further information in relation to this submission.

Yours sincerely,

Jane Stanley
Coordinator.

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**Submission to:
Senate Legal and Constitutional Committee**

**Inquiry into the Family Law Amendment (Shared Parental
Responsibility) Bill 2005**

ABOUT THE COUNCIL OF SINGLE MOTHERS AND THEIR CHILDREN (VIC)

The Council of Single Mothers and their Children (Vic) (CSMC) is a community-based organisation that has provided support, information and financial aid to single mothers and their families in Victoria for over 30 years. Our telephone information and support service handles an average of 15 calls a day, and we have a membership of over 1,450 single mothers and 120 organisations.

CSMC, along with sister organisations in other states and the National Council of Single Mothers and their Children (NCSMC), is well recognised as a source of expert advice on issues of relevance to single mothers. Our expertise is grounded in the concerns expressed to us by single mothers calling our telephone contact line, putting us in an ideal position to respond to this inquiry on behalf of these callers. Individuals, academic institutions, community support/welfare organisations, government departments and members of parliament are some of the bodies seeking our expertise.

CSMC has made submissions to the inquiry process in previous Parliamentary Committee inquiries, and this submission focuses on the amendments arising from the House of Representatives Legal and Constitutional Affairs Committee.

CSMC also fully endorses the submission made to this inquiry by the National Council of Single Mothers and their Children (NCSMC).

**CSMC RESPONSE TO THE FAMILY LAW AMENDMENT (SHARED PARENTAL
RESPONSIBILITY) BILL 2005**

CSMC endorses the overall objective of the Family Law Amendment (Shared Parental Responsibility) Bill (hereafter referred to as “the Bill”) to support parents to reach safe, sustainable parenting arrangements post separation. CSMC acknowledges the valuable role and contribution of both mothers and fathers and wider family members to children’s lives. CSMC acknowledges that shared parenting after separation can have positive outcomes for children when the arrangement is chosen by the parties who can work together and who actively seek to co-operate around a shared understanding of their children’s best interests.

CSMC's central concern in relation to the Bill is to ensure that the basic human right to safety of adults and children is upheld in all cases in the family law system. Our concerns can broadly be summarised as:

- Decisions relating to the care and raising of children must have as a central principle that considers the “best interests of the child”. The Bill however, will relegate this principle to that of secondary importance;
- The Bill will not provide adequate safeguards to women and children who have experienced violence and abuse, and may contribute to continued exposure to violence after separation;

1. THE CHANGES DO NOT PROMOTE THE BEST INTERESTS OF THE CHILD

The Bill promotes parent's “rights” to share “equally” in their children, rather than encouraging the exploration of a range of options to best meet the *child's* needs.

The best interests of a child are promoted when it is the full range of their needs that are considered in making decisions impacting on them. Children need stability in their lives, and a “one size fits all” approach will not be able to best meet the needs of the majority of children.

The Bill creates an obligation on courts and mediators to consider as a starting point ‘equal shared parental responsibility’ (and then to consider ‘equal shared parenting time’), rather than ‘joint parental responsibility.

Research has established that “equal shared parenting” time, while an admirable goal, is achievable for only a few separating couples. Pre-separation one parent, usually the mother, takes responsibility for the bulk of parenting obligations, and these divisions do not change after separation. “Equal shared parenting” time has been shown to work only where both parents are motivated, live close together, shared the responsibilities of parenting pre-separation, and communicate well. These parents are less likely to be seeking the assistance of Family Relationship Centres or the Family Court.

The emphasis on equal time, or ‘substantial and significant’ time, arrangements gives inappropriate priority to those arrangements over any other type of arrangement. Rather than considering the full range of a *child's* needs, particularly needs for stability and continuity, the emphasis in the Bill prioritises the desires of the parents over the needs of children. Positive, quality relationships between parents and children are not dependent on parents having equal time with children.

Further, under the Bill the ‘best interests of the child’ is determined by two possibly contradictory factors – contact with both parents, and protection from violence/harm. This is discussed further below.

Recommendations:

- **A child's right to live without harm, fear of harm, or exposure to the harm of another, must be the pre-eminent factor in determining the "best interests of the child"**
- **A child's right to continuity of residence must be given equal consideration in the process of determining a parental schedule of attendance that will be imposed on the child.**
- **That the direction to consider "equal shared parenting responsibility" and "equal shared parenting time" be removed, and replaced with "joint parental responsibility".**

2. THE BILL MAY JEOPARDISE THE SAFETY OF CHILDREN AND OTHER FAMILY MEMBERS

There is a well established body of evidence that demonstrates that violence and abuse are factors in a significant proportion of separations. CSMC welcomes the changes introduced, or promised, to contribute to safety of children and family members.

However, CSMC has concerns that aspects of the Bill will, if implemented, undermine the safety of children and their family members, namely:

1. *The Bill creates conflicting primary considerations* for determining a child's best interests that are likely to lead to increase risk of violence or abuse. The primary considerations state that children should have meaningful relationships with both parents **and** be protected from abuse. The tension between these two considerations could result in children being placed at risk of harm
2. *The new secondary criterion* – the willingness of parents to facilitate a relationship with the other parent – will disadvantage parents trying to protect their children from violence or abuse. A parent trying to protect their child from harm, by definition, will not be willing to facilitate a relationship with the other parent. Information about abuse most often comes to light by the disclosure by a child to the non-offending parent. However, parents are disqualified in the Family Court as a credible source of evidence regarding their children.
3. *"False allegations" provisions.* Significant amounts of evidence demonstrate that violence and abuse is actually *underreported*, rather than allegations of abuse being falsely made. The provisions in the Bill that require courts to order costs against parties "knowingly" making a false allegation or statement (s117AB) will act as a disincentive to disclosure of a criminal act. Women and children will be placed at risk of exposure to further violence and abuse. The problem of false denials of violence is also obscured by this focus.

4. *Objective definition of violence, and requirement to determine if a targets fear of violence is “reasonable”.* There is a great risk here that the judiciary will draw on their own (subjective) experiences and prejudices, resulting in women’s and children’s experiences of violence being trivialise or denied.
5. *Compulsory mediation.* Mediation is based on a presumption of equal power between the mediating parties. In situations where violence and abuse is present, there is by definition, an imbalance of power, and a willingness by the abuser to take advantage of that imbalance for their own ends. Forced mediation, therefore has a history of working against targets of violence. Coupled with the provisions regarding “false allegations”, and the requirements of an “objective” definition of violence, compulsory mediation will place women and children at risk of
6. *Qualifications for Family Relationship Centre staff.* The experience, skills and qualifications for staff involved in screening and mediation must be determined. At the best of times, violence and abuse is under-reported. FRC staff need to be highly skilled to identify situations where mediation is inappropriate - particularly in light of the factors that will contribute to a reluctance to disclose violence and abuse (such as the “false allegations” provisions).

Recommendations:

- **That the content of the ‘best interests of the child’ be detailed as having a threshold benchmark of safety from abuse and violence or exposure to abuse or violence against a person in the child’s family**
- **That in cases where a history of violence or abuse has been established, decision making around contact should prioritise the child’s safety and that of family members ahead of any other consideration**
- **That where Family Law orders or agreements result in exposure to violence or abuse, victims should receive compensation, or in cases of murder or manslaughter, the immediate relatives of the victim/s should receive compensation from the Commonwealth**
- **All personnel involved with screening, mediation and court processes must have mandatory, accredited training in relation to domestic violence, child development and child protection.**
- **Clear guidelines must be developed to ensure that people who have or are experiencing violence or abuse are not inadvertently required to undergo mediation**

- **Section s117AB, providing for penalties for “false allegations” of abuse, must not be included.**
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COPY of submission made in response to the discussion paper "A New Approach to the Family Law System, Implementation of Reforms", December 2004

Consultation Secretariat
Family Law and Legal Assistance Division
Attorney-General's Department
Robert Garran Offices
National Circuit
Barton ACT 2600

consultation@ag.gov.au

Dear Secretariat,

Please find attached the response of the Council of Single Mothers and their Children (CSMC) Victoria to the discussion paper, 'A New Approach to the Family Law System, Implementation of Reforms', released by the Attorney General on 10th November 2004.

This submission addresses the specific questions within the discussion paper as well as providing information about CSMC and the needs of children and parents after separation, with a particular focus on single mothers and their children. Please do not hesitate to contact us if you would like any further information.

Yours sincerely

Dr. Elizabeth Branigan

CSMC Coordinator

BACKGROUND

The Council of Single Mothers and their Children (CSMC)

For over 30 years the Council of Single Mothers and their Children (CSMC) has provided a statewide support service across metropolitan Melbourne and rural Victoria for single mothers and their children. The service includes a telephone information, contact and support line, limited financial aid and emergency relief, a newsletter, a community lunch/support groups program and expert advice on issues of relevance to single mothers. We currently have over 1,200 current members who are single mothers or the children of single mothers. We are skilled advocates for the needs of single mother headed families and remain grounded in the concerns expressed to us daily through our Telephone Contact Line, which puts us in ideal position to respond to this discussion paper on behalf of these callers.

CSMC is the Victorian member organization of the National Council of Single Mothers and their Children, located in Adelaide, who have presented their own extensive submission that has our full support and is referenced throughout this paper.

The Council of Single Mothers and their Children (CSMC) applauds the '*New approach to the family law system*' for its proposals to:

- Offer *free* information, counselling, mediation and support services for separating families
- Encourage parents to active work together to ensure the best interests of their children are achieved

SUMMARY OF RECOMMENDATIONS

- We recommend that the Family Relationship Centers (FRCs) proposed in the Discussion Paper operate from the principle of 'the best interests of the child', which must be assessed on a case-by-case basis. The best interests of children are served when they have the right to have a say about what kind of contact they have with parents. A presumption of equal time is not in the best interests of every child, particularly not for those subjected to violence or abuse by a parent, or those who have witnessed domestic violence. Even where there is no abuse, being 'equally shared' between parents is impractical and unsatisfactory for many children.
- We recommend that the FRCs recognize the serious nature and the extent of violence against mothers and children. The proposition of referring cases involving 'entrenched' and 'evidenced' abuse to the Family Court or Federal Magistrates Court ignores the fact that much abuse and violence is hidden, contested or hard to support with material evidence.
- We recommend that a provision NOT be introduced specifically authorizing a court to make cost orders where 'false' allegations of violence are made and parents therefore attend court without attending an FRC.
- We recommend that the Family Law Act should NOT be amended to require parent advisors develop parent plans to raise the possibility of equal parenting time as a starting point.
- We recommend that that parents should be able, if they choose to, attend dispute resolution with their lawyers.
- We recommend that the FRCs should be subjected to detailed accreditation procedures and that an independent, statutory complaints body be introduced, whereby those who have been abused as a result of court decisions or mediated agreements that did not take proper account of disclosures of violence or abuse, should have access to redress.
- We recommend that attendance at FRCS should be voluntary, rather than mandatory.
- We recommend that a 12-month period should be given to finalize parent orders.

1. What are the support services needed by families going through separation?

CSMC is in a good position to answer this question as the majority of calls we receive are made during the period immediately following separation. Families going through separation require a range of support services, including:

- Information on family law processes and legal advice. Often this may necessitate legal representation
- Information of Centrelink entitlements (eg. Family Tax Benefits A and B, Youth Allowance, rent assistance, health care cards, concession entitlements, J.E.T etc.)
- Information on Child Support Agency entitlements, time lines and processes
- Immediate financial aid and emergency relief (food vouchers, No Interest Loan Schemes, second hand furniture and donations of white goods)
- Financial counselling (which may necessitate information on all of the above)
- Housing support
- Parenting behavioural information – such as how to support children through the grief and anger processes that result from separation
- Conflict resolution and communication programs to assist parents to develop positive strategies to assist their ongoing post-separation relationship
- Drug, alcohol and gambling services
- Mental health services
- Services for parents and children recovering from living with violence and abuse
- Services for parents who perpetrate violence and abuse in their family relationships
- Services for parents and children who are living with continuing post-separation violence and abuse due to inappropriate court orders or agreements.
- Leave conditions written into EBAs and AWAs to facilitate recently separated parents to work through their grief and attend all the necessary service appointments
- Services that provide emotional support
- Support groups

- Child care facilities for those parents for whom separation means returning to/ or increasing the hours they are engaged in paid employment
- Culturally and linguistically specific support services

2. *Apart from doctors, child care centres, lawyers and schools, who else in the community can help refer separating parents to Family Relationship Centres?*

Relevant telephone support services such as: Parentline; Council of Single Mothers and their Children; Mensline; Care Ring and WIRE.

The Family Relationships Centres, however, will need to develop an un-biased and safe reputation in the community so as to ensure that the relevant services may ethically refer their clients to them.

3. *What other ways could be used to encourage parents to develop parenting plans as the basis for their parenting arrangements after separation?*

We support NCSMC's recommendation in their submission that parenting plan templates and kits be developed and widely accessible in multiple formats leading parents through the range of questions and issues they will need to consider when making a parenting plan agreement. Such kits and templates should inform parents about child development and well being and focus on the practical capacity to meet children's needs and interests in making parenting arrangements.

We, furthermore, endorse the recommendation of the National Network of Women's Legal Services (NNWLS) that the Family Relationship Centres allow for the provision of early information and assistance but only require dispute resolution sessions to prepare parenting plans to occur anytime within the first 12 months after separation. The experiences of our client base tell us that the period immediately following separation is the time of greatest conflict and decisions made too early in the separation process may not be the best ones possible.

4. *Have you any comments on the proposed information, advice and dispute resolution services to be provided by the Family Relationship Centres?*

CSMC applauds the government's allocation of free mediation time, but believe six hours free time allocation would more realistically allow for arrangements to be negotiated on the complex parental separation and child wellbeing.

It appears from the proposal that Parenting Advisors are accorded a great deal of power. We recommend thorough accountability procedures be adhered to in order to ensure that this power is not exceeded or wielded in an unjust manner. CSMC supports suggestions such as those made in the NCSMC submission that FRCs and their employees are answerable to a client charter that is monitored by relevant peak bodies; that an independent complaints body is established and that a strict quality assurance framework is established.

The FRCs should place the 'best interests of the child' at the centre of their practice. This should be determined on a case-by-case basis, rather than simply adhering to a predetermined model of time allocation between each parent.

We would like to raise the concern that family violence has neither been adequately conceptualised nor considered in the development of this model. Mothers and children who have experienced abuse but are unable to satisfy the evidence basis that enables them to be believed will be pathologised unless they agree to their children seeing their abuser and tolerating continuing abuse. The FRCS should not, under any circumstances, play a role in forcing children to see parents who have injured or abused them.

As NCSMC documented in their submission, the Family Law Pathways Report identified two-thirds of separations involving children as experiencing issues of violence and abuse (FLPR 2001). Australian Institute of Family Studies research (Wolcott & Hughes 1999) indicates that communication breakdown, followed by violence and abuse issues (including substance abuse) are the main reasons for divorce. There is also evidence that people with mental health problems face a higher risk of relationship breakdown (Rodgers, Smyth and Robinson 2004) and conversely that divorce and separation can have adverse consequences for mental health and substance abuse – particularly alcohol abuse amongst men (ABS 1998; Rodgers et al 2004). Lone mothers living on income support have also been identified as having a higher incidence of physical and mental illness or disability, and experiences of violence and abuse (Butterworth 2003). The experience of being a target of family violence or abuse has also been identified as a cause of mental illness – particularly for women (Taft 2003). A wide body of well-established research has conclusively demonstrated that domestic violence and abuse are common enough factors in separation to be considered as ‘the norm’, rather than marginalized as isolated, individual instances. It is important to acknowledge abuse and violence for what they are, rather than using the more egalitarian terms ‘conflict’ and ‘dispute resolution.’

We believe that attendance at the FRCs should be voluntary, rather than mandatory. Forced mediation has a history of disadvantaging women (Astor 1994), yet the current proposal appears to not consider this evidence. For the Centres to gain the active support of services that support the wellbeing of women and children, it will need to take the issues of abuse and intimidation of women and children far more seriously.

An independent, statutory complaints body should be introduced where those who have been abused as a result of court decisions or mediated agreements that did not take proper account of disclosures of violence or abuse, should have access to redress, as well as statutory compensation or the capacity to sue the individuals who failed in their professional responsibilities to protect them.

Parents should be able, if they chose to, attend dispute resolution with their lawyers.

5. *What are the priority services they should be providing?*

- Identification of each child’s specific needs - health, education, and social.
- Identification of parents’ circumstances and exploration of the capacity of parents to meet proposed terms of agreements. The child’s interests and needs should be privileged ahead of arbitrary division of the child between parents.

- Information provision on matters such as: family law, child support, Centrelink entitlements, financial counselling, housing, parenting support, recovery from substance abuse and recovery from violence and abuse.
- A safety audit of each case to examine whether there is any allegations of abuse or violence against any party.
- Adequate on-site security to protect both participants and parenting advisors

6. *What training needs to be provided to help parenting advisers identify violence or child abuse?*

- Parenting advisers will need significant training in screening for and identifying violence and abuse. Training in the gendered dimensions of violence and abuse should be accredited according to compliance with the Partnerships Against Domestic Violence (PADV) competencies. PADV projects have identified best practice standards within domestic violence and sexual assault services. Training needs to include understandings of gender and family dynamics of violence and abuse, knowledge of normal child development and the impact of trauma on a child's development and mental health.
- Parent advisers must be empowered to stop mediation where a perpetrator of violence is taking advantage of his position of power. The parenting advisers will need to be adept in skilled in identifying and responding appropriately to physical, emotional, social, sexual and financial abuse in both adult and child relationships. A recent Victorian study found that intimate partner violence accounted for 9% of the public health burden for Victorian women aged 15-44 (Vic Health 2004).
- Financial and other penalties arising from allegations of violence that are asserted as being false will serve to silence victims and provide perpetrators with another tool of control to prevent targets speaking out about their experiences.
- Targets of violence are normally: traumatized by the abuse; suffer ill health as the result of the abuse impoverished by the abuse and the separation; and able to get little or no legal help due to legal aid caps and compliance requirements (VicHealth 2004; Branigan 2004). Perpetrators of violence have no health effects arising from his abuse of other people, are able to maintain employment and afford lawyers. This puts the targets of violence at a grave disadvantage in the mediation process.
- It is disturbing that the discussion paper appears to focus on the notion of 'false allegations' despite research showing consistently and clearly that women and children rarely make false allegations of abuse (Parkinson 1990; Brown et al 2001; Kaye, Stubbs and Tolmie 2003).

7. *Are there other things the parenting adviser could do when agreements break down?*

- Workable agreements should include a process for negotiating change as life circumstances invariably change over time (for example, if one parent wishes to

move interstate to obtain a job, or if a parent re-partners and re-locates to a more distant suburb they will need to re-negotiate the initial terms of their agreement).

- A further allocation of one to two hours free mediation time to negotiate these changes should be factored into the resource allocation for the FRCs.
- The most common reason for contravention of contact orders has been identified as concerns for a child's safety (Rhoades 2002). This suggests that careful review of the safety of all parties and the capacity of parties to meet the terms of the agreement are likely to be the best initial responses by the parenting advisor when agreements break down. Again, this will necessitate parenting advisors having thorough, gender sensitised training in identifying abuse.
- Parenting advisers should not persist with agreements that require adults or children to be exposed to violence or abuse or to otherwise place their safety at risk.

8. *What is the most effective way of supporting pre-marriage education?*

- Pre-marriage education should be funded to be included in school and TAFE curriculums on relationship education/life and social sciences and should include units on financial planning, communication, problem solving, and issues of power and controlling behaviours.
- Assistance with the preparation of pre-nuptial agreements would prompt engaged couples to consider how they plan to manage earning and finances, child bearing and rearing, and other key relationship issues. This would, in practice involve pre-marriage education.

9. *What services are needed to help prevent family separation?*

The prevention of family separation should not be a goal in and of itself. As detailed earlier, communication breakdown, violence and abuse (including substance abuse) are the most common reasons given for divorce (Wolcott & Hughes 1999). People should neither be encouraged nor coerced into staying in relationships that put themselves or their children at risk.

Services that already help prevent family separation are financial counsellors, gamblers help organisations, alcohol and drug abuse services. All services of this nature need increased funding if they are to adequately work towards the prevention of family separations.

10. *How can the Family Relationship Centres best meet the needs of families across Australia?*

FRCs can best meet the needs of families across Australia by protecting the best interest of the child and ensuring safety and security for all separating couples who use their services. This would include a 'zero tolerance' approach to the use of violence.

11. *What methods of outreach would be most effective for these sorts of services?*

- Internet based resources and information on a national website dedicated to all the critical issues mentioned herein, including links to relevant services. Materials should be available in a broad range of community languages.
- Good links to established services that are already experts in the relevant fields. This will require that funding to these services be increased in a manner proportionate to the additional demand.
- Outreach workers to be employed from culturally and linguistically diverse backgrounds.
- A dedicated team of workers should be permanently employed to travel to rural and regional centres what are not located within a feasible (e.g. 100 km radius) distance of established FRCs.

12. *What more can be done to make it easier for grandparents to have an on-going relationship with their grandchildren after separation?*

This will depend largely on each family's unique circumstances and whether this would involve any increased risk to the child or any of the child's family. If necessary, a separate (1-2 hour) allocation of free mediation time could be allocated to negotiate the arrangements separately from those of the parents.

13. *Entrenched conflict will be difficult to define. What factors should be used to identify entrenched conflict?*

Some factors that may be used to identify 'entrenched conflict' are as follows:

- Hostility between the participants
- Allegations of violence or abuse against a participant
- The existence of an AVO
- The existence of police records of charges or convictions involving interpersonal violence or property damage by one of the participants
- The existence of GP or hospital or other health records documenting injuries to a parent or child arising from the actions of the other parent
- Attendance at a women's shelter services
- Child protection reports against a parent
- A history of litigation between the participants
- The existence of a continuing and substantial child support debt (evidence of unwillingness to financially support the child)
- Verbal abuse about the other parent expressed to a third party (name-calling, threats of violence, false statements)
- The expression of fear by a parent about the other parent's actual or potential actions
- The expression of fear by a child about a parent
- Denial of access to bank accounts, property titles, and other significant financial information by a partner

14. *Should there be other exceptions to the requirement to attend a dispute resolution before filing a parenting dispute in the courts?*

No. The courts direct parties to pre-hearing alternative dispute resolution anyway so the requirement replicates what is already required.

15. *How can we ensure that people in rural and remote parts of Australia are best able to meet the proposed requirement?*

FRCs must be funded to be located in rural and regional centres. If it is not possible to fund the required number of services that are readily accessible to people at little cost, a visiting service should be established to travel to each rural and regional centre around Australia approximately three times a year.

16. *Should there be other exceptions, such as where there is significant urgency involved in getting the order enforced?*

The government must act to reduce contravention of contact orders by effectively supporting children's human rights to safety in cases involving violence and abuse and not forcing them to be with people who hurt them, frighten them or kill them.

17. *Should the Government amend the Family Law to include these two provisions as factors that a court would need to consider when deciding what is in the best interests of the child?*

As previously outlined, concerns about safety account for most breaches of orders (Rhoades 2002). Along with our National Council, we thus oppose a presumptive reversal of residence when contact orders are contravened and support a comprehensive funded investigation of the child's safety and well being if issues of violence or abuse are raised in the context of mediation.

18. *What other useful provisions from overseas jurisdictions should be considered?*

- Rather than working from a position of shared parental responsibility CSMC advocates that where domestic violence has occurred, there must be a rebuttable presumption of no contact, such as exists in s16B of the New Zealand Guardianship Act 1968 in New Zealand, arising from the Bristol Inquiry
 - The California Family Code (section 3044) – ‘there is a rebuttable presumption that an award of sole or joint legal custody of a child to a person who has perpetrated domestic violence is detrimental to the best interests of the child (Jaffe et al p 15).
 - As detailed in the NNWLS submission, CSMC is **strongly opposed** to introducing factors from the Florida legislation that focus on which parent is likely to allow frequent contact and facilitate a relationship with another parent. It is impossible to anticipate such a matter. Nevertheless, the silent majority of women do facilitate contact (Rhoades 2002; Branigan and Keebaugh 2004).

20. *Are there other options for creating a less adversarial approach to resolving disputes in the courts?*

This is outside our realm of expertise.

21. *What should the combined registry do to make it easier to navigate the family courts system?*

- Provide detailed, easily comprehensible information on line, in brochures and via a support line as to how to navigate the system.

22. *Are there other messages that need to be included?*

Thank you for the opportunity to comment on the discussion paper. We would be more than happy to be contacted if there are issues specific to our area of expertise that we may assist you with:

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References

- Australian Bureau of Statistics, (1996) *Women's Safety Australia*, Catalogue Number 4128.0, Canberra, AGPS.
- Bagshaw, Dale and Chung, Donna (2000) 'Gender Politics and Research: Male and Female Violence in Intimate Relationships', *Women against Violence*, 8: 4-23.
- Branigan, Elizabeth (2004) *His Money or Our Money? Financial Abuse of Women in Intimate Partner Relationships*, Coburg-Brunswick Community Legal and Financial Counselling Centre.
- Branigan, Elizabeth and Keebaugh, Shannon (2004) 'A Feminist Family Agenda: Putting the Mother Back into Sole Parent', forthcoming in *Just Policy*, VCOSS.'
- Butterworth, P. (2003) 'Multiple and Severe Disadvantage Among Lone Mothers Receiving Income Support', *Family Matters* No. 64, Autumn pp. 22-29.
- Family Law Pathways Advisory Group (2001) *Out of the Maze*, Canberra, Attorney Generals Department. www.ag.gov.au.
- Heenan, M., Astbury, J. Vos, T., Magnus, A. and Piers, L. (2004), *The Health Costs of Violence: Measuring the Burden of disease caused by Intimate Partner Violence*, VicHealth, Victoria Department of Human Services, and Melbourne.
- Jaffe, P., Lemon, N., and Poisson, S. (2003), *Child Custody and Domestic Violence*, Sage Publications, Thousand Oaks, Ca.
- Kaye, M., Stubbs, J. and Tolmie, J. (2003), Negotiating Child Residence and Contact Arrangements Against A Background of Domestic Violence, *Research Report*, No. 1, Griffith University, June.
- Kaye, M., Stubbs, J. and Tolmie, J. (2003) Negotiating *Child Residence and Contact Arrangements against a Background of Domestic Violence*, Families, Law and Social Policy Research Unit, Griffith University, Queensland.
- Kelly, J. (2003) Parents with Enduring Child Disputes: Multiple Pathways to Enduring Disputes, *Journal of Family Studies*, Vol. 9, No. 1, pp. 37-50.
- McInnes, Elspeth (2004) *The Challenges of Securing Human Rights to Safety in Australian Family Law Frameworks*, paper presented at the 'Home Truths' conference, Melbourne, September 15-17.
- McInnes, Elspeth (2004) *National Council of Single Mothers and their Children Submission to the discussion paper, 'A New Approach to the Family Law System, Implementation of Reforms'*.
- Rendell, K., Rathus, Z. and Lynch, A., (2000) *An unacceptable risk: A Report on child contact arrangements where there is violence in the family*, Brisbane, Women's Legal Service.

Rhoades, H., (2002) 'The 'No Contact' Mother: Reconstructions of Motherhood in the era of the 'New Father', *International Journal of Law, Policy and the Family*, 16 (1): 71-94.

Smart, C., (2001) 'Children's Voices' Paper presented at the 25th Anniversary Conference of the Family Court of Australia, July, <http://familycourt.gov.au/papers/html/smart.html>

Wolcott, I. and Hughes, J., (1999) Towards *Understanding the Reasons for Divorce*, Working Paper 20, Melbourne, Australian Institute of Family Studies.

Council of Single Mothers and their Children, Victoria

BRIEFING PAPER 26 May 2004

STATISTICS & FACTS - SINGLE MOTHERS IN AUSTRALIA

CSMC Victoria

The Council of Single Mothers and their Children (CSMC) was established by a group of unmarried mothers in 1969. For over 30 years CSMC has provided a statewide support service for single mothers including telephone information, financial aid, a newsletter and expert advice on single mother's issues. Paid workers, unpaid workers and management committee are all single mothers.

Single mothers in Australia

Nearly 500,000 Australian families are single parent headed families. Single mother headed families represented 83% of these families in 2001 (ABS 2001).

According to Child Support agency data, 91% of parents who are entitled to child support are mothers.

Single mother headed families are more impoverished as a group than those headed by single fathers. Single fathers are more likely to have teenage children in their care while single mothers are more likely to have young children in their care. Single fathers are also more likely to have full time paid employment (ABS 2003:9).

Still poor

Single parent families are the most financially disadvantaged families in Australia. Single mothers without paid work, and those who manage on part-time wages are frequently surviving on incomes under the poverty line.

In 1999-2000 single parent families had an average income of \$295.00 a week. (ABS 1999-00 Cat No 6523 in Colvin 2003:4). NATSEM recently estimated the weekly cost of two children on an average income to be \$310 a week (Family and Community Service Committee 2003:132).

According to the Child Support Agency of parents entitled to child support (91% mothers):

- only 4% had incomes over \$50,000 per annum and
 - 75% raise children on incomes below \$20,000
- (Family and Community Service Committee 2003:14).

Teenage Single Mothers

Claims that increased social security encourages teenage pregnancy are flawed. The most compelling evidence is the drop in teenage pregnancy over the period since sole parent entitlements were introduced. According to the Department of Family and Community Services (1998):

"Despite increased support for lone parents, there has been a long-term decline in teenage births from 55 per 1000 for teenagers (15-19 years) in 1971 to less than 20 per 1000 in 1997".

The same document notes that in June 1997:

- only 3% of single parents on social security payments were teenagers
- The average age of single parents on social security payments was 33.5 years
- Australian teenage birth rates are lower than UK, USA and New Zealand
- The rate of teenage parenthood is lower than any time since these statistics have been counted in Australia

Teenage birth rates are affected by young people's ability to access good health information and contraception. The narrow range of health and youth services in rural and regional areas can particularly disadvantage rural young people's access to reproductive options.

Single mothers raising teenagers & young adults

Single mothers whose children are aged over 16 years are particularly financially disadvantaged as they are ineligible for parenting payment (single) and the more liberal income tests. This change was introduced by the ALP in 1989. Previously parenting payment (single) was paid until the youngest child was 18 years.

Teenagers are estimated to cost between 2 - 4 times more than children under 5 years (NATSEM in Davidson 2003). However single parents who are dependent on Centrelink and caring for young adults find their income dropping by up to \$73.00 a week (CSMC 2003, Davidson 2003).

In addition, the ALP introduced lower rates of Youth Allowance for young people who live at home and on the basis of their age. Young people do not receive an adult rate of Austudy or unemployment benefit until they are 24 years old. These measures make ongoing study increasingly difficult for young people in low income families.

Working at the similar rates as married mothers

Married mothers and single mothers' access to paid work is quite similar. However, married women hold the bulk of part time work.

Table 1. Percentage of single and partnered mothers in paid work in 2002 (AIFS 2003:3).

	Full time work	Part time work
Partnered mothers	25.5%	37.4%
Single mothers	21.0%	26.8%

An Australian Institute of Family Studies research paper notes that full time work participation of single mothers increased from 20.3% in 1983 to 28.7% in 1988 then decreased to 21% in 2002 (AIFS 2003:3). This trend is consistent with the fact that the most disadvantaged groups are the first to lose work in an economic down turn.

Part-time work of mothers has steadily increased, but may actually represent episodes of casual work. Whitford (AIFS 2003:3) suggests up to 60% of single mothers are working in any year but may be experiencing multiple episodes of paid work.

Child support is not paid or is low

When relationships break up the poverty of mothers is revealed. Child support is of minimal assistance for many children, as 41% of single parents receive no child support (Family and Community Service Committee 2003:14).

The average child support payment was \$57.23 a week in 2002. Nearly 80% of child support payments are under \$100 a week. According to the Department of Family and Community Services data on child support payers:

- 40% pay \$5.00 or less a week
- 16.2% pay between \$5-40 a week
- 22.3% pay between \$40-\$100 a week
- 21.4% pay over \$100 a week child support

(in Family and Community Services Committee 2003:14, 127,128).

The child support formula ensures child support amounts fluctuate in response to both parents' income, the level of care both parents provide and when children are born in a second family of the paying parent. These statistics suggest that claims by aggrieved fathers groups, that they are paying half or a third of their income, require greater scrutiny.

Single mothers are responsible for over 50% of child expenses

According the NATSEM the weekly cost of children for a family on an average income is:

1 child = \$183
 2 children = \$310
 3 children = \$410

(Family and Community Services Committee 2003:132)

Comparing these figures with common child support payments CSMC estimates at least 80% of single mothers are responsible for between 66%-97% child related costs.

For example with single mother with 1 child who receives:

- \$5.00 child support is left to pay \$178 a week or 97% of child-related costs
- \$40.00 child support is left to pay \$143 a week or 78% of child-related costs
- \$57.00 child support is left to pay \$126 a week or 69% of child-related costs
- \$100 child support is left to pay \$83 a week or 43% of child-related costs.

(CSMC 2004:table 1 p.6)

Only when child support reaches \$100 dollars a week does it exceed half of the child related costs for one child. Much more detailed modelling is required, however, this example illustrates that child support in the majority of cases does not meet 50% of child costs.

Paul Henman, Research Fellow, Macquarie University notes that costs related to parenting across two families may be 39-56% higher after separation (Family and Community Service Committee 2003:144:6.1). He acknowledges that there is no proportional decrease in the cost of children for the primary carer parent when care is shared. Most of these additional costs for separated parents relate to housing.

Single mothers do most of the parenting time

Shared care is valid aspiration, however

- Under 3% of children from separated families experience a shared care arrangement of over 30/70% arrangement – i.e. where a non-resident parent has their children more than about 3 nights a fortnight and half the school holidays

(Family and Community Service Committee 2003:12:1.45)

- For over 97% of children from separated families their resident parent is providing 70-100% of their care

(Family and Community Service Committee 2003:Table 1.1).

- Nearly 90% of the resident parents are women.

(Family and Community Service Committee 2003:11:Table 1.1).

The Council of Single Mothers and their Children (CSMC) believes that revolutionising the balance of parenting responsibilities and paid work which trap parents in gendered patterns of father as ‘breadwinner’ and mother as ‘primary’ parent is required before marriage breakdown. Australian institutions and initiatives capable of implementing industrial conditions and work cultures that privilege parenting hold the key to these necessary changes.

Current policy undermines flexible shared care

For separated parents, policy makers must be careful not to link low levels of parenting time with financial advantage or disadvantage – which risk effectively imposing a dollar value on parenting time. Flexible shared care should be based in children’s needs and minor alterations to parenting time should not result in major financial or bureaucratic implications. Children should not be placed in a situation where they know an extra night with their father may mean less money for their mother or visa versa. Mutually exclusive parenting entitlements are necessary for separated parents to reduce the potential for these types of tensions.

Recent policy trends have tended to fund non-resident parents’ child-related costs by reducing the primary carer entitlements to family tax benefit and child support. Meanwhile support for equal caring parents has been largely ignored.

Advocates and mutual support

Single mothers need mutual support and skilled advocates to help them negotiate the many complex administrative hurdles and barriers they face. Many single mothers are overwhelmed by combined bureaucratic burdens of negotiating Social Security, Child Support and Family Law.

In addition they can feel marginalised and alienated from local communities because of their poverty, high parenting responsibility and misinformed negative community attitudes.

The Council of Single Mothers and their Children is happy to assist single mothers, services agencies and media requiring expert advice on sole parent issues. We can be contacted at:

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References

ABS (2003), *Australia Social Trends*, 'Family and Community Living arrangements: Changing families', Australian Bureau of Statistics downloaded www.abs.gov.au 19/4/04.

ABS (2003), *Australia Social Trends*, 'Family and Community - Family functioning balancing family and work', Australian Bureau of Statistics downloaded www.abs.gov.au 19/4/04.

AIFS (2003), Gray M, Qu L., Renda J., De Vaus D., *Changes in the Labour Force Status of Lone and Couple Mothers 1983 – 2002*, Australian Institute of Family Studies, Research Paper No 33.

CSMC 2004, Response to *Every Picture Tells a Story, report on the Parliamentary inquiry into child custody arrangements in the event of separation*, www.csmc.org.au

CSMC 2003, *Parenting 16+*, Council of Single Mothers and their Children, Melbourne.

Davidson P. (2002), 'How to Raise a teenager on \$85 a week', paper present at SPRC conference ACOSS, www.acoss.org.au

Colvin K. (2001), *The Women and Poverty Report, More that half-less than equal*, VCOSS Melbourne.

Family and Community Affairs Committee (FaCS) 2003, *Every Picture Tells a Story, report of inquiry into child custody arrangements in the event of separation*, Commonwealth of Australia, Canberra

Department of Family and Community Services (1997), 'Some Common Questions about Lone parents answered' in Healey J. (ed) *'Issues in Society: Single Parenthood'*, Spinney Press 1999, Sydney p 6 – 13.

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