

House of Representatives Standing Committee  
on Family and Community Affairs

Submission No: 496

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Secretary: \_\_\_\_\_



House of Representatives Standing Committee on Family & Community Affairs  
Parliament House,  
Canberra  
ACT, 2600.

August 8<sup>th</sup> 2003.

To the House of Representatives Standing committee on Family And Community Affairs,

**Re: Parliamentary Enquiry into a Presumption of joint residence within family law.**

The Logan Women's Health Centre (LWHC) is a community based, not for profit organisation currently funded by the National Women's Health Program, Queensland Health. It is a service run by women for women. LWHC provides a range of health services for women and the last financial year saw us manage over 7,000 occasions of service to the community.

The LWHC is opposed to a legal presumption of joint residence for separating families. We are concerned that the basis for this is politics supported by emotive anecdotes rather than evidence. The LWHC supports the principles set out in the Family Law reform Act 1995 that the interests of the child should always be the main consideration in reviewing residency agreements. We also support that each situation be reviewed individually to take into account the range of other factors including history of violence and the child's right to psychological and physical safety. At all times the quality, stability and reliability of a child's care should be the main consideration, not politics.

With this in mind, we have attached our submission to the enquiry, which includes letters from some of the women who access our service.

We are very interested in the public forums and hearings planned to allow a more detailed presentation of these issues, and would appreciate being provided with information regarding these events in the Brisbane area. We would also be interested in any updates from the parliamentary enquiry as they arise.

If the committee would like further information on any of the issues raised, contact can be made with the Manager, Lynda Pullen on 07 3808 9233 or via email on [lyndap@loganwomen.com.au](mailto:lyndap@loganwomen.com.au). Many thanks for your consideration of this submission.

Yours Faithfully,

Lynda Pullen  
LWHC Manager

Logan Women's Health Centre Inc.

## **Re: Parliamentary Enquiry into a Presumption of joint residence within family law.**

### **Agency Profile**

The Logan Women's Health Centre (LWHC) is a community based, not for profit organisation currently funded by the National Women's Health Program, Queensland Health. It is a service run by women and for women. LWHC provides a range of services including information, referral, counselling, a group program, community development activities, health promotion projects, venue and support for self help groups, General Practitioner, Women's Health Clinic, Natural therapies Clinic, Logan Hospital's Antenatal Midwives clinic and Kim Walters Choices Program for women and their families affected by breast cancer. The last financial year saw over 7,000 occasions of service where women accessed our services.

### **The LWHC position**

The LWHC is opposed to a legal presumption of joint residence for separating families. We are concerned that this push has come from political factors and emotive anecdotes rather than evidence based review. The LWHC supports the principles set out in the Family Law reform Act 1995 that the interests of the child should always be the main consideration in reviewing residency agreements. We also support that each situation be reviewed individually to take into account the range of other factors including history of violence and the child's right to psychological and physical safety. At all times the quality, stability and reliability of a child's care should be the main consideration, not politics.

The claim that former female partners deny contact with fathers, is not substantiated by either research or our experience. There is however, evidence that despite domestic violence, breaches and other problems, many women go to extraordinary lengths to facilitate contact with fathers. (Kaye, Stubbs and Tolme 2003) These researchers noted that despite significant violence directed towards women both prior to and post separation, women did comply with contact arrangements all of the time except if it related to the well being of the child.

It is difficult to understand how shared residency arrangements will assist men who report that they find child support commitments financially impossible or crippling. If anything, it appears that there will be greater financial burden on separated families in running 2 separate child oriented households. Furthermore, a recent survey noted that only 28% of payees actually received child support payments on time, while a further 40% reported that payment was never received. (Australian National Audit Office, Audit report no 7. 2002-03)

## **Challenging a legal presumption of joint residence**

The following issues and arguments are raised to support a position against a rebuttal presumption being incorporated into the Family Law Act:

1. The legal presumption privileges the rights of parents over the rights of children by overriding the key principle of what is in the 'child's best interests.' The rights of the non-resident father should not supercede the rights of a child. There is some concern that joint residency may in fact place the needs of the parents above the needs of the child. Unfortunately limited research is available. One UK study, (Smart 2001) noted that many children found that being shared on a 50/50 basis, was emotionally straining and oppressive as they attempted to take up the burden of ensuring fairness between parents.
2. It ignores the range of factors that should also be considered when deciding parenting orders such as children's wishes, maintaining children in a settled environment, family violence, and the parent's capacity to care for the child. This is of particular concern in situations where domestic violence has occurred. Spousal abuse and child abuse are interrelated. Research shows that psychological harm is caused by children witnessing domestic violence. Unfortunately, these children are also at a higher risk of experiencing physical violence directed at them. (Kaye, Stubbs & Tolmie 2003).
3. There are already provisions within the Family law Act to consider shared residence arrangements where it is in the interests of the child.
4. It will place women and children who have experienced domestic violence at increased risk of further violence. A child's right to contact should never precede their right for safety. Children will be forced to live with violent fathers and force mothers to regularly be in contact with abusive ex partners. Data from a 1996 Australian Bureau of Statistics suggest that one in five Australian women have experienced family violence by their current or former partner. This represents a total of 1.4 million women. There is now significant evidence that cases going to the family court have a high incidence of domestic violence, and that this violence continues after separation. Research has identified that the most reliable way of ending violence is diminished contact between the parties.
5. It ignores the harms caused by destructive male role models who are abusive or neglectful. It is unacceptable to assume that any role model is better than none. Children's rights to psychological and physical safety MUST ALWAYS supercede any right of the father.
6. Many men are already active participants in their children's lives and don't need the law to tell them to do this. Most mothers wish to share parenting responsibilities and duties and work cooperatively with fathers who were significantly involved with children prior to separation. Kaye, Stubb and Tolmie (2003) noted that even where mothers had experienced domestic violence, many supported the value of contact with non-residential parents in principle. Those who were ambivalent or concerned about contact focused on the children's safety and well being.

7. It does not match the lived reality of separated families or recognise that in most families the mothers are the primary carers of children and do most of the domestic work. The practical difficulties and burden of running 2 households catering to the needs of children will be impossible for all but the most economically privileged groups.
8. The child support consequences will force single mothers, who are already one of the most impoverished groups, to become even further impoverished, so further increasing the number of children who are living in poverty.
9. It ignores the clear evidence that shared residency works where parents are already predisposed to cooperate and already have a history of shared care between the parents. Shared residency requires a significant degree of consultation and negotiation between parties. This cannot be forced but must come from both parties for it to be effective. Forced arrangements, especially where violence and abuse has occurred places both the children and the mother at continued risk of abuse and further violence. Research has noted that where domestic violence has occurred, reduced contact between the parties was the most effective strategy to end violence. Shared residency requires significant forced contact where an abusive partner has access to a former partner.

For these reasons the Logan Women's Health Centre is opposed to the proposed changes to the Family Law Act.

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