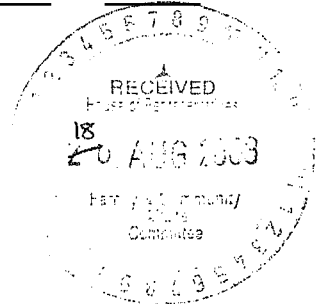




House of Representatives Standing Committee
on Family and Community Affairs
Submission No: 860
Date Received: 18-8-03
Secretary: _____
Tasmanian Men's Health & Wellbeing Association, Inc.
(TMEWA)



Position Statement

Family Law

Introduction:

Family Law is an issue that will affect approximately half of all married men in a direct sense (46% of marriages end in divorce¹), and most men in an indirect manner; their children, parents, or friends who divorce.

The Australian Family Law system has espoused the interests of children from a marriage, as being of paramount importance, and then follows certain courses supposedly directed to this end. It is very contestable that these procedures are in any way, in the best interests of the children.

In approximately 92% of cases, sole custody of the children is awarded to the mother.² Most of these cases are not pursued in court, firstly because the legal costs are prohibitive, and secondly because many lawyers will advise a male client that they have very little chance of contesting custody successfully.

Even in cases where it is deemed a father has a good chance of success and thus proceeds to the Family Court, they have only been successful in obtaining sole custody in 15 % to 19 % of occasions.³

The awarding of sole custody to the mother leaves the man in the following position:

- Bearing a very heavy emotional cost, having not only been separated from his wife but also his children. Contact or access orders are usually for once per fortnight.
- Receiving a lesser proportion of the property settlement, usually 60% to 70% being awarded to the sole custodian mother.
- Having a proportion of his earnings taken out of his salary, like tax, to pay Child Support. This being 18% for one child, 27% for two etc. of his gross earnings.⁴
- The father is deprived of the very role of fathering, unable to have a say in how the children are raised, or to teach them positive masculine values by providing a good role model.

The consequences for the children are equally serious:

- The usual contact awarded of one night per fortnight is, not infrequently undermined by the custodial mother moving away from the previous family location, not infrequently interstate. This means contact has to occur during school holidays, usually an extra cost impost to the father. More important it deprives the children of their birthright, having two parents to care for them and to be in their lives.
- This lack of father contact has been shown to result in generally worse outcomes

for the children in social, academic, and wellbeing issues, compared to joint custody and/or frequent contact cases.⁵

- Contact will sometimes become so painful for both father and children, because of the continued need to part, that it will be discontinued. The children may lose contact with their father altogether.

The TMHWA believes that:

- In the event of marriage breakdown, both parents retain responsibility and rights regarding their children's welfare;
- Children following divorce are entitled to have both parents fully involved in their nurturing and decision making regarding their lives;
- Both parents are capable of providing equally valid contributions with regard to caring for the children and generalised assumptions that one gender is better suited to caring for children than the other are outdated and untrue;
- To exclude fathers from a full parenting role after separation/divorce, is to perpetuate in the minds of children and society in general, the view that fathers are only capable of providing financial assistance and are unable to contribute fully in all aspects of child rearing.

The TMHWA recommends that:

- The Family Law Act be amended to provide for automatic joint custody/residence of children with both parents following separation and divorce.
- A "Parenting Plan" be prepared with the assistance of mediation and legal assistance, to facilitate the details of joint custody/residence.
- The granting of automatic joint custody/residence only be deviated from when one of the parents is unwilling, or proven to be unfit, to continue in their parenting role.

Rationale

Overseas experience has shown that with joint custody many of the previously mentioned issues are resolved.

- Children have sufficient contact with both parents to benefit from what both have to offer. They will not feel they have lost a parent.
- Both parents are equally valued as parents. Neither have to bear a disproportionate degree of the emotional or financial consequences of divorce.
- In those states in the US where shared parenting laws exist, it has been shown that children adapt better after divorce, with better academic and social outcomes, less substance abuse, suicide and self harm etc.⁶
- There is also a lower level of post divorce litigation with shared parenting.⁷ This would mean that the Family Court which is currently not able to keep up with current levels of litigants, would be more able to cope and would only need to deal with issues that fall outside of the automatic shared parenting position.
- Child support and property issues could be addressed on a more equitable and straightforward basis.
- Both parents, as well as having quantity and quality of time with their children, would also have time (when the children are not in their care), to re-establish their lives, further their careers, perhaps engage in new relationships.
- The children will witness that both fathers and mothers are valued as parents, and as people, that they are not stereotyped into the roles of nurturer or provider. They are given permission to continue to love and honour both parents.

The TMHWA resolves to:

- Inform government and non-government organisations in regard to these recommendations;
- Collaborate with government and non-government organisations in exploring ways to develop and implement these recommendations;
- Promote these recommendations in the public arena and lobby for legislative change.
- Support men involved in Family Law issues, consistent with the values expressed in this paper.

Mission Statement

To improve the health and wellbeing of Tasmanians by improving, supporting and advocating the health and wellbeing of Tasmanian men.

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