

Women's Law Centre of WA

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House of Representatives Standing Committee
on Family and Community Affairs

Submission No: 1133

Date Received: 18-8-03

Secretary:

Our Ref: MR

Your Ref:

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

18 August 2003

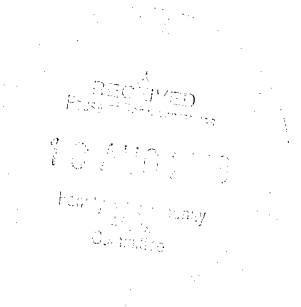
Dear Committee Members,

Re: Addendum to Submission dated 8 August 2003.

Please find attached an addendum to the submission from The Women's Law Centre of W.A. (Inc.) to the Inquiry into Child Custody Arrangements in the event of Family Separation.

We apologise for not including this addendum in our original submission and ask that you consider the issues contained within the addendum together with our submission.

The Women's Law Centre of W.A. is a community legal centre that provides a state wide service to disadvantaged women in Western Australia. Most of the clients and enquiries we receive are from women with complex legal and social matters involving Family Law – Children's Issues. The disadvantage our clients face may include but is not limited to: race, language, disability, poverty, domestic violence and family responsibility.



In the area of Family Law – Children’s Issues, we provide services to women who may be the parent with residency, the parent with contact orders or seeking contact, and grandparents who are carers or who may be seeking contact with grandchildren.

Our experience of working with women, and their families, who face disadvantage has informed our submission to your Committee.

We endorse the following submissions to the Inquiry:

NALCLC (National Association of Community Legal Centres)

National Network of Women’s Legal Services

Welfare Rights Network

Illawarra Community Legal Centre

The Womens Legal Services in Queensland, Victoria and New South Wales.

We recognise and welcome the many well researched and detailed submissions you will receive from Community Legal Centres and Legal Aid Commissions.

If you have any questions or comments, please contact the author of this report Ms Kate Davis at the Women’s Law Centre of W.A. – if she is unavailable then please do not hesitate to contact me – our telephone number is 08 9272 8855.

We would welcome the opportunity to address your Committee to speak to our submission.

Yours faithfully,

Lea Anderson
Manager.

Women's Law Centre of WA (Inc) – Supplementary Submission to the Standing Committee on Family and Community Affairs inquiry into child 'custody' arrangements in the event of family separation.

Please accept this supplementary submission which focuses on diverse families (including Lesbian, Gay, Adoptive and Donor families).

Any consideration of the application of a 'rebuttable presumption of joint custody' needs to address the implications for a range of families. The same range of families that the Family Court services with its current focus on 'the best interests of the children'.

These families include biological parents, parents who have adopted children, parents who have utilised technologies to assist with infertility and have had children as a result of donor sperm and donor eggs. Some of these families may have made private arrangements to have children using donor sperm and eggs.

So if you follow an imposed regime of a 'rebuttable presumption of joint custody', another potentially litigious layer of issues will have to be considered – again moving away from the rights of children and what is in their best interests to considering the rights of parents. But who are the parents – the biological parents or the parents who have raised the children? We are concerned that a presumption of 'joint residence' is based on a narrow image of Australian families – and would operate in a discriminatory way by failing to recognize the parenting roles played by many non-biological parents.

It is obvious that the Court currently works with diverse families and the consideration of any change should not provide an opportunity to discriminate against or exclude lesbian, gay, adoptive parents or parents who have accessed donor sperm or eggs.

The following case studies demonstrate the difficulties involved in a presumption of joint residence.

A woman, Ms P, has recently separated from her partner, Ms S, and now wants to establish contact with their child.

The child's biological father is known – but is treated as an anonymous sperm donor.

Only the biological mother (Ms S) is on the child's birth certificate because when they decided to have a baby together they were living in NSW and lesbian parents cannot both be named on their children's birth certificates.

Ms P has some contact with the child, but would like to see her child more – her ideal would be joint residence. She is concerned that if the biological father ever chooses to assert paternity then her role as parent to the child may be overlooked or overridden by his possible 'rights'.

For this woman, her major concern is that a presumption of joint residence *could* operate to exclude her from parenting altogether, if the presumption of joint residence overrides the Family Law's current willingness to consider children's relationships with parents and significant carers other than biological parents.

Another woman in similar circumstance to the woman in the above example is seeking contact with the child of her lesbian relationship. Both women are on the child's birth certificate (as permitted under WA law).

Will the birth certificate entry be sufficient (or required) for lesbian parents to access the presumption of joint residence? If these women do access the presumption, then the practical difficulties of applying the presumption outlined in our initial submission may still apply.

It should also be noted that different states have different requirements about who can go on to the birth certificate and who cannot be named on the birth certificate.

Another woman has separated from her female partner – and they have been able to make their own arrangements about residence and contact for their child. The biological father is a friend of both women, and agreed to donate his sperm saying “It's only my body fluids. I have five kids, and this is my gift to my friends”. The women and donor agreed that the women would raise the child and the donor would have no role other than as a family friend. The donor saw the child occasionally when the two families interacted socially, and did not have a parenting role. After the women separated, the donor made increasingly concerted efforts to have regular extended contact with the child. Neither woman is in favor of this.

Under a presumption of joint residence would the law presume that this child live in three homes? Would the law privilege the biological father (who had not previously filled a caring role) over the non-biological mother who had maintained a co-parenting role beyond the relationship breakdown?

With the community the debate about liberalising access to information to children (and possibly donors of eggs and sperm) for families who have used various reproductive technologies and donor egg and sperm programmes many views or interests are being considered.

The issues of 'biological' parents and whose 'rights' may over ride others may need to be considered within the creation of new family law. This may lead to complex multi layered litigation that moves the 'best interests of the children' further away from the Family Court's primary focus.

Currently the Courts deal with diverse families and do so 'with the best interests of the children' at the forefront of the decision making process.

A presumption of joint residence would be unworkable in the majority of Australian families – creating the unsupportable position that most families would need to access legal and court services to rebut such a presumption. In the event of any change to the current system based on such a rebuttable presumption, we are concerned that where any complex matters with many 'levels of litigation' exist, there is a particular risk of discrimination against lesbian and gay families and families utilising donor sperm and eggs.