

# MEN'S INFORMATION

AND

# SUPPORT ASSOCIATION

House of Representatives Standing Committee  
on Family and Community Affairs

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SUBMISSION TO

HOUSE OF REPRESENTATIVES FAMILY AND  
COMMUNITY AFFAIRS COMMITTEE

INQUIRY INTO CHILD CUSTODY  
ARRANGEMENTS IN THE EVENT OF FAMILY  
SEPARATION

## 1. Introduction

Men's Information and Support Association Inc. (MISA) have prepared this submission; the largest incorporated organization in Queensland that is solely directed towards counseling and relationship education for men and their families.

As an organization, which is funded under the Federal Government's Men and Family Relationships Initiative, we are a member of the Industry Representative Body, Family Services Australia. We note that Family Services Australia (FSA) has submitted a paper to the House of Representatives Family And Community Affairs Committee Inquiry into Child Custody Arrangements in the Event of Family Separation.

MISA would like to support a large part of FSA's submission; however, the following paper supports the opposite view to FSA that is, that the *presumption of equal time with each parent* would be in the best interests of the child. In addition, further points will be presented for consideration.

In presenting this paper we would like to emphasise that the points made come from listening to hundreds of men talk over the past eight years about what they perceive to be inequalities in the system when it comes to *child custody arrangements in the event of family separation*.

## 2. Men's Information and Support Association Inc.

MISA was formed in 1995 by volunteer counselors and in order to meet the increased need in the community, a submission for funding was tendered in 1998. In the year 2000 MISA obtained funding and employed four part time counselors/psychologists and an administration officer (56 hours for counseling and 28 hours for administration). Today we have 11 part time counselors (Masters level); five psychologists and four administration staff most of who are working on a volunteer basis. These staff service 300 to 350 appointments a month.

Approximately 65 percent of our clients are on a government benefit and 80 percent of our clients are men. Men present to MISA primarily with depression, attempted suicide or suicidal ideation, anxiety and anger. The underlying issues that men come to counseling for are predominantly relationship/family breakup, relationship/family dissolution, and relationship/family maintenance.

Clients attend our service from the following areas of north Brisbane:

|                                |                   |
|--------------------------------|-------------------|
| · Caboolture Shire             | approximately 31% |
| · Pine Shire                   | approximately 37% |
| · Redcliffe Shire              | approximately 21% |
| · Brisbane north inner suburbs | approximately 11% |

### 3. Comments re Terms of Reference

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

MISA notes Family Services Australia's (FSA) comments in the executive summary of their submission which state that:

“the current provisions of the Australian *Family Law Reform Act 1995* already provide for an arrangement where children may spend equal time with each parent if the family wishes. The fact that few Australian families currently choose this arrangement indicates that a rebuttable presumption would impose an arrangement upon families that the majority will not accept.”

FSA states that few Australian Families *choose* an arrangement where children spend equal time with each parent and support this statement with statistics.

MISA considers that the statistics may reflect the number of families where parents do not have equal time with their children; however, they do not necessarily reflect choice. In addition, FSA also makes the above assumption based only on figures from the Child Support Agency caseload. Also, the question must be asked, “in what way might the system currently be set up to favor producing this type of outcome”.

In our experience of counseling men for separation issues, the majority of men have not chosen the child care arrangements but have had to comply with them for a number of different reasons. As 65% of our clients are unemployed or on sickness or disability benefits they do not have the financial capacity to employ legal representation to contest their ex partner's child care arrangements. Many of them are also ineligible for legal aid or legal aid will often only fund one member of the family (in our experience, usually the women are more informed and get in first). Also, many of our clients have only a secondary school education and often tell us they do not understand the papers that they receive from solicitors. On many occasions they just accept what they are told because they do not have the skills, knowledge, financial resources, or access to the necessary expertise to represent their side of the story.

It is often the case that men have to go to court to obtain equal access. If they do not have the money to do so then they have no choice but to accept the conditions dictated to them by their partners. The statistics reflecting the number of families sharing care represent the outcome of a system that requires a man to take his partner to court if she objects to equal shared care. The statistics may be a true representation of the numbers, but the reasons below account for a percentage of why the statistics for equal shared care are not higher than they presently are. In this case it cannot be said that “few Australian Families choose equal time with children” because in many cases it is not a choice but a product of the system and the social structure of our society. For example, men are predominantly the full time worker in the family hence they do not get the opportunity to spend as much time with the child as the mother and often as they would like.

Many fathers are loving fathers who interact with their children after work and on weekends while willingly accepting the responsibility of providing for the family. There is an attitude in society that because fathers usually do not spend as much time with the children as the mothers then they are not as important or that they are more expendable when it comes to parenting. Hence the current alternative presumption to the one being debated at present. To not have a presumption of equal time with the children invites an alternative social attitude of greater entitlement for mothers. MISA considers that a presumption of equal time will encourage attitudes within the community that promote a father's care as being just as important as a mother's.

### **3.1 The reasons men will not go to court to obtain shared care are as follows:**

1. "I don't have enough money for the legal fees."
2. "Legal aid will not represent me because they are already representing my partner."
3. "I don't want to put my children through court it would stuff them right up."
4. "I don't think I could handle going through court (usually said by men suffering from reactive depression because of the relationship breakup)."
5. "I don't want to put her through that, I still love her (in cases where the woman leaves the man which is in most of the cases)."
6. "I would love to have the children for an equal amount of time but I work full time and don't know how I could do it."
7. "Because I have to work to support them it is better that they are with their mum (usually in situations where mothers are not working)."
8. "I couldn't take them away from their mum."
9. "They probably don't want me anyway, they hardly ever saw me. I was working two jobs so we could manage."
10. "They would probably be better off with their mum."
11. "The children have a new dad they don't need me any more."

MISA supports and emphasizes FSA's points and recommendations made in their section 4.1 of their submission. However, we differ in our opinion in that, in the court's deliberations the presumption should be that children spend "equal time with each parent". We reiterate that the specific circumstances of each child should be considered in relation to the best arrangements for her/him.

Men seen at MISA generally also support the opinion that the baseline which the courts should work from should be the presumption that children spend "equal time with each parent". With this as a baseline, parents can then negotiate their reasons for why it should be otherwise. It is not being suggested that "equal time with each parent" be a mandated arrangement for all. It is only being suggested that it is the initial presumption from which the courts begin their deliberations.

In addition, we support FSA's comments on the principle 'best interests' in section 4.1 and reiterate that, unfortunately, adults often define the 'best interests' of the child. In some cases, even though the courts go to the trouble of getting the opinions of the children, they are often still ignored in the 'best interests of the parents'.

John and Anne aged 14 and 12 continually stated how they did not want to see their mother because she had been physically neglectful in the past and was often emotionally abusive to them when they went to visit her. John and Anne were seeing a psychologist to cope with the depression and anxiety of having been ordered by the courts to see their mother. When asked what would make them feel better, the children said, "having the choice to see our mother and not being ordered to by the courts". At the time they no longer wanted to have anything to do with their mother but said, "they might have sometime in the future". In this case the mother was continually ignoring the children's wishes and using the courts to get them to see her.

A further point with regard to the best interests of the child is that children are able to continue interacting with their father. Some fathers are so distressed by what they perceive as losing their children, wife, house, and family that they attempt suicide or consider it. Relationship breakup is one of the main reasons underlying the high statistics for male suicide. Within the relationship breakup fathers often perceive they are losing their children. In addition, much of our counseling deals with anxiety and depression over the perceived loss of children. In one such case:

A couple decided that the father would stay home and look after the child while the mother went to work. The decision was based on the fact that the mother's job earned more than the father's. After five years of the father being the primary carer for the child the mother stated that she was going shopping and took the child and the dog and never returned. She rang two days later to say that she was living with another man. Someone she had met at work. Not having a job the father had no money to contest the actions of the mother and had to accept fortnightly access.

It is likely that the child would have experienced high stress levels, as the father was the primary attachment figure of the child. MISA supports FSA's recommendation 6.

### **3.2 Circumstances in which a presumption of equal time with each parent could be rebutted.**

1. Where there are excessive travel distances for the children.
2. Where there is a forensic history that could indicate a danger to the children's welfare.
3. Where the abuse of drugs (illicit or legal) and alcohol is occurring in a parent to such a degree that puts the children at risk.
4. Where there has been reasonable proof of sexual or physical abuse of the child.
5. Where there is known neglect of the children by a parent.
6. Where there has been a history of a long-term psychiatric illness, which impairs the person's ability to parent.
7. Where there has been known domestic violence (DV) toward the children. However, if the DV has only been directed toward the partner equal access should not necessarily be denied to the other partner.

8. Where it is accepted by both parents that their cultural traditions say otherwise.

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

MISA feels strongly that this depends upon the wishes of the child and that if children continually protest about having contact with other persons, they should not be ordered to do so. However, as smaller children can reflect the opinions of, be influenced, or coerced by significant others, and where there may be doubt concerning the child's welfare, contact centers can then be utilized.

Also, we feel children should not be ordered to have contact with other persons who the child does not consider to be a significant other or an attachment figure. Other family or extended family members could also confirm this.

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

We talk to very few men who are not prepared to support their children but, as one of the involved issues, many of them complain that they are unhappy that they do not have adequate assurances that funds that are given to the custodial parent for their children's benefit actually end up benefiting the children. Many would prefer to pay invoices that are clearly intended to directly benefit the child (clothing, school fees etc).

The issue of child support is one that needs to be explored. Unfortunately, at this time we do not have sufficient time to examine the issues involved in acceptable detail.

**(c) with the committee to report to the Parliament by 31 December 2003.**

MISA supports this time frame.

#### **4. Social Change**

*In reality* there is an attitude in society that children are better off with their mothers after separation and that they should predominantly reside with the mother while *visiting* their father. However, in today's families where both parents frequently work, fathers are often equally sharing the parenting and caring responsibilities of the children. MISA feels that over the past twenty years the above attitude does not now reflect the changes in the social structure of society.

MISA agrees with FSA that the current family Law provisions include possibilities for shared parenting arrangements. However, changing the presumption of equal time eventually becomes a norm that will provide better outcomes for children. Encouraging a norm in society of equal time with both parents also promotes attitudes and expectations that, parents who are separating, will organize their lives around this presumption

## **5. Summary**

MISA's perception is that a presumption is not a mandate. We endorse all the recommendation put forward by FSA, however, we consider that the child's interests are best served if negotiating *in the best interests of the child* comes from a basis of equal time with each parent.

Sandra Bennett  
Coordinator  
Psychologist