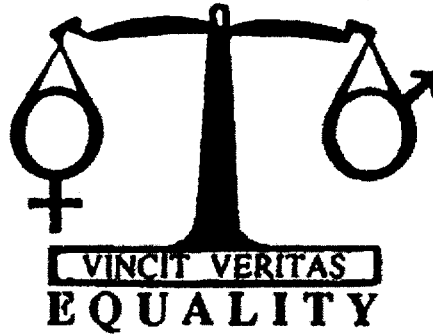


Submission No: 1114

Date Received: 8-8-03

Secretary:

Men's Confraternity WA Inc
www.mensconfraternity.org.au



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Standing Committee on Family and Community Affairs
Child Custody Arrangements Inquiry
Department of the House of Representatives
Parliament House
Canberra ACT 2600
Australia

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**RE: INQUIRY INTO CHILD CUSTODY ARRANGEMENTS IN
THE EVENT OF FAMILY SEPERATION.**

SUBMISSION FROM MEN'S CONFRATERNITY (WA) INC. IN RESPONSE TO
THE TERMS OF REFERENCE TO THE STANDING COMMITTEE ON FAMILY
AND COMMUNITY AFFAIRS

Having regard to the Government's recent response to the Report of the Family Law
Pathways Advisory Group, the Committee should inquire into, report on and make
recommendations for action:

- (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 could be rebutted; and
 - (ii) in what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents.
- (b) whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children.

Introduction

Firstly, we must thank the Government for having the courage to attempt to tackle this immensely emotive subject.

During the course of this enquiry, you will hear many testimonies from many different people and/or organisations. The most repeated and therefore the most important catch phrase you will hear is the term 'in the best interests of the children'. This statement exposes the true objective of this inquiry – 'what is in the best interests of the child?'

A presumption of shared parenting is a concept that has been around for a long time. Unfortunately it has had many opponents and hasn't really had a proper opportunity to be trialled in this country. It has however in other parts of the world with very positive results. The changes to the Family Law Act in 1995 were an attempt to introduce this concept of shared parenting to the Family Court. Sadly this has been a failure due to the Family Court's refusal to adapt its rulings to adhere to the modified legislation. It has also contributed to increased litigation, because the changes to the Act, allowing children more rights to see both of their parents were not automatically enforced, resulting in more legal action to have those rights enforced. We will deal with both of these issues later in our submission.

Essentially, we already have shared parenting, or rather, the ability to achieve it in the Family Court.

From the Australian Family Law Act:

- children have a right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together; and
- children have a right of contact, on a regular basis, with both their parents, and with other people significant to their care, welfare and development; and
- parents share duties and responsibilities concerning the care, welfare and development of their children; and
- parents should agree about the future parenting of their children.

What we don't have is adequate legislation which forces the Family Court to adhere. This also will be covered in our submission. Currently the Family Court simply ignores these directives by claiming that adhering to them does not serve 'the best interests of the children'.

We personally have no doubt that 'the best interests of children' are best served with the loving guidance of both a mother and a father under one roof. In a society where this is not always possible, we support the practice of joint, shared parenting after separation and/or divorce.

You will hear many arguments against this post separation scenario, due to the sizeable list of reasons why it would not work. Most people will not dispute this, we included. What needs to be understood in order to accept joint shared parenting as a workable alternative to the current system is that it will work in the majority of cases.

The proposed changes

Men's Confraternity believes that there should be an amendment to the Family Law Act introducing a rebuttable presumption of 50/50 joint/shared parenting after separation and/or divorce.

A rebuttable presumption of 50/50 joint/shared parenting enshrines into law every child's unchallengeable right to a continuing relationship with both of their parents. It also enshrines into law every parent's fundamental right to raise their own children.

This proposed amendment will act in the best interests of children because it is now readily accepted that fatherlessness is now the most ubiquitous social issue in Western society, and shared parenting is one of the answers.

It will act to remove a long standing erroneous assumption that children need the stability of one home. What is now beginning to be understood is the fact that children need the stability of their relationships with their parents more than the stability of their physical surrounding. Shared parenting gives children this stability that they need.

From:

Monitor on Psychology

Volume 33, No. 6 June 2002

(<http://www.apa.org/monitor/jun02/custody.html>)

Robert Bauserman, PhD, of the Baltimore Department of Health and Mental Hygiene, reviewed 33 studies that examined 1,846 sole-custody and 814 joint-custody children. Both groups of children were compared with a sample of 251 kids in intact families. Bauserman found that children in joint-custody arrangements had fewer behavioral and emotional problems, higher self-esteem and better family relationships and school performance compared with those in sole-custody situations. And he found no significant difference in adjustment among children in shared custody and those living in intact family situations. Joint-custody children probably fare better, according to Bauserman, because they have ongoing contact with both parents.

The contact with both parents, he argues, is the key ingredient in kids' adjustment, he said.

Rebuttable

The whole base behind a rebuttable presumption of 50/50 joint/shared parenting is that it is rebuttable. This makes it possible to have any of the other possible arrangements in the event that shared parenting is not the best arrangement. This is essentially no different from the current system, which allows the Family Court to make rulings based upon individual circumstances of each case.

Presumption

The key which will completely overhaul the current system is that the starting point from which the Family Court derives at the best scenario for the children will be shifted. Instead of starting from a presumption that the children are best suited in a sole parent residency arrangement, the Family Court must accept that a child is best suited in a

joint/shared residency arrangement and then take peripheral circumstances into consideration.

Why have a Family Court at all?

Preferably, we might be able to reach a point where the Family Court is no longer necessary in resolving issues which have no business being discussed in a court. Communication is the key. Sadly, communication is considerably lacking between parents who end up before the court. Instead of giving the court more powers to intercede in these situations, we should be finding better ways to force the adversarial parents to stop and communicate. If we don't then inevitably we will have to hand over to courts, increasing powers to make intrusive decisions that responsible parents ought to be making on their own.

The current system

In looking at outcomes for fathers of contested residence applications..... analysis conducted in 2000, fathers were successful in 40% of contested residence applications. *Moloney, L; 'Do fathers 'win' or do mothers 'lose'? A preliminary analysis of a random sample of parenting judgments in the Family Court of Australia', Presentation to Australian Institute of Family Studies, September 2000*

An increase from 31%. two studies in the Family Court in 1983 and 1994 showed that fathers were successful in 31% of cases. *See Bordow, S; 'Defended cases in the Family Court of Australia: Factors influencing the outcome', Australian Journal of Family Law, volume 8, No 3, pp 252 - 263*

The current system promotes the exclusion of one parent prior to Family Court proceedings. The status quo precedent encourages the resident parent to exclude the other to enhance their chances of obtaining a court order that continues this practice. Tactical use of obstruction and non-compliance, common in our Australian Family Law system, is used prior to any child residency hearing, and later becomes a modus operandi.

For the non-resident parent endeavouring to establish 'contact' it can take many years even though the divorce proceedings may have ended. Indeed, many parents (over 90% are fathers) give up the unequal struggle and Family Court's figures confirm the fact that after divorce or separation around 40% of children lose all contact with their fathers within 2 years. With shared parenting these facets disappears. Any 'sole residency' request, from either parent, has to rigorously prove to a magistrate that joint residency would be positively detrimental to the child.

The wrong approach

The typical contested residency determination involves a choice between two parents who are both fit and eager to provide for the care of their children. Australia's courts of justice are more usually accustomed to adversarial presentations by lawyers and officials that are resolved by a judge with the selection of a winner and a loser. The court picks a winner and the loser is then ordered to pay the winner's expenses. There is no doubt that this system works well in commercial disputes but in divorce cases involving child residency cases, it is wholly destructive.

Most orders are made by consent. The simple reason for this is most men who seek legal advice about their chances of having 50/50 joint/shared parenting ordered by the Family Court are told to settle for what you can get.

Fatherlessness

In Australia one million children under 18 live with only one of their natural parents.
(ABS 1998)

"Australian studies with adequate samples have shown parental divorce to be a risk factor for a wide range of social and psychological problems in adolescence and adulthood, including poor academic achievement, low self-esteem, psychological distress, delinquency and recidivism, substance use and abuse, sexual precocity, adult criminal offending, depression, and suicidal behaviour." *Bryan Rodgers of the Australian National University after re-examining Australian research.*

Statistics on fatherlessness from the USA:

The Harbinger Press

http://www.harbpress.com/fm__wheresdaddy/Fatherless.htm

- 90% of homeless and runaway children are from fatherless homes.
[U.S. D.H.H.S., Bureau of the Census.]
- 80% of rapists motivated with displaced anger come from fatherless homes.
[Criminal Justice & Behavior, Vol 14, p. 403-26, 1978.]
- 60% of repeat rapists grew up without fathers.
[Raymond A. Knight and Robert A. Prentky, "The Developmental Antecedents of Adult Adaptations of Rapist Sub-Types," Criminal Justice and Behavior, Vol 14, Dec., 1987, p 403-426.]
- 71% of pregnant teenagers lack a father.
[US Dept. of Health & Human Services press release, Friday, March 26, 1999.]
- 63% of youth suicides are from fatherless homes.
[US D.H.H.S., Bureau of the Census.]
- 85% of children who exhibit behavioral disorders come from fatherless homes.
[Center for Disease Control.]
- 90% of adolescent repeat arsonists live with only their mother.
[Wray Herbert, "Dousing the Kindlers," Psychology Today, January, 1985, p.28.]
- 71% of high school dropouts come from fatherless homes.
[National Principals Association Report on the State of High Schools.]
- 75% of adolescent patients in chemical abuse canters come from fatherless homes.
[Rainbows for all God's Children.]
- 70% of juveniles in state operated institutions have no father.

[US Dept. of Justice, Special Report, Sept. 1988.]

85% of youths in prisons grew up in a fatherless home.

[Fulton Co. Georgia jail populations, Texas Dept. of Corrections, 1992.]

75% of prisoners grew up without a father.

[Daniel Amneus, The Garbage Generation, Alhambra, CA: Primrose Press, 1990.]

Fatherless boys and girls are: twice as likely to drop out of high school; twice as likely to end up in jail; four times more likely to need help for emotional or behavioral problems.

[US D.H.H.S. news release, March 26, 1999.]

43% of US children live without their father.

[US Department of Census.]

Two years after divorce, 51% of children in sole mother custody homes only see their father once or twice a year, or never.

[Guidubaldi, 1989; Guidubaldi, 1988; Guidubaldi, Perry, & Nastasi, 1987.]

42% of fathers fail to see their children at all after divorce.

[Frank F. Furstenberg, Jr. and Christine Winguist Nord, "Parenting Apart," Journal of Marriage and the Family, vol 47, no. 4, November, 1985.]

Increasing litigation

The increase in litigation since the 1995 amendment to the Family Law Act (1975) was a direct response to the provision introduced into the law giving children equal right to spend time with their fathers. More fathers have then decided to seek court permission to be more prominent in the lives of their children. Before that many more fathers never even bothered to take on the bias in the Family Court.

The problem remains and this new amendment to introduce a rebuttable presumption of 50/50 joint/shared parenting will help to fix it.

The problem is the current legislation refers to an 'equal right', but then leaves the Family Court to interpret what an 'equal right' is. According to the Family Court this is 'every second weekend and half of school holidays'.

The amendment in 1995 did not achieve what it set out to do. In recent years, the number of fathers who are winning residency has increased marginally to around 20%. This is still a bad thing. Two reasons:

- children need both parents, taking a child away from one instead of the other does not solve the problem; and
- shared residency orders by the Family Court are decreasing not increasing, now down to less than 3%.

From:

Monitor on Psychology

Volume 33, No. 6 June 2002

(<http://www.apa.org/monitor/jun02/custody.html>)

Also, according to the research, couples with joint-custody agreements tend to experience less conflict—which speaks to the concern that joint custody is harmful to kids because it exposes them to ongoing parental strife. In fact, Bauserman notes, “it was the sole-custody parents who reported higher levels of current conflict.” He found that some research shows that joint custody may actually reduce parental conflict over time.

It should also be noted that an increase in litigation in the short term is somewhat unavoidable. As happened with the introduction of the Family Law Act (1975), many people waited to go to court in anticipation of its introduction, and rushed in, in great numbers when it was given royal assent. Many more that were unwilling to divorce under the old system, joined the queue resulting in an immediate short term increase in people applying to the court.

This also happened in 1995. Many people will argue that this is a bad thing and it probably is for the Family Court in the short term. It will be seen as a good thing in the long term because the immediate reactionary increase is a reflection of the inadequacies of the old system.

Reducing divorce

There is now growing evidence which suggests that a rebuttable presumption of joint/shared parenting will help to lower the divorce rate. Many will argue that this will mean more battered wives, but this argument does not stand up to scrutiny.

In truth, where a presumption of joint/shared parenting has been introduced couples have been more inclined to work through marital problems. When the tactical advantage in filing for divorce and securing sole residency are removed, more parents acted less selfishly.

From:

Divorce not happiest outcome: survey

31 August 2002

By Bettina Arndt

A University of Chicago study has found that about two-thirds of unhappy spouses who stuck it out were happy five years on. But only half of those who split from their partners could make the same claim. The study, led by sociology professor Linda Waite, followed 645 married adults who described themselves as unhappily married. After five years, 167 had divorced or separated.

But ending the marriage was not necessarily the key to a happier life. “Divorce failed, on average, to result in improvements in psychological well-being for unhappy spouses,” the researchers found.

The study used 12 measures of psychological well-being to produce the happiness ratings, using depression, confidence and self-esteem as well as indirect measures such as the number of drinks per day.

They found that, on most measures, the stay-married group showed more gains than the divorced group. After five years they were twice as likely to be happy with life in general, 30 per cent more likely to report a higher sense of personal mastery and one-third more likely to have increased self-esteem.

Of the most discontented at the time the survey began, about 80 per cent of those who remained together reported being happy five years later. University of Queensland psychology professor Pat Noller said the findings challenged the notion that staying together doomed unhappy couples to a lifetime of misery. "Most people who stick it out don't end up being trapped in unhappy marriages," she said.

Bettina Arndt

From:
The Children's Rights Council
(<http://www.gocrc.com/research/custpolicies.html>)

A growing body of research suggests that child custody policies have a significant influence on divorce rates. States in the USA that have higher levels of joint physical custody have, on average, lower divorce rates.

Kuhn and Guidubaldi 1997 [<http://www.gocrc.com/research/spcrc97.htm>] showed a significant correlation between joint physical custody awards and reduced divorce. They conjectured that a parent who expects to receive sole custody is more likely to file for divorce than one who may be awarded shared custody. Sole custody allows one parent to hurt the other by taking away the children, and usually involves higher child support transfers than shared physical custody. Sanford Braver discusses the implications of their findings in his book *Divorced Dads*.

Brinig and Buckley (1998) [<http://www.law.indiana.edu/ilj/v73/no2/brinig.html>] independently found the same correlation between joint physical custody awards and reduced divorce. They conjectured that fathers are more likely to form strong bonds with children if they know that their relationship would be protected through joint physical custody in the even of a divorce. This would reduce the likelihood that fathers would initiate divorce.

Brinig and Allen (1998) showed that the parent who receives custody is more likely to be the one who files for divorce. That is, among cases where the mother received custody, the mother usually filed for divorce, and where the father received custody, the father was more likely to be the one who filed. They concluded that filing behaviour is largely driven by attempts to "exploit the other partner through divorce." Significantly, they found that custody had a stronger relationship with filing than financial factors, although these factors are of course comingled through child support.

Why have shared parenting?

It is about the child's right to know and love both parents without the fear.

Children have the adaptability to adjust to the practical side of a shared residency arrangement. What they struggle far more with is the emotional loss and feelings of abandonment associated with the forced eviction or alienation of one parent.

In almost all cases, it is accepted that the biological parental bond is primary. The onus of proof is on those who wish to change this. It is not on those who have the reasonable expectation that if they choose to have their own children, and look after their own children, to prove that they should be allowed to. The onus of proof is on those who oppose such a position.

A fundamental right of parenthood gives fit parents a right to share residency of their children 50/50 and work out their child-rearing decisions according to their own values, not the biases of a family court judge.

Shared parenting provides a “win – win” situation for the two protagonists - not a “win or lose” outcome.

Shared parenting is recognition that the child needs a substantial relationship with both parents and that both parents have important contributions to make to the child's growth and development.

Shared parenting makes sense now because the old model of a “stay-at-home mother” has been replaced by the 2003 reality that most children have two parents who work, both before and after separation and divorce.

How do we make it work?

The willingness and ability of each parent to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent should be viewed first and foremost by this court. This in turn will force separating couples to place the welfare of their children's ongoing relationship with the other parent as a paramount consideration. This and only this will lead to the facilitation of the court towards up holding the ‘best interests of the children’.

When the court must deal with a situation where one parent needs to be given the majority of the residence time, the parent who is more likely to allow the child frequent and continuing contact with the non residential parent must be given preference.

What the court needs to do.

The court order that the parental responsibility for a child be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child.

An award of shared residency must also obligate the parties to exchange information concerning the health, education, and welfare of the child; and, unless allocated, apportioned, or decreed, the parents or parties shall confer with one another in the exercise of decision-making rights, responsibilities, and authority.

Compulsory counselling enforced to support and promote co-operation between the parties.

Proper training for the counsellors in the benefits of shared parenting.

When making decisions the court must examine the willingness of the parents to share residency, and the sincerity of each parent's request. The court must also accept that each

human being has a fundamental right to raise their own child and that right is held first and foremost before taking peripheral circumstances into consideration.

If the court declines to enter an order awarding 50/50 joint/shared residency, the court shall state in its decision the reasons for denial of shared residency. Objection to shared residency by a parent seeking sole residency is not a sufficient basis for a finding that shared residency is not in the best interest of a child, nor is a finding that the parents are hostile or argumentative toward each other.

Accusations of abuse

Family Court is not the proper environment in which to make accusations of domestic violence. DV is a criminal offence and if a person is to be prevented from having a relationship with their child because of an accusation, then the evidence and investigation should be held to a level which would satisfy a criminal prosecution. Anything less would be a clear violation of due process.

If clear evidence is available which would satisfy a court of justice then action may be taken to prevent contact between the offending parent and the children. In the meantime if the court held doubts then these alone should not be considered sufficient evidence to prevent frequent contact. Doubts may be acted on by providing supervision during contact times, but this should not be done in such a way as to impede on their normal interaction. This should not be at the expense of either of the parents. Much more effort needs to go towards in-home supervision. Our current system treats people as guilty until proven innocent. This needs to stop.

Relocation

Relocation does pose some interesting questions but the answers are relatively simple.

This issue needs to be looked at from the perspective of the child. If we accept that the children are best served by continuing a relationship with both of their parents, then any determination handed down by the court should accept that it is the parent who is wishing to move who is placing the interests of the children at risk. They can move of their own volition but should have no right to take children without the permission of the other parent.

We make many sacrifices becoming parents and the continuing need for these sacrifices does not go away with separation. Both parents have the right to forego residency of the children to pursue a new relationship or to pursue a new career, but neither parent should have the right to break the parent/child relationship. If remaining close to the children's other residence means a sacrifice than that indicates your commitment as a parent to your children. Parents who want to move should be considered the lesser parent.

Greater weight needs to be given to the child's "right to a continuing relationship with both parents" rather than one parent's wish to relocate.

The need for an automatic right

All else being equal, whoever walks away from a marriage should be the one to give up residency if shared parenting can not be achieved.

Our current system can not continue in its current form, because it does not take into account, the reasons for separation. It would be too costly and destructive to all parties concerned if we were to return to a system of 'fault', however, simple consideration by the court as to which parent is abandoning the relationship would introduce the concepts of fairness and natural justice to the Family Law Act.

The benefits to mothers

Joint/shared parenting after separation and divorce benefits mothers. By dividing the parental time commitment, joint/shared parenting gives mothers more time off to further her education, work late to advance in her career, or to enjoy some leisure. Mothers with joint/shared parenting are less stressed and therefore better parents and workers. Joint/shared parenting is the best solution for children after separation and divorce.

Children enjoy continued love and interaction with both parents and the extended families of both parents, and a lessening of emotional trauma due to separation and divorce. Children in joint/shared parenting spend more time with a parent and less time with costly paid babysitters or child care. Children in joint/shared parenting arrangements have egalitarian role models.

The truth is that a shared parenting arrangement would help to alleviate the financial burden on single mothers by allowing more free time to dedicate to wage earning. Any potential drop in child support income for the traditional sole residential parent would be offset by the additional income which could be earned by taking a job.

Children also benefit from geographic stability. Because the separated and divorced parents do not move away, the children are more likely to remain in one school and to maintain their circle of friends

More recent studies have revealed a statistically significant relationship between gender and financial living standards after divorce. This compares to the statistical relationship between gender and the residential parent.

"A surprising finding in one study was that mothers who share custody are more satisfied than those having sole custody and whose children see their father periodically. However, both groups expressed more satisfaction with their residential arrangement than did sole-custody mothers whose children had no paternal contact." *Kelly, J., Current research on children's post divorce adjustment. Family and Conciliation Courts Review, 31.29-49, 1993*

The benefits to the government

Family Tax Benefit, Parenting Allowance and other government pensions reduce due to increased incomes for resident parent houses and allows for further contribution by way of taxation on earnings.

PIR Research did research into the cost of the CSA to the Australian taxpayer and come up with some astonishing results. Direct costs of the scheme, including support for CSA unemployed liable parents has now reached \$1,740 million per annum according to the report. Only \$380.4 million/annum is recovered by Centrelink as a result of the claw back

based on the amount of support parents pay. For every dollar collected the CSA costs the Australian taxpayer \$2.80.

Shared parenting will result in greater co-operation between separated parents, greater sharing of actual costs in raising the child/children, greater compliance with CSA assessments, less dependence on government pensions and support services

The benefits to society

The benefits to society in solving many of the problems children experience as a result of fatherlessness are more numerous to mention. Our section on Fatherless shows exactly the effects of this problem are and any reduction in the rate of fatherlessness will be of immense benefit to society.

The benefits in general

Division 16, School Psychology, American Psychological Association, Report to the U.S. Commission on Child and Family Welfare, June 14, 1995. This report "summarizes and evaluates the major research concerning joint custody and its impact on children's welfare." The report concludes that "The research reviewed supports the conclusion that joint custody is associated with certain favorable outcomes for children including father involvement, best interest of the child for adjustment outcomes, child support, reduced relitigation costs, and sometimes reduced parental conflict." The APA also noted that "The need for improved policy to reduce the present adversarial approach that has resulted in primarily sole maternal custody, limited father involvement and maladjustment of both children and parents is critical. Increased mediation, joint custody, and parent education are supported for this policy."

"Joint custody is also the preferred option in high conflict situations because it helps reduce the conflict over time - and that is in the best interests of the children." *Bender, W.N. 1994. Joint custody: The option of choice. Journal of Divorce & Remarriage 21 (3/4): 115-131.*

The benefits to children

Shared parenting is by far, the single biggest indicator of payment of child support. Most non-residential parents simply refuse to pay child support to ex-spouses who actively prevent contact between the non-residential parent and the children.

"Children have expressed higher levels of satisfaction with joint physical custody than with sole custody arrangements; citing the benefit of remaining close to both parents. Joint custody does not create confusion for the majority of youngsters about their living arrangements or about the finality of the divorce, nor does it increase loyalty conflicts." (*Leupnitz, 1982; Shiller, 1986a, 1986b; Steinman, 1981*)

"Divorce also has significant impacts on children, according to the research. Many of these impacts tend to be negative. Children are more likely to be poor after divorce, and more likely to experience instability. However, moderating factors include children's coping skills, and the presence of joint custody." *Amato, P. R. (2000). The consequences*

of divorce for adults and children. *Journal of Marriage and the Family*, 62(4), 1269-1287.

A study of 517 families with children ranging in age from 10.5 years to 18 years, across a four and a half year period. Measures were: assessed depression, deviance, school effort, and school grades.

Children in shared parenting arrangements were found to have better adjustment on these measures than those in sole custody. *Adolescents After Divorce*, Buchanan, C., Maccoby, and Dornbusch, Harvard University Press, 1996.

Example of shared parenting legislation

This is how the state of Oklahoma encapsulated those ideals when it adopted shared parenting in 1999:-

It is the policy of this state to assure that minor children have frequent and continuing contact with parents who have shown the ability to act in the best interests of their children and to encourage parents to share in the rights and responsibilities of rearing their children after the parents have separated or dissolved their marriage. To effectuate this policy, if requested by a parent, the court shall provide substantially equal access to the minor children to both parents at a temporary order hearing, unless the court finds that such shared parenting would be detrimental to such child. The burden of proof that such shared parenting would be detrimental to such child shall be upon the parent requesting sole custody.

Shared parenting plan

A "parenting plan" is simply a schedule of how the parents plan to jointly look after the children in the post divorce or separation period

- (i) The location of the residence(s) of the child or children
- (ii) The financial support based on the needs of the child or children and the actual resources of the parents
- (iii) The fair allocations of holidays, birthdays and school holiday time
- (iv) Transportation of the child or children between the residences and school
- (v) Educational needs and requirements
- (vi) The work commitment of both parents

The implementation order shall allocate the time periods during which each parent shall have physical residency of the child so that the child is assured of frequent and continuing contact with both parents.

In the unusual event that parents and mediation officers cannot construct a satisfactory parenting plan, the courts can order each parent to submit a detailed parenting plan. This plan should strictly delineate each parent's position with respect to the scheduling and allocation of rights and responsibilities. The magistrate will then either impose the mandatory 50/50 split in time allocation or adjudge which of the parent's plans, within the tolerance of a minimum 65/35 split, best serves the interests of the child or children.

Magistrates need to have the automatic default powers to award a 50/50 time split for parents if parents cannot agree a parenting plan.

American States which have shared parenting:

ALABAMA - 1997
ARIZONA - 1998
ARKANSAS - 1999 - presumption of joint custody
CALIFORNIA - presumption in favour of joint custody if both parents agree.
COLORADO - preference for joint custody
CONNECTICUT - presumption in favour of joint custody if both parents agree.
DELAWARE - preference for joint custody
DISTRICT OF COLUMBIA - presumption in favour of joint custody.
FLORIDA - presumption in favour of joint custody.
GEORGIA - presumption of joint legal and physical custody
IDAHO - presumption in favour of joint custody.
INDIANA - joint custody.
IOWA - presumption in favour of joint custody.
KANSAS - Presumptive Shared Parenting
KENTUCKY - equal sharing of parenting and custody
LOUISIANA - presumption of joint custody.
MAINE - presumption of joint custody - 2001
MARYLAND - Rebuttable Presumption of Joint Legal Custody
MICHIGAN - presumption in favour of joint custody if both parents agree.
MINNESOTA - presumption in favour of joint legal custody but not physical custody
MISSISSIPPI - presumption in favour of joint custody if both parents agree.
MISSOURI - presumption in favour of joint custody.
MONTANA - presumption in favour of joint custody.
NEW JERSEY - a presumption of joint physical custody and shared physical custody responsibility
NEVADA - presumption in favour of joint custody if both parents agree.
NEW HAMPSHIRE - presumption in favour of joint custody.
NEW MEXICO - presumption in favour of joint custody.
NEW YORK - presumption of shared parenting - 1999
OHIO - presumption in favour of joint custody.
OKLAHOMA - presumption in favour of joint custody -1999
OREGON - presumption in favour of joint custody.
PENNSYLVANIA - joint custody and joint legal and physical custody - 1998
SOUTH CAROLINA – joint custody
TENNESSEE - presumption in favour of joint custody if both parents agree - 1996
TEXAS - 1995
VERMONT - presumption in favour of joint custody if both parents agree
VIRGINIA
WASHINGTON - presumption in favour of joint custody if both parents agree.
WEST VIRGINIA - presumption in favour of joint custody – 1999
WISCONSIN - presumption in favour of joint custody – 1999

Enforcement

When a residential parent refuses to honour a non-residential parent's contact rights without proper cause, the court has the power to act to impose sanctions against the resident parent for the breach. The problem is that it does not.

It should be noted that proper cause in this situation must be deemed to be incidences which endanger the welfare of the child. Denying contact because the child was dropped of an hour late last week is not a valid reason. It must be upheld that if a child is to be denied contact with one of their parents by the other parent or another guardian then it must with court sanction unless there is an obvious case of abuse where Police intervention is possible.

The most common complaint that we hear as an organisation is that the Family Court is not enforcing its own residency and contact orders. The court argues that exercising the authority that it has, to impose sanctions, would adversely affect the welfare of the resident parent and consequently the welfare of the children also. The Family Court has shown a great reluctance to enforce its own orders for this reason.

This logic though is flawed. Mainly because if you do not impose sanctions, then orders will be preached in the knowledge that no real punishment will be forthcoming.

Also the impositions of a fine or punishment for breaches of laws are evident everywhere in our society. They are imposed to be a deterrent so that people do not breach the law and endanger other citizens. They are imposed to protect society from those who are too selfish to think about the consequences of their actions on other people. They are imposed for the betterment of society.

The same can be said about breaches of court orders for residency and contact. Fines and punishments need to be imposed to those in the community who are too selfish to consider the consequences of their actions. They need to be imposed to protect the parent child relationship between the child and both parents because that is the most important factor in ensuring a child suffers the least number of negative consequences from their parents decision to separate. It makes them accountable for their actions. It imposes a punishment for the protection and benefit of those children.

Education

Thousands of fathers often are denied copies of school report cards and newsletters and even school photos. This is a clear violation of a child's rights and parents rights.

There are now many studies around which attest to the importance of fathers being involved in the education of their children. Children who have involvement by their fathers in both their home environment and schooling environment are better behaved, friendlier with other children and generally perform better academically.

From:
Fathers key to success
The Age Newspaper (Melbourne)
5 October 2002
By Caroline Milburn

Fathers have a bigger impact than mothers on whether a child is cooperative and self-reliant in the first year of school, a study has found.

The study on how well a child makes the leap from toddlerhood to school shows that men matter.

Children whose fathers regularly looked after them during their infancy and preschool years were more self-disciplined and had better social skills than others whose fathers spent less time alone with them.

The study found that mothers were an important influence on their children's ability to cooperate, especially when the child was between two and three. However, the extent of a father's involvement in caring for a child between birth to five years old was found to be more influential on a child's ability to cooperate and obey instructions when they started school.

Children whose fathers rarely looked after them were more likely to be hyperactive or have other behaviour problems in their first year of school.

Society's resistance to shared parenting before separation

From:
The labour of love that makes divorce harder work for fathers
Sydney Morning Herald
29 July 2003
By Bettina Arndt

Look at recent results emerging from the Household, Income and Labour Dynamics in Australia (HILDA) survey. Analysis of HILDA data by Yi-Ping Tseng, of the Melbourne Institute, shows wives with the highest life satisfaction in Australia are in families where either the man is the sole-earner or working significantly longer hours than the woman.

Most families fit one of these patterns, with a third (31 per cent) in sole-earner families and almost half (45 per cent) with full-timer husbands and part-timer wives (in these families the men average 48 hours per week paid work, compared with 25 hours for the wives). In the remaining one-fifth of families where both work full-time, wives show less life satisfaction.

Tseng found wives in male breadwinner families also report more satisfaction with their partners and are most likely to see their partners as doing a good job as fathers - more so than the two-full-timer families.

Researchers at the Australian Institute of Family Studies recently used this HILDA data

to look at men working very long hours (60-plus) and found that when men were happy working these hours, their partners seemed particularly content with their relationships.

Fifty-seven per cent of these men would prefer shorter hours with a commensurate salary drop, yet almost a quarter were not happy with their workload but didn't want a change in hours - a finding the researchers suggest may reflect the need to preserve a salary level while resenting time away from their families.

Dr Michael Bittman, of the University of NSW, has found that fathers see their commitment to paid work as the major barrier to being effective parents, with 68 per cent of fathers unhappy about not spending enough time with children.

Bettina Arndt

Anti shared parenting

You may even hear claims that due to the fact that single mother households are still reliable predictors of poverty, women should be given 'special consideration.' They should be given sole residency so that they can collect more government pensions.

This argument is erroneous because any household surviving on government pensions are always going to be struggling financially. If the tax payer were to support them at a financial level that is comfortable it would result in greater numbers of single parent households. This would be promoting greater negative societal effects caused by the absence of one parent.

Shared parenting provides for greater opportunities for the resident parents and a greater ability to provide for themselves with less reliance on the government.

You will also hear claims that women sacrifice more, and ultimately should be considered special by the court because of these supposed sacrifices. This is nothing but feminist ideological nonsense.

It is comparing apples to oranges in demanding that the female contribution to a marriage is more important, and should be rewarded with the gaining of sole residency of the children. This does nothing to promote what is good for the children's welfare. Both parents are equally needed by the child and although the division of labour within a marriage was different, once they separate they both become sole parents who have to do the same job on their own that they used to divide between them.

CSA

An independent report confirms the child support scheme is financially, a national disaster and the hidden costs to the tax payer far outweigh any benefits claimed by the Child Support Agency. PIR Research Group, who conducted this research, is Australia's leading independent investment research company, well known in financial circles including the ATO, who undertake research into a variety of social issues in the public's interest.

- Unemployment levels amongst payers, who are mostly fathers, have reached 39 per cent, representing 76 per cent of all unemployed males 20 years and over (*ABS statistics*).
- The average weekly amount paid to a child has reduced from \$48.64 (*\$35.35 CPI indexed from 1990*) under the previous court order system to just \$26.50 under CSA.
- Direct costs of the scheme, including support for CSA unemployed liable parents has now reached \$1,740 million per annum according to the report.
- Only \$380.4 million pa is recovered by Centrelink as a result of the claw back based on the amount of support parents pay.
- For every dollar collected the CSA costs the Australian taxpayer \$2.80.

"Child support is our system for replacing fathers with money. Everyone, including mothers, would be better off if we replaced money with fathers." *KC Author, Where's Daddy? The Mythologies behind Custody-Access-Support.*

Recent attempts to correct the injustices in the Child Support (Assessment) Act 1989 by the Child Support Legislation Amendment Bill (No 2) 2000 were defeated in the parliament. That Bill proposed that non-resident parents exercising contact with their children for between 10 and 30 per cent of nights would pay a reduced amount of child support. The rationale for the Bill was to recognise more directly the costs incurred by non-resident parents in having contact with their children.

Men's Confraternity fully supports this amendment bill and hope that this Inquiry will recommend its re-introduction to parliament.

Fringe benefits tax

Fringe Benefit Tax (FBT) is also included for Child Support Assessment payments (CSA). This is ridiculous and needs correcting.

In circumstances where a company car is a tool of trade for the purpose of travelling to customer meetings, carrying of company tools, attending after hours maintenance call outs etc, then the Fringe Benefits Tax (FBT) component of a payer's taxable income should also be exempt from CSA liability.

In the situation where the FBT calculation is approx \$7,000 per year, this incurs additional CSA liability of \$1260/annum at 18% for one child and \$2520/annum at the top rate of 36%. + medicare levee of \$105 (1.5%).

The Benefit is not a financial payment but a perceived benefit. This results in having to pay additional CSA payments and incur additional Medicare levee payments from take home pay.

We believe that net income should be used for the purpose of calculating CSA liability which would immediately correct this situation.

The percentage rate

The current percentage rates are vastly unrepresentative of the actual cost of raising children. The unfairness of the percentage rates is a major contributing factor in the incredibly high rate of unemployment amongst child support payers (39%).

Men's Confraternity believes that if these percentage rates were corrected then their would be an increase in the work participation of payers, resulting in greater benefits to both parents and child. The government would also see greater income tax revenue and less liability by way of government support pensions.

We support the modification of the Child Support (Assessment) Act 1989 to reflect recent changes in Britain which has resulted in the following percentage rates:

- 15% of net income for one child
- 20% of net income for two child
- 25% of net income for three children or more.

These need to be applied with an exempted income amount to allow payers a basic income whereby they are allowed a minimal survival income that must be above the acknowledged poverty line income.

Reduction in this rate should start immediately by 20% if the non-resident parent has greater then 10% residency or has the child overnight during regularly scheduled overnight visit. It should remain at 20% until percentage of residency increased above 20% and then increase equally with the percentage of residency.

Inflation

Inflation of exempted income levels should be linked to the cost of living and not the inflation rate.

Overtime

All overtime should be exempt from CSA liability.

It can be easily argued that no-one does overtime without a necessity to do so. The assessment of overtime income is an incredible disincentive to work. This small change would allow a person who works hard to be able to benefit from their efforts. To relate this overtime to an increased CSA liability is incredibly destructive to a payer's life.

Conclusion

Today, in at least 30 American states, there exists a presumption or preference for joint/shared parenting. States were naturally cautious in the pioneering days of shared parenting and adopted a less presumptive stance than later converts, who, having seen the success accruing to those pioneering states have bettered the provisions. Recently passed legislation has tended to favour stronger presumptions that protect the child's right to both parents. Wisconsin, Oklahoma and Maine have since passed much stronger laws and the early pioneers may well soon reinforce their original laws.

We are now in the situation where we can correct some of the injustices and inadequacies of the current system. We can adapt our legislation so that it accurately reflects the society that we now live in. The Family Law Act (1975) has become so anachronistic that it is now longer functioning efficiently or responsibly.

We need to ask the question. Do we want to live in a society that believes that in every given situation a child will only have one capable parent and that the other must prove that they are worthy of raising their own child before the state will let them? This sort of state intervention is unwarranted.

We need to fix the current Family Law Act so that parents have an automatic right to share parent their own children for our children's sake. Our children need it and deserve it.

We need to give parents back the right to raise their own children.

To do otherwise is to create and encourage dysfunction.