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CSW Communications Procedure
Human Rights Section
UN Women
220 East 42nd Street, 17th Floor
New York, NY 10017 USA

Friday 30 July 2021

By email: cp-csw@unwomen.org.

Dear Madam

**Re: Infringements of Women and Children's Human Rights
within the Australian Family Court**

Feminist Legal Clinic Inc. is a not for profit community legal service based in Sydney that works to advance the human rights of women and girls. We write this communication on behalf of the Women's Court Support Service (WCSS) that is operated by volunteers who provide non-legal support to victims of domestic violence who are engaged in legal proceedings in the Sydney Family Court.

Late last year a survey was conducted of our clients and members regarding their experiences in the Family Law Court and the results were very disturbing:

- The majority of respondents indicated that the relationship with the father of their child/ren has been characterised by family or domestic violence.
- 85% of mothers have felt pressured by the family law court to give their children's father contact in circumstances where there were concerns for the safety/well-being of the children or themselves.
- The majority of women also reported breaches by fathers of court orders as well as failure to make child support payments.
- 65% of respondents had experienced difficulty with having police apply for, or enforce, AVOs or other domestic violence protection orders on their behalf due to concerns that such orders will conflict with or adversely impact family law proceedings, parenting arrangements or orders.

These survey results indicate that regard for the family law is actively undermining the protection of women and children from male violence. Attached to this letter is a selection of comments from our survey respondents.

The legal cost of family law proceedings is also resulting in women being systemically disadvantaged:

- 86% of respondents to our survey indicated they are experiencing financial stress because of the cost of their family law proceedings.
- We are greatly concerned that perpetrators of violence are using this reality to further victimise women with 89% of respondents to our survey indicating they have had the father of their children use, or threaten to use, legal proceedings to punish them.
- Also 79% of women surveyed indicated they found the cost of legal representation in proceedings limited their ability to bring contravention action or other legal proceedings needed to protect the safety or well-being of the children.
- And 25% of women surveyed indicated they have taken contravention proceedings which proved ineffective.

Our greatest concern however is that the family law court would appear to be actively impeding the safeguarding of children by their mothers:

- We are very concerned that 65% of women responding indicated they have been accused of parental alienation or having coached the child/ren or of being a "hostile parent" when they have withheld the child/ren from contact with their father due to concerns for their safety.
- Most distressing is that 30% of women responding have been forcibly restricted in their ability to see their children, or separated from them, because of orders made by the Family Court or Federal Circuit Court.

Furthermore, mothers who make allegations of domestic violence and/or child abuse against the fathers of their children are routinely accused in the family court of being deceitful or delusional and of engaging in parental alienation. Men's rights groups are disseminating this false narrative within the broader community so effectively that women requiring support are not supported by the family court but rather viewed with suspicion.¹ Indeed, we have observed in cases where we have assisted women that the Family Court is frequently making orders whereby children are removed from mothers in these circumstances and placed instead with the father and alleged perpetrator.

It is of great concern to us that a culture has developed in the family court whereby many legal practitioners are routinely advising women against raising these concerns of domestic violence and/or child abuse for fear that it will result in them losing care of their children altogether. This culture often results in women providing compromised and inconsistent accounts to the family court that further detract from the quality of evidence provided. Another concern is the many unrepresented mothers in family law proceedings who are at a distinct disadvantage and are frequently coerced to sign consent orders with the threat

¹ Laura Bates *Men Who Blame Women* Simon & Schuster 2020 page 130

that they will otherwise have their children removed. Of course, there is no appeal from such orders and in any case, appeals are largely inaccessible or futile for the many women without representation.

We are also alarmed that the voices of children who are being subjected to abuse are not being heard. Indeed, their reports are being routinely dismissed as fabrications incited by hostile mothers. It is our experience that Independent Children's Lawyers (ICLs) not only fail to even meet with the children and directly represent their concerns but often facilitate the case against the mother being brought by male perpetrators of violence.² To further compound the problem, certain family consultants and expert witnesses are notorious for providing reports that support fathers who are perpetrators of violence and denigrate and dismiss the accounts provided by women and children.

Meanwhile it is our experience that police often cite the existence of family law proceedings as a justification for not applying for protection orders (AVOs etc), or for applying for orders which are severely compromised by provision made for compliance with parenting agreements or family court orders. We also see the domestic violence legislation being increasingly weaponised against women by male perpetrators and worry that the proposed coercive control provisions will be used to prosecute mothers who attempt to restrict their contact with children.

While it may be comforting to believe histrionic and vindictive women are fabricating all these allegations against men who claim to be trustworthy, the statistics for domestic violence and child sexual abuse suggest to the contrary. Unfortunately, section 121 of the *Family Law Act* has effectively removed these matters from public scrutiny. This section intended to shield the privacy of families now appears to be operating to protect the reputations of violent and/or manipulative perpetrators together with members of the legal profession and expert witnesses, inadvertently or otherwise, who facilitate the systemic abuse of women and children under cover of family law proceedings.

The feminist push for fathers to play a more equal and active role in parenting has unwittingly created circumstances whereby the risk of male violence has been downplayed and the role of mothers in safeguarding their children disregarded. We would suggest that the Australian High Court in *Gronow v Gronow* 1979 did not envisage that their decision would be routinely used to justify exposing children to risk. Even where there is no prospect of conviction and allegations cannot be established beyond reasonable doubt, vigilant and protective mothers must be supported and not subjected to the cruel punishment of having their children removed. From a child's viewpoint, the trauma of having a mother so dramatically removed from their life with no adequate explanation can equal the inexplicable grief they suffer when a parent dies. An equality narrative should not be used to dismantle the unique physiological attachment between a mother and child which has the essential purpose of keeping children safe, secure and protected.

² Debbie Morton the ICL for the children killed by their father, John Edwards, is a prominent example of this problem that has been reported on in the Australian media. <https://www.theguardian.com/law/2020/dec/15/lawyer-who-represented-children-killed-by-john-edwards-subject-of-complaints-in-nsw-tribunal-hears>

The recently published research article *Allegations of child sexual abuse: An empirical analysis of published judgements from the Family Court of Australia 2012– 2019* by Webb, Molony, Smyth and Murphy³ provides strong empirical evidence that corroborates this survey data and our first hand observations and the many anecdotal accounts we receive from women.

This analysis of published judgements by the Australian Family Court involving cases where there have been allegations of child sexual abuse makes some key findings, including:

- Most allegations (90%) of child sexual abuse were made by mothers.⁴
- In fully contested cases, only 14% of judges expressed a belief in the truth or likely truth of the allegations.⁵
- In fully contested cases, judges found there was a risk of sexual harm in only 12% of cases.⁶
- In 23% of fully contested cases judges regarded the allegations as deliberately misleading.⁷
- In 25% of contested cases, restraining orders and warnings were made *against* the parent raising the allegations (usually the mother).⁸
- Almost two thirds (63%) of allegedly unsafe parents (usually the father) had their time with their child(ren) *increased*.⁹
- In 17% of judgements in contested cases, children's *living arrangements were changed to the allegedly unsafe parent*.¹⁰

In other words, **in most cases mothers are not being believed by judges when they claim their children are at risk** and it is **likely that they will lose time with their children** who may even be handed into the primary or sole care of the alleged perpetrator. This is despite the existence of research cited by Webb et al. that shows:

- one in five women (i.e. 20%) and one in thirteen men (~8%) were sexually abused between the ages of 1 and 17 years (World Health Organisation 2020).¹¹
- it is well- documented that childhood sexual abuse is most often perpetrated by individuals known to the child (Snyder, 2000).¹²
- research indicates that a large majority of allegations of child sexual abuse are likely to be true (O'Donohue, Cummings and Wills, 2018).¹³

³ Webb, N., Moloney, L. J., Smyth, B. M., & Murphy, R. L. (2021). Allegations of child sexual abuse: An empirical analysis of published judgements from the Family Court of Australia 2012– 2019. *Australian Journal of Social Issues*, 00, 1– 22. <https://doi.org/10.1002/ajs4.171>

<https://www.aph.gov.au/DocumentStore.ashx?id=734e8ece-6b2c-4a4f-b779-228fcc1da3be>

⁴ (Webb et al, p9)

⁵ (Webb et al, p12)

⁶ (Webb et al, p12)

⁷ (Webb et al, p13)

⁸ (Webb et al, p14)

⁹ (Webb et al, p13)

¹⁰ (Webb et al, p13)

¹¹ (Webb et al, p3)

¹² (Webb et al, p3)

¹³ (Webb et al, p4)

It would seem the legal process frames mothers as liars and coerces them into dropping their allegations rather than supporting and protecting them. The research by Webb et al. also reveals that allegations of child sexual abuse were more likely to be abandoned where there was an expert report (15%) than without an expert report (5%)¹⁴ and that Independent Children's Lawyers (ICLs) were involved in 100% of cases where allegations were dropped.¹⁵ This accords with anecdotal accounts of the disproportionate influence of reports from individual experts known for their bias and the extraordinary pressure applied by ICLs who have frequently had no contact with the child. The analysis by Webb et al. also records that restraining orders or warnings were frequently directed by the court toward the protective parent (in 25% of fully contested hearings).¹⁶

We would suggest that this important research reveals only the tip of the iceberg because in our experience women who raise these allegations are pressured by ICLs, their own and opposing lawyers to agree to consent orders under threat of otherwise losing their child(ren) altogether. As a result, some of the most disturbing matters do not appear in reported judgements which are the focus of this research. We also note that this study by Webb et al. corroborates similar research on this topic both within Australia and overseas.¹⁷

We look forward to this complaint receiving detailed consideration.

Yours faithfully



Anna Kerr
Principal Solicitor

¹⁴ (Webb et al, p16)

¹⁵ (Webb et al, p8)

¹⁶ (Webb et al, p14)

¹⁷ (Webb et al, p16)

Comments from Survey Respondents

"I am going through the family law courts now, as we speak I am signing my trial affidavit. I can say that I have been told several times that I cannot say I am frightened of my ex husband. I am seeking to relocate. My ex husband uses my mental health to take all decision making power off me, socially isolate me by telling significant others in the small town I live in that I am delusional about the psychological violence and people believe it."

"Post separation abuse and legal and court abuse selling off of assets without any attempt at settlement and without financial disclosure"

"Lied to police and had them issue an interim avo. I fought it and won costs but I still paid over \$10k based on fabrication. He's parked outside my home and tried to have me rear end his vehicle by pulling in front of me and slamming on his brakes. Once my son (then aged 12) began to stand up for himself, his dad started intimidating his friends and him."

"I am in the midst of court & I have a judge that does not read the evidence. I do not think it is intentional I do however think it is due to overworked judge. Unfortunately I am a number as are my children aged 6 & 12...."

"I was told if I didn't (sign particular orders to give the father access) then he would be given sole custody. Then because I did agree to give him time that meant that I was a liar and he wasn't dangerous. So he got full custody anyway."

"The judge told me to agree to shared care or lose them." [serious concerns were raised here]

"My choice was to agree to contact or lose custody completely due to unsubstantiated allegations of him sexually abusing my 4yo. Apparently I coached her to disclose and in protecting her, was the abusive parent because of parental alienation."

"I fear withholding access will be used against me even though he has a criminal charge of child abuse."

"Had to agree to interim orders as couldn't afford the cost of a hearing."

"Made to give access when she was hit, given alcohol, and sworn at. He also had a dvo on his wife."

"I had no more money to spend in the court and he had unlimited access to his mothers money. I had to agree on orders as the ICL said it could be worse if I didn't."

"I currently am forced to coparent with my rapist"

"I have been shocked by this system from the beginning. I have been forced on multiple occasions to 'suck up' whatever is delivered, even though it was far from safe for my child. I have recently received a hair follicle test that clearly demonstrates the Father has been on high levels of Ice throughout these proceedings. I am disgusted that I was forced to comply with orders to handover a child under these conditions."

"It's nearly impossible to demonstrate severe psychological abuse to the courts satisfaction yet the adverse effects of it are felt on a daily basis of poverty and deprivation - that other countries have successfully countered. Australia (NSW) actively enables male violence and female destruction."

"Ordered into 50/50 shared care all evidence of abuse ignored family report writer decided best for children"

"He threatened to kill the boys if he didn't get them."