COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS

Reference: Child custody inquiry

THURSDAY, 28 AUGUST 2003

GEELONG

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

INTERNET

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: **http://www.aph.gov.au/hansard**

To search the parliamentary database, go to:
http://parlinfoweb.aph.gov.au

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS

Thursday, 28 August 2003

Members: Mrs Hull *(Chair)*, Mrs Irwin *(Deputy Chair)*, Mr Cadman, Mrs Draper, Mr Dutton, Ms George, Mr Pearce, Mr Price, Mr Quick and Mr Cameron Thompson

Members in attendance: Mr Cameron Thompson, Mr Dutton, Ms George, Mrs Hull, Mrs Irwin, Mr Price and Mr Quick

Terms of reference for the inquiry:

To inquire into and report on:

(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.

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

WITNESSES

Committee met at 8.29 a.m.

CHAIR—Good morning. I declare open this first public hearing of the House of Representatives Standing Committee on Family and Community Affairs inquiry into child custody arrangements in the event of family separation. This inquiry addresses a very important issue which touches the lives of all Australians. To date the committee has received over 1,500 submissions. This is a record number for an inquiry by this committee and amongst the highest ever for a House of Representatives committee. We are grateful for the community's response. This is one important way in which the community can express its views.

From the outset of this inquiry I want to stress that the committee does not have preconceived views on the outcomes of the inquiry. Accordingly, throughout the inquiry we will be seeking to hear a wide rage of views on the terms of reference. While at any one public hearing we may hear more from one set of views than another set—for example, more from men than from women—by the end of the inquiry we will have heard from a diverse group and thus received a balance over the range of views.

The public hearings the committee is undertaking are focused on regional locations rather than just capital cities. At these regional hearings the focus will be on hearing from individuals and locally based organisations. Later in the inquiry we will hear from the larger organisations, such as the Family Court and Child Support Agency, in Canberra or via videoconferencing. Today we will hear from six witnesses—three locally based organisations and three individuals. We are hearing from the organisations first so that the individuals have an opportunity to see how the public hearing process operates. I remind everyone appearing as a witness today that the comments you make are on the public record. You should be cautious in what you say to ensure that you do not identify individuals and do not refer to cases before the court. Aside from that, you should feel free to speak without any fear of reprisal or intimidation.

About two hours has been set aside for the public hearing. This will be followed by about an hour for community statements of about three minutes duration each so that we can give as many people as possible the opportunity to speak. I ask that each individual speaking in the community statement segment keep their comments to three minutes.

[8.33 a.m.]

MITCHELL, Ms Louise, Development Coordinator, Womens Information Referral Exchange

CHAIR—Welcome and thank you for your attendance. The evidence that you give at this public hearing is considered to be part of the proceedings of parliament. I therefore remind you that any attempt to mislead this committee is a very serious matter and could amount to a contempt of the parliament. I remind you that the comments you make are on the public record. You should be cautious in what you say to ensure that you do not identify individuals and that you do not refer to cases before the courts. The Womens Information and Referral Exchange has made a submission to the inquiry—submission No. 29—and copies are available from the committee secretariat. Would you like to make a short, five-minute opening statement before I invite members to proceed with their questions?

Ms Mitchell—I would like to make a five-minute statement. WIRE has been providing information support and referral to the women in Victoria for nearly 20 years. We commonly speak to women about separation, family law matters and domestic violence, among many other issues. In the 2002-03 financial year the top two contact issues for our telephone service were separation/divorce and domestic violence respectively. Our fifth most common contact issue was the legal concerns surrounding separation and divorce. These results are consistent with top-caller issues in other years.

Each year we hear the stories of thousands of Victorian women. From our own experiences in working with women, WIRE contends that joint residency is the optimum outcome for separating families but is not universally achievable. We further contend that a presumption of joint residency will expose children and women to violence and abuse. The Family Court is currently given discretion to make orders for the residence and contact of children, looking at the situation of each family with reference to a number of factors. It therefore deals with each case that comes before it on its individual merits. WIRE believes that this is the correct approach. It is important to note that it is entirely possible for separating couples to negotiate joint residency under the current Family Law Act. Less than five per cent of couples currently do enter such arrangements voluntarily. We believe that this small proportion, as well as the likelihood of women being awarded custody, stems from women still doing the vast majority of caring for children during relationships and prior to separation and structuring their lives around their children by not working or working only part time, for example.

The evidence available does not support the idea that men do not fairly obtain access to their children, as the majority of child custody matters are settled independently with the consent of both the mother and the father. Of the cases that are referred to the Family Court, only five per cent are decided by a judge, and in matters where the court has to make a decision, 40 per cent of fathers are now granted residence.

The Family Law Act also currently emphasises the children's rights by focusing the court's attention on making decisions that are in the best interests of the child. The introduction of a presumption of joint residency arrangements would be a significant shift from emphasising the

best interests of children to privileging the wants of adults. We believe that starting from a presumption of joint residence is not supported by any evidence which suggests it is in the best interests of the majority of children.

Joint residency assumes that parents can spend equal time with their children and assumes that all parents will be able to and want to live close to each other, negotiate flexible working arrangements, communicate regularly and easily, and afford to maintain two separate households that are set up for children. Joint residency requires a high level of emotional maturity and an acceptance by both parties that the relationship has ended. In WIRE's experience, the families who will end up having a judge decide an outcome are among those least likely to exhibit those traits.

Successful joint residency also requires consensus about parenting styles for the benefit of the children involved and to minimise the stress inflicted on children who must be on the move frequently. We also believe that children's needs change over time and that a presumption of joint residency will not adequately cater for their changing needs.

WIRE is particularly concerned about the introduction of the presumption of joint custody where there is any evidence of domestic violence or child abuse. Domestic violence clearly has a negative impact on children's wellbeing, and they are exposed to a greater extent if they have to move frequently between parents.

The terms of reference ask us to consider in what circumstances joint residence might be rebutted. Presumably this is the mechanism by which joint residency would be denied a violent parent. We believe this mechanism would prove deeply flawed in practice for the following reasons. One, if the presumption is of joint residency, children may be forced to live with a violent or abusive parent while the rebuttal proceedings are under way. Two, it puts the onus on women to prove domestic violence exists despite the underreporting of domestic violence as a crime, particularly non-physical forms of violence or abuse. If a woman has not made reports of domestic violence to the police or other agencies, she may not be able to prove her claims that domestic violence is occurring. Three, women earn disproportionately lower incomes than men and tend to be worse off financially than men following separation. Given that the vast majority of victims of domestic violence are women, we have grave concerns as to whether women will be able to finance the legal proceedings around rebuttal and that this inability will result in women and children being exposed to violence.

WIRE believes that it is in the best interests of children that there is a presumption of no contact with a parent where there is any evidence of domestic violence or child abuse until a thorough risk assessment has been undertaken and it is shown in the individual case that that child is safe from abuse and that contact truly is in their best interests.

Mr QUICK—You state that WIRE has been operating for 20 years. In your submission, you state:

This inquiry has arisen over a misconception from men that they do not fairly obtain access to their children.

What do you mean by that?

Ms Mitchell—I think there is a perception in the community that Family Court proceedings are unfair to men and that men are disproportionately denied access to children. We do not believe this is supported by the evidence. We believe that women are granted custody because they have shaped their lives around their children more and primarily have that caregiver role in the family prior to separation.

Mr QUICK—I would be interested to hear your views on the expectation of having equal time and the ability of families to afford two separate households that are completely set up for their children and the impact this might have on second relationships and second families.

Ms Mitchell—That is something we probably have not considered in our submission. Can you rephrase that question?

Mr QUICK—We have this concept of equal time and shared custody. There is an expectation, I guess, that you have two separate households so the children go one week to one and one week to another and that both houses are set up as ideal homes. That is assuming there is not a second relationship and a second family being introduced. The idea of two identical houses excludes any concept of another relationship and another family. Do you have any views on that?

Ms Mitchell—I do not have any particular views on that.

Mr QUICK—Is it realistic and workable?

Ms Mitchell—I think it is highly variable.

CHAIR—Ms Mitchell, you can take that on notice and respond to the committee at a later date if you would like.

Ms Mitchell—Okay.

CHAIR—You do not have to answer if you feel you are not in the position to answer.

Ms Mitchell—I do not particularly feel I am in a position to answer that question. I think the situation would be highly variable from case to case.

CHAIR—If you would like to take it on notice and respond to the committee at a later date, feel free to do so.

Ms Mitchell—Thank you.

Mrs IRWIN—Following on from the question Mr Quick has just asked—I know you have taken it on notice—could you comment on how we manage shared parenting or equal time? What strategies does your organisation feel are needed to assist parents who are in an ongoing conflict to manage shared parenting or equal time?

Ms Mitchell—I think it is very difficult for families that do feature a higher degree of conflict to enter into genuine joint residency arrangements. The situations where joint residency are successful, from our experience of hearing women's stories, are where shared parenting has

happened prior to separation through the negotiation of flexible working arrangements and a commitment to really active parenting from both parents. I do not think that is something that can be grafted on following separation if it has not occurred prior to separation.

Mrs IRWIN—Does your organisation give a lot of counselling?

Ms Mitchell—We provide support over the phone. We try not to call it counselling, because we have volunteers working there. So we try to maintain boundaries about what they can and cannot do, but we do listen to women's stories and support them in their experiences.

Mrs IRWIN—Is the funding that you get from the Commonwealth or the state?

Ms Mitchell—We are funded primarily by the Victorian government. Our telephone service is funded by the Department of Human Services, our information centre is funded by the Office of Women's Policy and the rest of our funding comes from memberships, donations and so on.

Mrs IRWIN—Does your organisation feel that the Family Law Act works well for your organisation's clients?

Ms Mitchell—Again that is highly variable. That is probably something I would like to take on notice and answer at a later time in writing.

Ms GEORGE—You argue in your submission that presumption of joint residency and the rebuttal process would tie people up in expensive litigation. That is an argument that we hear about the current system, particularly about enforcement of court orders regarding contact. Have you thought about ways in which all of this process might be taken out of the litigious area and having some kind of mediating process before parents avail themselves of the court process?

Ms Mitchell—WIRE is not an expert on family law proceedings. We have an understanding of how the proceedings operate from the stories we hear from the women who call us for support. I would not like to make specific comments about what the proceedings are, women's general experience and what improvements could be made.

Ms GEORGE—So do you get complaints from the people you deal with about the cost of litigation—about issues to do with access and contact?

Ms Mitchell—Yes. We do get complaints about the inability to find legal assistance that women can afford.

Mr DUTTON—Do you have any solution or any suggestion as to the problem of enforcement? We have heard some evidence—I suppose all of us in our respective electorates hear from constituents all the time—about court orders being made but enforcement not being practical. There is fault on both sides in some of these situations. Are there any practical solutions to that side of the problem?

Ms Mitchell—Are you referring to the enforcement of joint residency, for example?

Mr DUTTON—Contact orders.

Ms Mitchell—I know that that is a difficult area, and the police particularly struggle with this in the case of intervention orders—people pushing the boundaries of intervention orders and resuming abusive behaviours immediately after the expiry of an intervention order. Again, I do not think WIRE has any specific suggestion to make, given that our role does not make us an expert in family law matters and police procedures—only that women find it very difficult to negotiate these situations and to feel safe.

Mr PRICE—You mention that, of the five per cent of cases that are decided by judges, 40 per cent are granting residency to the male partner. Do you have calls from women who have had those residency orders, if you like, granted against them?

Ms Mitchell—From time to time, yes.

Mr PRICE—What are the issues that that group of women is raising with you that may be of interest to the committee?

Ms Mitchell—It is a very rare woman who welcomes being denied access to or having very limited contact with her children. The Family Court makes decisions in the best interests of children and we recognise that sometimes a woman may not be in a position to provide the best care for her children.

Mr PRICE—Domestic violence seems to be on the increase. Do you have any statistics for Victoria about the level of domestic violence and the granting of AVOs?

Ms Mitchell—No, I do not. I feel that an organisation like the Women's Legal Service might be in a better position to provide that, but I can try to track that down for you.

Mr PRICE—No, that is okay. I think we are meeting the legal centres a little later. That is a fair point. Again, maybe a women's legal service is the better one to ask. The Family Court is a superior court. Is there, in a sense, an irony that you have a superior court deciding issues about divorce, separation and residency, but juvenile justice, adoption and that range of issues are dealt with at the Children's Court or Magistrates Court in Victoria? In the justice system, you have a Rolls Royce up here and down there, for equally important perhaps even critical issues, I am loath to say, is the bottom level of courts. I do not mean it pejoratively. Does your organisation have a view about that disparity?

Ms Mitchell—No, I do not believe our organisation does have a view on that matter.

Mr PRICE—Lastly, the five per cent figure is used in your submission. In a sense, if it is only five per cent of cases ending up there we have nothing to worry about. But do you experience situations where women do not get legal aid and are not able to prosecute their legal rights? I do not want to lead you, but in some ways that figure is a misleading figure in the sense that people run out of money and self-representation is seen to increase dramatically?

Ms Mitchell—Are you referring to the figure that only five per cent of cases are decided by a judge in the Family Court?

Mr PRICE—Yes.

Ms Mitchell—Yes, we regularly speak to women who find it very difficult to obtain the legal assistance they need, not only in these matters but in a range of matters.

Mr PRICE—How should the committee view that five per cent, if there is this range of women who are unable, in their view, to prosecute what they see as their legal rights or claims?

Ms Mitchell—You can make of it what you will given that those restrictions also apply to men accessing the legal system.

Mr PRICE—Yes, I guess I am trying to get a feel for how good that five per cent figure is. I accept that that is the number of cases that end up there. I guess I am trying to get a feel for how many do not but would like to?

Ms Mitchell—I will take that on notice and get back to you.

Mr PRICE—Thank you.

CHAIR—Do the women coming to your service have difficulties with the way in which contact and residence orders are made? If so, basically, could you outline some of the difficulties that women bring to you with respect to contact and residence orders?

Ms Mitchell—Certainly a lot of women appear to have difficulties, especially in cases where there is a high level of conflict and violence occurring, with the logistics of contact—handing over the children. Children are sometimes used as tools of control and abuse—that happens both to men and women, although more commonly to women. Also, Family Court proceedings are sometimes used as tools of control and abuse, given that the opportunities for abusive behaviour might be dwindling with the sort of lower degree of contact that the couple is having.

Mr QUICK—Should we be talking about quality time rather than equal time?

Ms Mitchell—Quality time is a pretty unquantifiable and nebulous concept. But I do not think we should be talking about equal time.

Mr QUICK—But if we are talking about the best interests of the children, to me it is an unrealistic expectation that just because you have seven days with one parent and seven days with the other that the quality time is going to be on a par.

Ms Mitchell—That seems quite reasonable to me.

Mr QUICK—We should be talking about the interests of children and continuity of educational opportunities and quality of life. It is easy to talk about equal time.

CHAIR—Is that your question?

Mr QUICK—I guess it is a question in a way. Lastly, in terms of the issue of sanctions, if the non-custodial parent fails to pay their CSA payments, should some sanction be imposed if this concept of equal time is what we are on about?

Ms Mitchell—I am not sure what the relationship is with child support and joint residency. I do not know, for example, whether it is going to be a mechanism by which some men pay less maintenance because there is the presumption that they will be looking after their child for their so-called fair share of time. Obviously a lot of people have trouble accessing the child payments that they are entitled to and that they are awarded. Yes, it would be good to see women access those payments. But, yes, I could get back to you with more specific comments from our manager and our board.

Mrs IRWIN—Is your group WIRE solely for women?

Ms Mitchell—That is correct.

Mrs IRWIN—It is a referral and information point. Do you have many phone calls from grandmas/nannas?

Ms Mitchell—No.

Mrs IRWIN—You have none whatsoever?

Ms Mitchell—We may get one from time to time, but certainly not in terms of the three issues surrounding what this inquiry is about, not in relation to our top five caller issues for the year—nothing of that sort of magnitude.

Mrs IRWIN—How many clients are on your books? How many phone calls would you get a day?

Ms Mitchell—We do not have clients. We just receive anonymous phone calls and we support women. We can get anywhere between 20 and 70 phone calls a day. We usually answer around 7,000 phone calls a year.

Mrs IRWIN—With referrals, say a woman needs protection, would you give them advice on a refuge or give them advice to see the police or whatever?

Ms Mitchell—Absolutely. We will go through a woman's story with her and try and identify the best options for her and help her to make her own decisions about where she should go from there. That usually entails referral to other agencies. We help women negotiate the maze of services out there. Often it will be a referral to the Domestic Violence Crisis Line—the 24-hour line. It might be to the Victorian police, the Domestic Violence and Incest Resource Centre, community legal centres and so on.

Mrs IRWIN—Would the majority of the phone calls you are getting be more from women or children who are being sexually or physically abused?

Ms Mitchell—We speak to a lot of women who have sexual abuse and incest in their past.

Resolved (on motion by **Mr Quick**):

That submission No. 29 from the Womens Information and Referral Exchange be accepted as evidence and authorised for publication as part of the inquiry.

CHAIR—Thank you for your attendance this morning. If you would like to refer answers to any of those questions on notice back to the committee secretariat, we would be most happy to receive them.

[8.57 a.m.]

LO, Ms Belinda Nanfern, Member, Family Law Working Party, Federation of Community Legal Centres

YANDELL, Ms Helen, Member, Federation of Community Legal Centres

CHAIR—Welcome to the inquiry. The evidence that you give at this public hearing is considered to be part of the proceedings of parliament. I therefore remind you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. I remind you that the comments you make are on the public record and you should be cautious in what you say to ensure that you do not identify individuals and do not refer to cases before the courts. The Family Law Working Party of the Federation of Community Legal Centres has made a submission—submission No. 753—to the inquiry and copies are available from the committee secretariat. Would like to make a short opening statement before members proceed with their questions?

Ms Yandell—We would like to make a comment firstly about the terms of reference for this inquiry. We have some concerns that the terms of reference themselves are in contravention of article 31 of the Convention on the Rights of the Child, which requires that the best interests of the child be taken into consideration at all times. Because the terms of reference of this inquiry refer to a rebuttable presumption, it is that presumption that is actually contrary to the best interests of the child and the best interests of the child would need to be looked at in each case in detail.

We believe that each child's circumstances are unique and each family's circumstances are unique, and that is what needs to be taken into consideration when there is family breakdown. In 95 per cent of cases, family breakdowns are sorted out amicably by agreement between the parties and we believe that that right of families to make that determination needs to be maintained. The presumption of share care of children would remove the right of families to make that determination and we believe that would not be in the best interests of children. In the five per cent of cases that are unable to make those arrangements amicably and for themselves, there is often a high level of unwillingness to make agreement and there needs to be an independent body that can step in to determine what is in the child's best interests or children's best interests, given the particular circumstances of that family and those children.

By imposing a presumption of share care we submit that there would be an increase in the number of families that would need to in fact seek court intervention in order to rebut that presumption so that they can determine what is in the best interests of the children, taking into consideration a whole range of factors such as the age and needs of the children, the current employment commitments of both parents, the proximity of parents' residences and factors like that. We believe that it is good to be analysing and looking at what is happening with our Family Law Act. It is a very complex area of law, but we need to be moving forward, not backwards. We need to not return to a situation where parents' rights are paramount but maintain and improve the situation where children's rights are paramount. I will leave it there for the moment.

Ms Lo—Following on from Helen's points, I would like to point out that prior to 1996 the Family Law Act was phrased such that children were considered as chattels or property. Therefore, the terminology used during that time was 'custody' and 'access' and that had a tendency for parties, I believe, to assume that children were considered the prizes of perhaps any type of family law dispute. However, after 1996 the Family Law Act underwent a large number of changes and in particular the terminology was changed to 'residence' and 'contact' and the children's interests were considered paramount over the parents' interests. This is the way that we still advocate that the Family Law Act should be.

The responsibility of parents is outlined in section 60B of the act and it does take into account the fact that children have a right to know and be cared for by both parents and that, furthermore, each parent has a responsibility towards their children regardless of relationship breakdown. Children must continue to receive adequate and proper parenting in order for them to achieve their full potential. The act is phrased very much in a children focused way now as opposed to a parent focused way. The act also is phrased to encourage parents to cooperate in relation to the care of the children, and obviously when parents do cooperate it is in the children's best interests. There are also remedies are outlined in the act where a parent attempts to prevent one party from seeing the other. Therefore, if there are any accusations made in relation to possibly one party preventing the child from seeing the other, that parent is able to go to the Family Court and seek an enforcement of any orders that may exist or perhaps make orders in order to address that.

It is in the children's best interests that they be provided with stability and security in an otherwise traumatic situation that occurs upon relationship breakdown. In order to ascertain what is in the children's best interests in terms of security and stability, normally the court looks at what the parents' relationship was and roles were prior to the breakdown. Because of the way that society is at the moment, mothers generally are considered the primary caregivers. That is not to say that all families are like this, but certainly generally it is the case. If the status quo is looked at in this way and if the primary caregiver is considered to no longer be part of the child's life in such a significant way post separation, the court considers that this could detrimentally affect the child and would no longer be in the child's best interests. I again reiterate Helen's point that only five per cent of marriage breakdowns go to the Family Court and these situations are such that the parties are so conflicted and so divisive that the only way that they can have decisions made in relation to the children is to have a third party's intervention, that being the Family Court.

I would also like to make a few points in relation to child support. All parents have a responsibility to support their children financially to the best of their ability. They are the people who brought the children into the world and therefore should be responsible to the best of their ability to provide for their children. However, a child is not a prize to be paid for upon viewing. Child support is a responsibility and should not be linked to the amount of time a parent spends with a child. Receiving child support is by no means a reward for the party who might have the greater care of the child. It is important to note that child support is to go towards the care of the child. Child support is not to go towards the care of the past spouse. That is what spousal maintenance is for.

Having said that, though, we do believe that the child support system is problematic for both parties. Our experience is that we have payees and payers who are dissatisfied with the child

support system and therefore we think that there needs to be a more realistic analysis of the costs of raising children so that more clarity is achieved by both parties in this regard.

CHAIR—Thank you, Ms Lo.

Mrs IRWIN—Thank you very much, Belinda and Helen, for that good briefing. Would you support a process that requires parents to try mediation before they are allowed to access the legal system? What I am reading in some of the submissions or heard from people I have met face to face within my own electorate is that they go to court and before a decision can be made they are sent off for counselling or mediation. Would you support a process whereby, before they even went before the magistrate, mediation should be there first?

Ms Lo—I think it depends upon the situation. If there is domestic violence alleged in the relationship, it is very difficult in those types of relationships for mediation to occur. However, my experience as a community lawyer is that almost all of my clients do go to mediation when there is no domestic violence alleged prior to any proceedings being commenced, so that there may be a possibility perhaps where the parties do not need to expend unnecessary money, do not have to go through unnecessary emotional turbulence and hopefully can work out their affairs prior to having to go to court.

Mrs IRWIN—You were correct in saying that the best interests of the child or the children are paramount to this inquiry. How could families be better assisted to make arrangements that share their parenting responsibilities?

Ms Yandell—We have to acknowledge that many families are already doing that. We are in fact talking about a very small percentage of families which are not already making a decision in the best interests of the children, and it is that very small percentage of families that I think this inquiry is focusing most on. But I do not think we can lose sight of the fact that many already do that. Many families will find ways—that is, they will either do it through counselling or through assistance from extended family members to ensure that the contact they have with their children is in their children's best interests. But there still needs to be somebody who is determining that the children get to their sporting activities on time, get to their music lessons on time, get to school and do all of their homework. Somebody needs to be taking some responsibility to ensure that all of those activities are happening for that individual child's circumstances. Sometimes that simply cannot be shared because of the commitments of families.

Mr PRICE—To be frank, you shock me a little bit. I do not have with me the UN Convention on the Rights of the Child and I have not read it for a while, but you quote section 60B of the Family Law Act in your submission and outline four points:

a) children have the right to know and be cared for by both parents ...

b) children have the right to contact on a regular basis ...

c) parents share duties and responsibilities concerning care ... and

d) parents should agree about the future parenting of their children.

I think we all agree on that.

Ms Yandell—Yes.

Mr PRICE—I think it is consistent with the UN Convention on the Rights of the Child. However, I cannot see how the presumption of rebuttable joint residency is inconsistent with anything in the UN Convention on the Rights of the Child.

Ms Yandell—I think the issue is that it is a presumption. A presumption is saying that there has to be shared care first.

Mr PRICE—But here is the presumption in 60B that these are the principles to which, allegedly, the Family Court operates.

Ms Yandell—The presumption is that it is going to be in the best interests of all children to spend 50 per cent of their time with both families, be that half a week each, a week about—

Mr PRICE—No; it is rebuttable, so there are going to be some exceptions.

Ms Yandell—Yes but there is the presumption first, then one needs to rebut.

Mr PRICE—Is there not a presumption here? There is a presumption that all these principles that we all agree with are very sound, we can sign up to them, but there are going to be exceptions, and I accept that.

Ms Yandell—Yes.

Mr PRICE—Well, it is the same with joint—

Ms Yandell—We believe that, in order to rebut that, we will have more and more families which need legal assistance and/or will end up in the courts. At the moment people are able to work those things out—those factors that suit their family needs and their children's needs—as best as possible.

Mr PRICE—But do you not have to rebut those principles in the Family Court if you want to—

Ms Yandell—No, you need to rebut the shared care, not the principles of the best interests of the children. What you are rebutting, according to my understanding, is the 50-50 shared care.

Mr PRICE—Sorry, perhaps I am bald and I am trying to split hairs, I do not know, but I do not quite see it as being inconsistent with the rights of the child. I will look it up anyway. You seem to place a great deal of weight on the Family Court's much touted five per cent success rate conforming to international standards of best practice for family courts. As a community legal centre, do you get approached by women—and men, for that matter—who believe they have matters they wish to pursue in the court but for which you do not get funding and have to decline? Is that very many? How does that get caught up in the five per cent?

Ms Lo—As a community legal centre, we do not provide Victoria Legal Aid funding at all. So we are a completely free service for our service users. Most of us are completely underresourced so we cannot go into court to represent people. We are there to give them advice and information. I know that in my experience at Brimbank a lot of the people who come in to see me cannot afford to pay for private representation and they may have a mortgage—

Mr PRICE—Men and women?

Ms Lo—Men and women, yes, Mr Price. They are also unable to get Victoria Legal Aid funding because they may be working part time. They may have a mortgage but that does not mean they have a lot of money—

Mr PRICE—Disposable income.

Ms Lo—Yes, that is right. So, when they do come, if they feel they need to go to court we give them assistance for self-representation. Having said that, though, we also attempt to negotiate with the other side via letters or other types of correspondence to see whether or not the other side would be willing to negotiate without the need to go to court.

Mr PRICE—In your opinion, would you say that those numbers of people are significant or very small? How would you describe the situation?

Ms Lo—When you are talking about the number of people, are you talking about the family law clients?

Mr PRICE—That is right; the clients who come to you for advice, who feel they would like to pursue matters before the court but are not eligible for assistance or who do not have their own funding.

Ms Lo—It is important to note at the outset that when people come to legal centres they are there to get information as to what their rights are. A lot of the time they might come thinking they have to go to court. Then, when they are given the options, they are very happy they do not necessarily have to go to court. We do have a lot of clients in the community legal centre who come for family law advice. I cannot give you the statistics at the moment as to how many go to court, but we are very happy to find out for you and provide it to the committee.

Mr PRICE—I am just trying to get a feel for it. I would be most grateful if you could just give us a view or take it on notice about whether you think there is a significant number of people who are unable to access the courts. You made a couple of comments about child support. Perhaps we are on common ground here. Would you agree with me if I said that the most important priority in relation to the child support scheme has not been about children, although children and women have benefited, but about clawing back social security benefits—that is, the Commonwealth clawback of Centrelink benefits.

Ms Yandell—In relation to the family tax benefit; is that what you are referring to?

Mr PRICE—Yes.

Ms Yandell—Could you repeat your question, please?

Mr PRICE—When the child support scheme was introduced, the huge winner was the Commonwealth. In those days it was not called Centrelink benefits; it was social security, but they were able to clawback a lot of money. Although the principal objective was announced as being women and their children—and I do not deny that they benefited—the biggest winner was the Commonwealth.

CHAIR—You can take that on notice and provide the committee with your response to that if you would like.

Ms Yandell—Well, we could. I am happy to make a comment in relation to it because, in a sense, I do not know that I am in a position to agree or disagree with you. I can tell you what we are finding from our experience, but I do not know that I can make a personal comment that disagrees or agrees with your statement.

CHAIR—I would be happy for you to take that on notice.

Ms Yandell—I certainly can provide you with some information about the impact that it has had.

Mr DUTTON—Can I take you back to a statement that you made—I think I am quoting you correctly—when you said 95 per cent of cases were resolved amicably?

Ms Yandell—Yes.

Mr DUTTON—Where is the evidence of that, or how do you base that statement—

Ms Yandell—Well, only five per cent of matters actually go to the Family Court. So 95 per cent of matters are determined between the families outside of the Family Court.

Mr DUTTON—In an amicable manner?

Ms Yandell—Well, maybe the word 'amicable' is not the right word for the whole 95 per cent of cases, but they do reach agreement and it is agreement between those parties.

Mr DUTTON—Would it be fair to say, though, that there is a vast number of people, and it could be men or women—I am sure five per cent of people would not be adequate to cover them—who opt out of the legal process because it can go on for up to two years in the Family Court—

Ms Yandell—But that is those five per cent.

Mr DUTTON—Let me finish. It can cost tens of thousands of dollars and sometimes people believe it is best to quit not whilst they are ahead but before they get any further behind and they really accept a position that they would not otherwise accept, and it is anything but an amicable situation.

Ms Yandell—I would agree with that within that five per cent. Within the 95 per cent, I also agree that there are many families which will make arrangements rather than go to court, rather than spend that money which they may feel is not amicable but they make that arrangement because they believe it is in the best interests of their children then. That can change. As the children grow older, their needs change, the parents' situation changes and so the family arrangement changes. That happens all the time. They do not necessarily need that codified.

Mr DUTTON—Sure. Belinda, you spoke before about children pre-1996 having been regarded as one of the chattels, I suppose, of the relationship and how that changed post the legislative changes. Following on from that, should non-property matters—children and custody—be dealt with in an adversarial system? Is there an argument for a division of property out of a relationship break-up to be heard by a court and for precedent to apply? If the underlying principle is about the best interests of the child, should that be dealt with in an adversarial manner?

Ms Lo—That is a very good question. The Chief Justice of the Family Court agrees that children's matters, and perhaps family law matters in general, should not be dealt with in an adversarial way. We are talking about an extremely emotional situation. We are talking—no matter what—about their being no winners or losers; children will be suffering at all times. So it would be good if we could say that there was no need for a third party to intervene. Unfortunately, there are going to be situations where parties are not able to agree, where parties are not able to come to any type of arrangement for the children without the intervention of a third party. That is why, unfortunately, it seems we have the adversarial system for a situation which is probably quite unsuitable for an adversarial system, but that is the only way that we can deal with it at the moment.

Ms GEORGE—Just following on from Peter, I wrote down the statement you made, too, because in my experience dealing with a lot of constituents just because they do not end up in the Family Court does not mean to say that their problems have been resolved in an amicable way. In fact, I think not going to court often prolongs a situation. I want to query on what basis you make the assumption that, if you do not end up in court, it is all sorted out and things have moved on. I deal with a lot of people where the animosity and the non-resolution of the parents' responsibilities are still very entrenched.

Ms Yandell—But they do still reach agreement?

Ms GEORGE—Well, the agreement sometimes is one or other of the parties just not complying and saying, 'I give up. I've had enough. I'll get on and not worry about it.' What role do you see for a non-judicial process in trying to resolve these matters?

Ms Yandell—Following on from what Belinda just said, there are certainly great benefits to keeping decisions in relation to children in family law matters outside of an adversarial environment. There is enough animosity amongst the families themselves let alone adding the adversarial processes on top of that. So I would say, yes, I think there is.

Ms GEORGE—Belinda, you say you are happy with the fact that the committee is reviewing it the child support formula.

Ms Lo—Yes, we are indeed.

Ms GEORGE—Do you get complaints from both sides as we do?

Ms Lo—Yes, we do

Ms GEORGE—Would it be easier if we could divorce the monetary payment from the issue of—

Mr PRICE—'Divorce' might not be a good word.

Ms GEORGE—Separate: no, that is not a good word either. Could we look at the issue of the financial responsibility of both parents, apart from the issue of contact or separate the two, because in my experience contact is being used by one or other side as a bargaining chip rather than what is in the best interests of bringing up the child—financially and their responsibilities. How could we do that? Have you thought about how we might be able to unhinge those two aspects?

Ms Lo—Education would be a good option—educating people as to why the child support system is assessed in the way that it is. It is not used as a form of punishment or as a form of reward. Many of my clients tell me that they do not get enough child support for the number of children or for the child's living expenses for that particular situation. Plus many clients tell me they have to pay too much and when they start a new family and they have to continue to pay. It is important also to note that for those situations where somebody feels they are paying too much child support there are options for that person to appeal the existing arrangement.

In relation to your previous question, Ms George, about dividing or separating the amount of child support with the amount of time that somebody spends with the child, I completely agree. Child support is not a form to measure how somebody parents at all. It is not something that can indicate whether or not you parent well. It is more quality time rather than quantity time. So child support should not be used in that way at all.

Mr QUICK—Talking about children's rights, at what age should the child have a real say—and I mean a real say—in the matter of where they reside?

Ms Yandell—Again, that very much depends on the child. Children mature at very different ages. I think the Family Court now is saying children from the age of 12 can have their wishes heard—not necessarily listened to but certainly heard—and there are counsellors within the court who are able to speak with those children and find out—

Mr QUICK—What are your views? I know the views of the Family Court, but what are your views from the experience you have had?

Ms Yandell—I think there are 12-year-olds who can express those views and for others they may be 14 or 15 even. It depends on the children. It depends on how much they have had the opportunity within their family to express those views.

Mr QUICK—You mentioned the CSA, the Child Support Agency. Have you any ideas on how we simplify the complexity and disadvantage of second and third families, which seem to be an occurrence rather than just the second family?

Ms Yandell—Parents have that responsibility for their children, no matter how many families they have, and that is just one of the difficulties. If you have five children by two or three different partners, then you still have five children. If you have 10 children, you still have 10 children to support. I agree with Belinda. I think there needs to be some general education on the responsibilities of families to support those children. I do not think for a moment we think the child support formula is working well. I think there really does need to be an analysis of how much it costs to raise children, particularly in separated families.

Ms GEORGE—Do you think the cost of raising a child is the same in the first or second or third—

Ms Yandell—Yes, but when you duplicate homes and duplicate activities, costs do in fact go up.

Mr PRICE—You mentioned the review provisions of the Child Support Agency. Of course, originally there were none. But this is very different from other Commonwealth agencies in that it is not a proper external review; external people are hired effectively to do an internal review of the decision. Is it the view of the legal centres that there should be, consistent with best administrative law practice, an external administrative review of the decisions of the Child Support Agency? If you have not thought about it, would you take that on notice?

CHAIR—In the interests of time, could you take that on notice.

Mr PRICE—You raised, I think, the role of the child representative in the Family Court. I have some concerns about this, and I would be interested in the legal centre's views. Really, the representative is a representative of the court rather than a representative ascertaining and carrying out the wishes of the child.

Ms Yandell—There are two different parties. There is the child representative who is a solicitor and the representative of the court, but there are also court counsellors. The child representative is not the person who is necessarily determining what the child wants but who is representing the child. It is often the court counsellors or independent counsellors who are actually meeting with the children to ascertain what the children's wishes are and then they write a report on that.

Mr PRICE—Do the centres have any views about either the adequacy of the counsellors or the role of the special child representative, I would be interested to hear and I am sure the committee would be interested.

CHAIR—Can you take that on notice and provide a response?

Ms Lo—Certainly.

CHAIR—We may be able to hear from you again at some stage in another forum. In the interests of time, I will not ask my questions, unfortunately, because there are two pages of them. I did take issue with your submission. If you would not mind, I will post these questions to you for answering.

Ms Lo—Certainly.

CHAIR—That would be extremely beneficial. I thank you for your attendance this morning.

Resolved (on motion of **Mr Quick**):

That submission No. 753 from the Federation of Community Legal Centres is accepted as evidence and authorised for publication as part of the inquiry.

[9.30 a.m.]

BAILEY, Ms Alice Claire, Training, Development and Consultancy, Domestic Violence and Incest Resource Centre

KELLY, Mr Anthony Kelly, Coordinator, Men's Referral Service, No to Violence, The Male Family Violence Prevention Association

CHAIR—Welcome to today's public hearing.

Ms Bailey—I have some supporting documents which you might want to refer to and a copy of what I will be talking about today.

CHAIR—Thank you. They will be exhibits 1 and 2. The evidence that you give at this public hearing is considered to be part of the proceedings of parliament. I therefore remind you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. I remind you that the comments you make are on the public record. You should be cautious in what you say to ensure that you do not identify individuals and that you do not refer to cases before the courts. Both organisations have made submissions. They are submissions Nos 260 and 843 to the inquiry and copies are available from the committee secretariat. I invite you to make a very brief statement prior to the committee framing its questions to you.

Ms Bailey—The DVIRC is a state-wide resource centre which for 20 years has probably been the major provider of training on sexual assault and domestic violence in Victoria to workers in the field. This is what informs our focus today—basically talking about families in which violence is present and our concerns about the proposed amendments in relation to that.

The UN declaration of the rights of the child—that the best interests of the child be the paramount consideration and that it is in the best interests of children to be free from violence and abuse—is what frames our concern. To put domestic violence in some context, domestic violence is a crime that is greatly underreported. Police data estimate that only 20 per cent of cases are in fact reported to them. Current statistics suggest that one in five women who have been married or in de facto relationships have experienced violence from their partner during that time. I guess of most concern in relation to this legislation is that Australian and international research shows that victims are at an increased risk of violence and abuse, including abduction and homicide, in the period following separation.

In cases of family violence, we are concerned about a presumption of shared residency because children should never have residence with a violent parent and because victims of violence are not in a position to equally negotiate with a violent ex-partner about parenting arrangements. I think the other two speakers have already commented that the majority of families come to their own arrangements about parenting. In fact, where they do, less than four per cent decide on shared parenting. What that tells us is that for most families shared parenting is not the optimum arrangement. Primarily it is not the optimum arrangement because it does not reflect parenting arrangements prior to separation. In most cases, women continue to be the primary caregiver, and in most cases fathers maintain contact with their children.

So the proposed legislation targets only a minority of cases that are ending up within the Family Court. These are the families that have been unable to reconcile any other pathway to shared parenting, and they are characterised by high levels of conflict and, in many cases, violence. These, then, are the parents who are least likely to be able to successfully negotiate equally shared parenting.

Already, recognising a child's right to have time with both parents creates many difficulties where violence is occurring. The rights of a child to know both parents has often been interpreted as the rights of both parents to have access to a child, even in cases where there is clear evidence that one parent is violent towards that child. There are many documented cases in Australia of children being made to have contact with a violent parent in the interim or even in the long term because contact with a parent, even a violent one, is seen as preferable to no contact at all. We would strongly refute this notion because it is never in a child's best interests to have contact with a violent parent. Children have a right to live safely.

We also know that violent partners are more likely to be violent parents. Their parenting styles are harmful to children. They are 15 times more likely to abuse children, they are more likely to become angry with children, to use smacking and general controlling behaviours, and to be less consistent in their parenting. This negatively impacts on children in multiple ways, affecting their social, emotional, cognitive and physical development. Even where physical violence has ceased, the fear and intimidation a child experiences being around a parent is harmful in the long term.

A perpetrator does not need to exert violence every day. Even where physical violence has ceased, the fear of violence remains palpable in a child's life. It is notoriously difficult to assess the risk to children in having contact with a violent parent. Many perpetrators present as capable and non-violent when under supervision but have been found to alter their behaviour when they are no longer observed. Research also shows that perpetrators of violence do use children as tools in the legal process as a means of continuing control over families post separation. Litigation as a form of abuse is not only unaffordable for mothers but also very costly to the community.

All of these issues that impact negatively on children we believe would be exacerbated by a rebuttable presumption of joint residence. This is because a rebuttable presumption creates a climate of acrimony. It will force parents into an adversarial position and therefore place children at a greater risk of violence and abuse. Given that 80 per cent of domestic violence is not reported, one of the biggest difficulties will be that victims often lack a history of documentation regarding evidence about abuse to themselves and their children. These victims will face extreme difficulty in mounting legally compelling evidence to rebut a notion of joint residency.

The time taken to collate evidence that is legally compelling will leave children vulnerable to continued abuse without the protection of the non-abusing parent while they have residency with the other. There is already considerable public concern about the lack of coordination between services, such as DHS, child protection and the Family Court. It means that children are already being placed in the care of parents who are perpetrating sexual and other abuse against them while contact orders are being processed.

CHAIR—Is this the submission or is this additional information?

Ms Bailey—This is the presentation we would like to make.

CHAIR—It is your presentation?

Ms Bailey—Yes.

Ms Bailey—We believe the time delay will be exacerbated with the proposed amendments. Perhaps the most important thing is that, while it is difficult to demonstrate a history of physical abuse, substantiating cases of child abuse are even more difficult. Physical and sexual abuse is always accompanied by emotional abuse, and emotional abuse is the most difficult thing to measure in evidentiary processes before the law. In cases where family violence is a possibility, it is never in the best interests of a child to have contact because a violent parent is not a good role model for a child.

We would like to put forward some alternatives. DVIRC and NTV promote shared parenting in principle, and we would welcome social reform to encourage it. National and international programs are moving towards a presumption of no contact in cases where violence is present. So we would advocate the New Zealand model of no contact which presumes no contact until a perpetrator can demonstrate their capacity to parent safely. The presumption of joint residency is in contrast to international legislation, and it undermines the current national programs that aim to improve coordinated responses to violence, including the federal government's initiative—partnerships against domestic violence. We believe where family violence has occurred, the proposed amendments will be costly to the community, to the government, to the legal system but, most importantly, to the women and children who are victims of violence.

CHAIR—Mr Kelly, are you wanting to make a statement?

Mr Kelly—No.

CHAIR—Was that a joint statement?

Mr Kelly—Yes.

Mr QUICK—You state in your submission that women are more likely than men to experience financial hardship following divorce. How likely is that? Do you have any figures?

Ms Bailey—There should be a footnote in that submission which relates to that data.

Mr QUICK—Okay.

Mr QUICK—You state on page 4 of your submission:

To replace joint parental responsibility with 'joint residence' obscures the complex nature of parenting and what is in the best interests of the child.

Could you elaborate on that?

Ms Bailey—Basically, my understanding is that to move toward a notion of joint residency is to make the focus again on 50-50 time, when in fact we believe that parental responsibility is about much more than just time. It is about things like responsibility for coordinating a child's life, for love and care, and about sharing a quality of time.

Mr QUICK—Following on from that, I want to ask about the formality of the current system. For example, a child has to be returned on a Sunday night and there is no flexibility to take the child to school on the Monday morning. There is complexity, legality and cost associated with changing the orders. If we do not move to joint residency but we expand the flexibility, how would you see that happening?

Ms Bailey—DVIRC does not specialise in legal issues, but my understanding would be that, as the previous two speakers have noted, we need a broader social reform which encourages both parents post-separation to really develop sharing of responsibility and to move away from formalised court processes. DVIRC would encourage that. I think fixed and rigid plans are very useful in cases where violence has been present, because there needs to be very clear boundaries and protections for children in place. But in most families, certainly where violence is not occurring, we would encourage families to have the sort of flexibility to come to their own arrangements outside of court orders.

Mr QUICK—Are we getting it all back to front? Are we concentrating just on the five per cent? There are lots of positives happening from the 95 per cent. Should we be accentuating those and using those positives to perhaps change the rules and regulations which result in us unnecessarily focusing on the five per cent?

Ms Bailey—That is a really good point. I think the notion of shared parenting would be a really important one for the government to start educating about and promoting at a general level. To try to attach that notion to the proportion of couples that seem to be least able to demonstrate a capacity to negotiate at any level seems to me to be a bit the wrong way around, yes.

Mrs IRWIN—I want to talk about some individual circumstances. I have asked this question to the other people who have come before this inquiry. Does the current system take sufficient account of individual circumstances and diversity in families?

Mr Kelly—As we said, our area of knowledge and expertise is in the area of family violence—its dynamics and it impacts—rather than the mechanisms of the Family Court.

CHAIR—Would you like to take that question on notice and provide us with further explanation? If you are not qualified to answer the question, please feel free not to comment.

Ms Bailey—I believe that the system could better deal with cases where violence and abuse of children is occurring. It perhaps has not been quick enough to respond to cases where, for example, there has been enforced contact for children who continue to be abused by an abusive parent. In that sense perhaps, while the system does need to remain flexible, there needs to be a strong coordination and quite tight boundaries around cases where violence is alleged.

Mr PRICE—Are you happy with the way the Child Support Agency deals with domestic violence cases in allowing the parent not to pursue child support?

Ms Bailey—Ideally it is a responsibility of both parents to financially support their child and to support their children in other ways. I do not think the current child support formula reflects the cost of raising a child. That is my broad parameter to that. Given that for women who are fleeing violent partners the most important thing is to have anonymity and distance from that person if there is a danger that the violence will continue, it would be useful to have a system where women were able to receive support for raising their children without that leading to their ex-partners being able to identify them.

Mr PRICE—Are you satisfied with the arrangement where the agency, at the request of the mother—mostly the mother—does not pursue the child support claims against the abusing parent?

Ms Bailey—I think there are a lot of women generally who give up on pursuing child support. We would certainly advocate the rights of women in cases of violence to make a choice like that, because they are really making a choice to not have child support because they feel no other option about getting some distance. But in an ideal world, there should be ways that women are still able to access support.

Ms GEORGE—Thank you for your submission. I think it is a quality submission that has to inform where we go from here. The cost of raising children has been mentioned a couple of times today. I cannot get anyone to tell me objectively what the cost is and what the formula is based on. Do you have any evidence or submissions? You can take it on notice. If you can tell me on what basis the cost of raising a child has been predicated in this formula, I would be interested.

Ms Bailey—All I know is that, on a personal level, I have no money left at the end of my pay period, so the cost of raising a child is significant. DVIRC did not address the issue of child support in its submission because it is not an issue we have direct involvement with.

Ms GEORGE—I could not resist, because it has been raised a couple of times. You talk about the need to explore the possibilities of shared parenting within the existing framework of law. Is there a case that could be argued that the law was predicated on times past that are changing in terms of the primary caregiver role? Maybe that law needs to kind of keep pace with modern developments. Secondly, you say that the shared parenting should be explored further, but we have been told recently by the Family Court that very few parenting plans exist. How could we better do it if they are not working now? When we talk about shared parenting, do we need to move away from the traditional assumption of mum at home full time with the children?

Ms Bailey—I wish it were the case that it was appropriate to move away from that at this point, but current data suggest that in fact women still do the bulk of parenting. When I talk about social reform what I would be interested in are measures that are not legislative to promote shared parenting—things like flexible work practices and maternity and paternity leave. For families that have not had shared parenting prior to separation, I cannot imagine how difficult moving to a position of having to have equal parenting would be for fathers, who often do not

have flexible work practices. Anthony might want to talk a little about social reform in relation to men.

Mr Kelly—We are at a stage at the moment where that social reform is happening. There is greater awareness. There are greater supports and programs available for men as parents. That certainly needs to be encouraged. It seems to be really early days yet. It is only in the last 10 years that this sort of awareness has been growing and certainly only in the last few years have we seen more and more government support.

Mrs IRWIN—How does your organisation deal with allegations of violence or abuse in assisting separating families to make arrangements for care or contact of the said child or children?

Ms Bailey—The domestic violence centre does not do direct service provision any longer. We used to have a telephone service similar to WIRE where we would provide support and referral to women.

Mrs IRWIN—Because funding has stopped for that?

Ms Bailey—During the Kennett era funding was stopped. So most women who are experiencing domestic violence would either call WIRE or refuge referrals. Can you repeat the bit about what we would advocate?

Mrs IRWIN—I want to know how your organisation deals with allegations of violence or abuse when assisting separated families to make arrangements for care and contact.

Ms Bailey—Although we do not directly deal with women, we are very concerned about how allegations of violence are dealt with within the community. In the presentation that I just gave I mentioned that one of the key problems is a lack of coordination between services, between the Department of Human Services, the Family Court, and child protection. Our concerns would be that in fact where women allege abuse either against children or themselves there is often a real lag between the allegations and some kind of final decision and that could go on for years. Articles in the *Age* this week have talked about problems with Child Protection taking a long time to adequately deal with them. Again, we think those things need to be really tightened up, because the longer time period that elapses the more at risk children are.

Mr PRICE—In relation to domestic violence, I agree there is a lack of coordination. I am pleased that in my electorate we are about to launch a program to address it going over a number of years. In terms of the reporting of domestic violence in Victoria, I think the figures have been increasing, have they not?

Ms Bailey—Yes. In the information that I have given you all there are, I think, the most current statistics from a range of different surveys on what the incidences of violence are believed to be. The point to make about those statistics is that by any measure they are seen to be vastly underreported because most women do not report violence.

CHAIR—We appreciate your coming in this morning.

Resolved (on motion by **Mr Quick**):

That submissions Nos 260 and 843 from the Domestic Violence and Incest Resource Centre and from No to Violence, The Male Family Violence Prevention Association are accepted as evidence and authorised for publication as part of the inquiry.

[9.52 a.m.]

WITNESS 1, (Private capacity)

CHAIR—I welcome you this morning. The evidence that you give at this public hearing is considered to be part of the proceedings of parliament. I therefore remind you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. I remind you that the comments you make are on the public record. You should be cautious in what you say to ensure that you do not identify individuals and that you do not refer to cases before the court. I would ask that you consider whether you still wish to give your evidence in public or whether you would prefer to move in camera?

Witness 1—There is a court case that is current at the moment. I am not sure how that would affect my submission.

CHAIR—I think you need to give evidence in camera—in a closed hearing. I might take the next individual's evidence and then perhaps we can move to in camera afterwards. Is that all right with you?

Witness 1—Yes, that is okay.

Mrs IRWIN—Were you actually going to discuss the court case? I noticed the submission we have before us is mainly to do with the Child Support Agency?

Witness 1—Yes, it is, but in one of the matters it is hard to uncouple the two. That is the only issue.

CHAIR—I am not prepared to muddy the waters for you, so in the interests of fairness we should not make anything difficult for you or for anyone else. Thank you.

[9.54 a.m.]

WITNESS 2, (Private capacity)

CHAIR—The evidence that you give at the hearing is considered to be part of the proceedings of parliament. I therefore remind you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. I remind you that the comments you make are on the public record. You should be cautious in what you say to ensure that you do not identify individuals and do not refer to cases before the courts. In the interests of these issues, is there a likelihood that you might like to reconsider and move into confidential?

Witness 2—No, I am happy to—

CHAIR—So there is nothing in your presentation this morning that would be referring to anything in the courts?

Witness 2—No.

CHAIR—Thank you. Would like to give a short statement and then I will open to questions from the committee.

Witness 2—I appear as a dad and parent. I commend the committee on investigating such a difficult issue. There is a lot of emotion around separation, as we all know. It is a distressing time for both parties. Quite often people bring in reasons for fault, which do not necessarily, in my belief, constitute anything to do with arrangements afterwards for children and access. The reason I put forward a submission is that I am quite concerned that when people are emotional, upset, depressed and stressed, when they are separating, for a parent to be given, by default, a large amount of time with their children, quite often leads them to use that as a baseball bat on the other parent. That is a very distressing thing to happen. That is not in the best interests of children. It has been happening for a long time. I know it happened to me. I was able over time to get some great time with my child. We have a great relationship. I think it would have been very simple and smooth had I been given a default of 50 per cent.

Working conditions are changing. I know in my circumstances I worked from home so it was even easier. Nonetheless, more women, for example, are working, which is for the benefit of their family, and I think a lot more men are being involved, which again is also, in my belief, to the benefit of their children. As a result, I think it is good to look at a default shared care arrangement. The problem that fixes is that it takes away the power that a parent has to use against the other in a despicable way and that is a very good thing. I think grandparents do need to be given some potentially default access.

You were talking before about how children could be transferred in situations that are not amicable. My situation is not amicable. It has not been for a year, but it works very well. I have good clear orders and the transfers, in my case, are at the school of my daughter. So she is transferred on a school day. My ex-partner will drop her off and I will pick her up. So we do not have to have detailed or involved contact. As a result that works very well. We both still have the

best interests of our daughter at heart. But it is very easy to be coerced when you are stressed and upset into going down a legal path that is detrimental to any future relationship or anything from that point on.

In my environment, I have realised now that to have five days in my case of time with my daughter is extremely unusual in a shared care environment. It is extremely unusual. I cannot believe that, because to me it works fantastically. It is in the best interests of my daughter because she gets time with both parents. She settles in very well. There is less contact. There is less friction, if you like. We do not have any issues. If there were, we could have grandparents who are more than happy to take time with their granddaughter in terms of transfer and things like that. It is very distressing to see some parents having very limited time with their children. The grandparents really get very little at all, either, because they are reluctant to take time with their grandchild away from their own son or daughter.

Mr CAMERON THOMPSON—I am interested in what you had to say about the difference between whether someone cares for the children or are out earning money, whether that negates their ability to be a caring parent. You were someone who was earning before and now do much more caring. In terms of your ability to be a caring parent, do you think the fact that you were an earner before makes you less of a caring parent? What is your view?

Witness 2—I was an earner and a carer before and I am an earner and a carer now. I am more than happy to be involved as much as possible, before and after separation. I know I put that in my submission. I think it would be good to work out this type of arrangement based on potential flexibility. A lot of people tend to think of shared care, for example, in that if you worked before a lot you really cannot care for your child. In my belief many people work harder prior to separation such that they try to fix issues, financial as well, but then that works against them once they separate. That can work against them because they now work harder and all of a sudden they are a hardworking parent who really does not get involved with their children—that may not be the case. In my case I work from home. It was not an issue. I put it in the submission because I see it a lot.

It is a time of change for families. It is a time of change for children. It is a time of change for the parents who are separating. I do not see that there is much to add to that change other than saying, 'Talk to your employer. Try to obtain some flexibility. Talk to close and involved family and friends and obtain a routine and a schedule for your children.' It is a time of change, so making changes in that respect I think are quite reasonable as well.

Mrs IRWIN—You were stating that you have your daughter for five days. Is it five days on and five days off?

Witness 2—It is five days per fortnight; five days and nights, which is not shared care. It is classified as shared care under the law. To me to have such a block of time in a row—not a night here and a night there—makes the biggest difference. I can get involved with her school, with her friends, with her teachers and with what is going on—dropping her off at school, picking her up from school. Doing that with your child means everything to a child. It is routine. You are involved in their day-to-day life as opposed to being just a weekend parent. Although you can provide a lot in a weekend, you can provide a lot more when you can be involved and grandparents and others and family and friends can be involved with school.

Mrs IRWIN—How does it affect your daughter? I am not sure how old she is, but how does it affect her when she leaves dad and then goes back to mum or vice versa? Do you have any comments?

Witness 2—She actually likes it. She likes that she has two houses and two beds. She has two homes and two of pretty much everything. She is only six, so she is immature in that way. But she does like it. She is very happy. When people are emotional and upset and everything else, they do need to think about their children first obviously.

Mrs IRWIN—So she does feel that she has two homes?

Witness 2—Yes.

Mrs IRWIN—The reason I ask this is that in one of the submissions we received it was stated that a young child—I think the child was about 14 or 15 now—loved mum and loved dad with shared care but never knew where her home was.

Witness 2—From what I have read and heard in the last year—and I am fresh out of the system; I have been through this system within the last year. It was not eight years ago or anything like that. I can tell you how the system works in some parts today and maybe has some challenges today as well. I seen and have read where children thrive in such an environment as well. I would not suggest that such an arrangement is negative. What is the alternative? To have a home where you spend only two days? From my point of view, surely a child sleeping at your house for them is reassuring and for them is part of the day-to-day routine. They get up and who do they see? That parent. It is all about being involved. Most of the people who I have talked to, those who are older as well, tend to say that it is about time. You do not necessarily even have to be totally involved all of the time. Kids just love the fact that you are there sometimes. But of course being part of the routine makes it even more beneficial.

Mrs IRWIN—Was this a decision by the court or was it through mediation with your ex-partner that you actually could sit down and say, 'Our child is No. 1 priority'?

Witness 2—No, it was not through mediation. Unfortunately, it is not possible in my situation to be conversant for many reasons. In my case, I would argue with the figure mentioned before in that five per cent go to court. I mean, 95 per cent are not successful and are not agreeable even. Many people drop their cases prior to going to court because it just takes too long. That can impact children in a massive way. In my case, I basically paid for more time.

Mrs IRWIN—So how long did it take you did you say?

Witness 2—Three months. It was very quick because I was able to pay for more time, and I am very happy with that. It is not a good situation. It is sort of terrible in a way, but I will reap the benefits for the next 13 years.

Ms GEORGE—Exploring the possibilities of non-legal solutions, you say that in your situation the degree of tension would have prevented any mediation. Do you say that categorically, or can you envisage that with outside assistance you might have been able to come to a workable arrangement?

Witness 2—You are married to somebody. You have loved them, whether you want to believe that or not anymore. At some stage you were amicable and you were very close. Post separation people still should be able to come back to a point where the children are the focus. I told my partner that regardless of how much I ever disliked her I would always love my daughter more. That is really all that matters. I think that in a situation where someone is given full or very high access by default—

Ms GEORGE—No, what I am saying is that before we get to any settlement, if there is a process of mediation before the arbiter, whoever that might be, decides what occurs.

Witness 2—I would have loved to go to counselling or some sort of agreement where there is practical and realistic means with which to proceed. I did not have that.

Ms GEORGE—You did not have that option?

Witness 2—I actually called the courts. I called my solicitor. I called a counsellor. I wanted someone to be involved with both of us. At the time we were talking. If someone could have got involved at that stage, it would have been fantastic. But by law, apparently, a solicitor cannot represent both parties at the same time.

CHAIR—So do you think that there would be value in having a process that was able to provide these skills and these possibilities for you prior to going to a solicitor, prior to going to any court—that is, you have an intermediary assessor and before you go to a solicitor it is compulsory that you must go to this particular place that enables you to try to work out a sensible resolution?

Witness 2—It cannot hurt, can it? It cannot hurt. What is the issue there with a reportable counselling type session where it may be presented to the court as part of negotiation in access time and things like that? Of course we are not talking about situations, I do not think at the moment, in terms of violence or sexual abuse or anything like that. Where that is provable, there has to be some safety valves but not such that they can be loopholes.

CHAIR—It has been indicated to me that family law lawyers or solicitors always refer off to agencies for mediation or more counselling services. Do you believe that that is the case, that all solicitors refer off to some area of mediation and counselling prior to getting involved in the litigious system?

Witness 2—In my example, no. I went and sought that myself, though. It would have been good to have some deep information given. To go further than that, I actually booked into a counselling session with my ex-wife and when I got there they said, 'You can't do that. I'm sorry if you were misled, but we can't see two people at once. In a referral type situation we have a client and that's it. We do not have two clients.' All I wanted was a room—

CHAIR—A place for two people to sit down and go through the process.

Witness 2—Yes, a place for two people to sit down with a big calendar, with your finances if possible, and go through the whole situation, the potential scenarios and what does and does not

work for children—that is, possible changeovers, grandparent time and all that type of information could all be worked out.

Mr CAMERON THOMPSON—I am interested in the extent to which this is amicable. You say that you are talking there at times, yet you describe it as being non-amicable. You have this intervention order against your wife. What is the basis—

CHAIR—I do not think you should be asking the basis of the intervention order.

Mr CAMERON THOMPSON—Leave that aside, then. I am trying to find out to what extent that relationship has deteriorated over time.

Witness 2—When you first separate, quite often parents will talk and will try to seek solutions. People are upset, as I said before, but there are still ways forward. In my particular circumstances it reached a point where, in my belief, she did seek legal counsel, unfortunately saw three different legal practitioners and was given advice relating to finances and the material aspects of separation that do not necessarily take into consideration the best interests of children. I cannot imagine someone saying, 'You can get up to 70 per cent.' But what about amicability? What about the relationship with children? What about the time? When it is law, it is law. We are talking about finances and specifics.

Mrs IRWIN—In your submission you mention grandparents. I am not even a grandparent yet, as I think I have mentioned two or three times today. You state that your parents have been refused access by your ex-wife for no reason, but I gather that they do see your daughter on the five days that you have her.

Witness 2—Yes.

Mrs IRWIN—You state in your submission that your No. 1 concern is that if anything ever happened to you they would never see their loved grand-daughter again.

Witness 2—They may not. That is right.

Mrs IRWIN—Then you went on to say that you believed that there should be some additional routes that grandparents could take if they felt the need and they wished to see a grandchild. What routes would you like to see taken?

Witness 2—I would like to see a default—as in the 50 per cent—even if it was one day a month or one day a fortnight, particularly sleep-overs. I am quite big on sleep-over time because kids, in my belief, love that. There should be a day a month or something by default where you do not have to necessarily go through long-winded, very costly, prohibitive legal routes. In my case I have five days. My daughter's grandparents see her very often and the relationship is fantastic. My daughter benefits in a huge way. If I only had her every second weekend it would be very difficult.

Mrs IRWIN—But your concern is that if anything happened to you they might not have that opportunity?

Witness 2—Yes.

Mrs IRWIN—I know that some grandparents have gone to court, but a lot of them have pulled back because of the additional cost.

Witness 2—I think it is very distressing that grandparents may have to go to court and follow such a process just to get some time with their grandchildren. That can be from their own children not providing access as well. I have heard stories along those lines, too.

CHAIR—Tony, thank you very much for coming in this morning. It has been most enlightening. Thank you for taking the time to come in as an individual. We certainly appreciate your positive attitude towards this inquiry. We indeed thank you.

[10.15 a.m.]

WITNESS 3, (Private capacity)

CHAIR—Thank you for coming in this morning. The evidence that you give at this public hearing is considered to be part of the proceedings of parliament. I therefore remind you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. I remind you that the comments you make are on the public record. You should be cautious in what you say to ensure that you do not identify individuals and do not refer to cases before the courts. In the interests of these issues, is there a likelihood that you might like to move in camera?

Witness 3—No.

CHAIR—Is there anything in your presentation this morning that would be referring to anything in the courts?

Witness 3—I do not have any matters before the courts.

CHAIR—Thank you. If you would like to make a short opening statement, we will then proceed to questions.

Witness 3—I am appearing as a private citizen and as a concerned non-resident father. I appear before you today as an ordinary Joe, as a father of a wonderful 10-year-old son and as a man who carries with him all of the hopes and dreams that accompany parenthood. Sadly, my expectation of occupying a meaningful place in my son's life has been shattered by the outcome imposed upon my son and me by the Family Court. The normal order of the court whereby a non-resident parent is afforded two days contact with their children out of every 14 offers meagre opportunities for that parent to fulfil their crucial role in ensuring that their children develop as happy, healthy and confident members of the community. The unique and valuable contribution of grandparents, extended family, friends and significant others also falls victim to the court's normal order. Obviously, it is the group of people surrounding the non-resident parent of whom the children are largely deprived the benefit.

The precedent in the Family Court that the resident parent has primacy all too often results in a situation where that parent can dominate aspects of the lives of other family members, often for base motives. Absolute power corrupts absolutely, as they say, and the Family Court seems too ready to vest almost absolute power in the hands of just one of the parents. In producing the outcomes that it does, the court frequently cites the need to reduce the deleterious effects of conflict upon children. Whilst not denying the negative impact of that conflict, I believe the court is wrong-headed in its approach, because it can encourage some parents to create an environment of conflict in order to secure an outcome favourable to them. The court is thereby fuelling conflict, not lessening it, and this is the fatal flaw in its philosophy.

In my submission I drew attention to the Family Law Pathways Advisory Group. They have acknowledged at page ES2 of their report that 'maintaining nurturing relationships between

children and parents, even after separation, is known to be good for the children's wellbeing'. I also mention in my written submission that this fact has been affirmed to me by a memorable comment that my son once made to me that 'I don't care what we do, Dad, so long as we do it together.'

Subsection 60B(2)(a) of the Family Law Act envisages that children have the right to know and be cared for by both their parents. All too often the Family Court does not appear to fully embrace these concepts that I have just mentioned and this is the principal reason that a rebuttable presumption of shared parenting needs to be adopted in family law.

The operation of the child support scheme also impedes the ability of non-resident parents to re-establish their lives after separation and to provide for their children whilst they are in that parent's care. The prospect of a resident parent owning a large chunk of a paying parent's income particularly for higher income earners is likely to provide a disincentive for payee parents to work towards an arrangement that maximises the participation of both parents in their children's lives.

In my written submission I have suggested some characteristics of a fairer child support scheme, including that the formula should be based on the true basic costs of the children, their lifestyle; that contributions beyond the basic costs should be voluntary; that the payer's contribution should be weighted in accordance with the payer's proportion of the income pool of both parents, which I think is consistent with subsection 4(2)(a) of the child support act; that the payer's contribution should be pro rata the fraction of their time with the children to enable paying parents to adequately meet the costs of contact with their children; and that non-agency payments should be credited against the payer's liability at a rate of 100 per cent so that the paying parent can participate in the joy of providing for their children and be seen by the children to be providing for them.

The Australian of the Year, Professor Fiona Stanley, recently sounded ominous warnings of the emergence of a 'toxic society' in relation to children's health. I suggest that her comments can be extended to the problem of family breakdown as well. The opportunity seems to lie before us now to reduce the toxicity that has been blooming for too long in family law. What message are we sending to our children as they embark upon their journey into adulthood when they have to witness the relegation of one of their much-loved parents to the sidelines? Surely we can do better than that for our children? When I held up the newspaper headlines that announced the inquiry into the presumption of shared parenting, my son lit up like a Christmas tree. It has given both of us renewed hope that we may possibly have more and better opportunities to cement our father-son relationship.

For the sake of the children, I strongly urge this inquiry to recommend to the federal parliament that a rebuttable presumption of shared parenting be adopted in family law. I am very grateful for the opportunity to speak to you today and wish you well with the inquiry.

Mr CAMERON THOMPSON—You have a fairly strong statement in your submission saying that without a presumption of shared parenting there are two losers and that this can perhaps produce three slightly less enthusiastic but modified winners. Why do you think this would have that effect? One of the issues that came up earlier was whether or not someone who has been the caring parent as opposed to the earning parent would not be more appropriate as the

location for care? Can you perhaps just discuss those issues and tell me why you think there are only three winners out of this? Surely if there is a relationship between the caring parent and the child, would that not have been reduced to some extent?

Witness 3—I do not want to be seen as the paying and earning parent. I think that both parents should be given the opportunity to provide for their children and thus be the earning parent and also be the caring parent. I am desperate to have more of a role in the caring side of the equation and I am particularly offended by this concept of a primary carer. It has never sat well with me. I do not see that we should be put in boxes, as it were; that one parent should be encouraged to have more of the responsibility for the hands-on care of the child. That certainly is consistent with what my son has said right from a very early stage, that he craves and aches for both of us to look after him, but that has been frustrated to no end in my case.

CHAIR—Mr Quick?

Mr QUICK—Concerning the costs of rearing children, you mentioned basic costs, lifestyle and the income of both parents. We have a fixed percentage and in lots of cases it bears no relationship to second and third marriages and potential income from the new partners. For example, the new partner might be rich enough to give the kid a horse and agist it and have riding lessons, and there is an expectation that as a shared parent you have got to kick in for some of the costs as well. How would you see us simplifying this costing rather than just having it in percentage terms and having no relationship to what is going to happen later? You mention that people relocate to other states and the like. The cost of your involvement with your son for those two days might mean you have to get a plane fare to Tasmania or Queensland, and that is not factored in?

Witness 3—Possibly I have not factored that in. I think the imperative is to ensure that the basic costs of the children are met. My understanding of the child support scheme—I am not really an expert in this—is that when it was conceived it was factored in that there should be a transference of lifestyle.

Mr PRICE—The standard should be maintained?

Witness 3—Yes. I support that concept in principle, but I cannot see why the paying parent cannot be given the opportunity to do that voluntarily. There are problems when the formula results in a large amount of a paying parent's income being transferred to that parent and the paying parent seems to have little influence over how their hard-earned money is spent. Speaking personally, if I can identify ways of making voluntary payments that are going to benefit my child—as opposed to not having influence in it being spent by my former partner on things perhaps not so important to my child—I think that is the way to go.

Mrs IRWIN—You state that you have a 10-year-old son and you see him two days per fortnight. I saw your submission only this morning so I have gone through it only briefly. Your ex-partner relocated 100 kilometres. You then relocated to be close to your child. How old was the child at separation, if you do not mind me asking?

Witness 3—Three and a half.

Mrs IRWIN—You have also stated in your submission that he has expressed an interest to live with you more—not all of the time but more than two days per fortnight. I also note in your submission that it was a Family Court counsellor who said that you had put that into his mind. What sort of counselling did your son get? Was it only one counsellor? Do you feel that the process was wrong and that it should have been a better process? If so, what would you like to see happen?

Witness 3—I am very critical of the Family Court counselling service in respect of the process that was used most recently to produce a family report. There seems to be some inconsistency in the counselling because in a matter several years prior to that we had a Family Court counsellor who was, I believe, excellent—very committed and took a lot of time. In a subsequent matter we had a person who was quite obviously disinterested. It was just before Easter and I got the impression that he wanted to go home early. Then in the third experience the counselling that was arranged by the Family Court was for the purpose of making a family report. I am, I would have to say, disgusted at the way that took place. It was a very selective report that was produced. It ignored large, prominent parts of my response to the mother's application that was brought before the court. So there is a lot of inconsistency in the counselling. It was particularly bad when the family report was made. That was pivotal in the outcome. The trial judge placed a lot of emphasis on that family report and I was very disappointed at the selective nature of that report.

Ms GEORGE—I have read some of the difficulties you have outlined in your submission. You say that you moved to be closer to your child and one of the reasons you wanted to extend your contact hours was so that at least you could get to know the local teacher because your child had been derided by his friends and not having a real dad. I empathise with that because I think that does happen to lots of kids. What was the reason for the court rejecting what on the surface appears to be a very reasonable request? Was there any other argument there that you have not put in your submission?

Witness 3—In a nutshell, the relationship with the mother of my child has totally broken down. The communication has totally broken down. It is her way or the high way—she is recalcitrant.

Ms GEORGE—I guess what I am asking is: what reason were you given to deny your ability to drop the child at school on the Monday morning, to get to know the teacher, instead of returning him on the Sunday night? What reason were you provided for not having that request met?

Witness 3—In a nutshell, it was the perceived conflict between us. In respect of the schooling, there was an unfortunate incident where I made a complaint against the school—it is a Catholic school—

CHAIR—I think you need to be mindful of the evidence you are giving with respect to identification for your child's benefit.

Witness 3—Yes.

CHAIR—If I could ask you to absolutely rephrase. Perhaps the committee could be mindful of that as well.

Witness 3—I am trying to answer in general terms. There are problems in the relationship between me and that particular school.

Ms GEORGE—So there were other factors that you have not necessarily outlined. On the face of it, I would think that is a terrible thing for the Family Court to do in terms of the principles they are supposed to operate under.

Witness 3—I was staggered.

Ms GEORGE—I am just asking whether there were other extenuating circumstances. Also, you say in your submission:

Self-serving feminist doctrine appears to maintain an undue influence in Family Law research, Family Court counselling and 'community' legal services.

That is a very sweeping generalisation. Can you tell me why you felt that you needed to come to that kind of sweeping conclusion?

Witness 3—A lot of that statement is based on circumstantial evidence and third party evidence although I have personal experience, particularly in respect of the community legal centre that I accessed. I was seen by two ladies who seemed to be totally dedicated to dissuading me from taking a contravention matter to the courts and kept on suggesting to me that I should negotiate with the mother. They seemed totally disinterested in the fact that there was no hope of any sort of negotiation with the mother taking place. One of these ladies was identified as an accredited family law specialist. She gave me a piece of information in regard to the service of documents which was wrong and which, if I had not picked it up at the 11th hour, could have potentially scuttled my application. I believe that they were not interested in genuinely listening to the issues that were concerning me and were interested in stopping me from doing what I thought was a very important thing to do.

Ms GEORGE—So you are extrapolating and generalising from one personal experience that you have been involved in?

Witness 3—I have also been interested in the family law situation in general. I have been discussing matters via the Internet and I have seen lots of bodies of research come across—

Ms GEORGE—What you say is commonly said, and I am just wondering what substantiates that view.

Witness 3—The tender years doctrine, as I understand it—I believe that is an old body of research—was far reaching in terms of underpinning a lot of the assumptions, particularly the early assumptions, of family law. I understand that subsequent peer review of that research has discredited that information. There has also been a persistent suggestion that there was impropriety in the construction of that tender years doctrine. I am not an expert on this, but that is the impression.

Mr PRICE—Did you self-represent?

Witness 3—Yes, I did.

Mr PRICE—Do you think the weight of the child support scheme and family law encourages people to arrive at satisfactory arrangements amongst themselves in the best interests of their children?

Witness 3—I am pleased that I think in every case there has been court directed counselling. I think they attempt to do that. Also possibly counselling could benefit from being independent of the court.

Mr PRICE—In Western Australia—it used to be the case; I think it still is—family law counsellors are not part of the court. They are actually employees of the relevant state department. If that were the case—that is, that the Family Court just managed the legal process and the counsellors were provided from relevant state departments—would that give you greater confidence in the counselling being provided and relied upon by the court?

Witness 3—Based on my recent experience with that family report where large and important parts of my submission were totally ignored, I think that lends weight to the fact that, yes, it would be a good development for counselling to be independent of the court. I got the distinct impression that a preordained outcome was being fit to my situation by that counsellor who made that report.

Mr PRICE—Would counselling be far better whilst there is still blood in the relationship rather than the Commonwealth pouring all the money in when the relationship is dead and over?

Witness 3—As a matter of fact, the mother of my child and I did, prior to separation, on our own undertaking, go and see a private marriage counsellor. Unfortunately, he told us at the time that he could not see us the next week because he was going away to get married. He was fairly young and inexperienced. So we attempted to do that.

Mr PRICE—Did you see a counsellor in the end?

Witness 3—Yes, we did.

Mr PRICE—Who was that counsellor?

Witness 3—It was a private counsellor in that instance prior to the separation.

Mr PRICE—Yes, but it is the one you talked about?

Witness 3—No. The ones I have been referring to were Family Court counsellors.

Mr PRICE—I understand that, but you saw a counsellor prior to the marriage ending?

Witness 3—Yes.

Mr PRICE—And was it that young person that you referred to?

Witness 3—Yes.

CHAIR—Thank you for appearing before the committee this morning. We really appreciate your patience. Thank you for your attendance.

Witness 3—Thank you.

CHAIR—I indicate to the people in the audience that we have to take the in camera or confidential evidence prior to having the opening statements because the gentleman who is concerned with the in camera evidence needs to leave to catch another appointment. Unfortunately, I have to ask you to take go outside and we will call you back in as soon as we have finished with that.

Evidence was then taken in camera, but later resumed in public—

[11.03 a.m.]

CHAIR—We welcome everyone today to the community statements segment. Each person will be allowed around three minutes. We would like to give as many people as possible the opportunity to speak. I remind you that the comments that you make are on the public record and that you should be cautious in what you say to ensure that you do not identify individuals and you do not refer to cases before the court. I now invite individuals to move forward and make your statement. Is there anyone who would like to make comments?

Anna—My name is Anna. I am a family law barrister. I am also a separated mother of three children. I have a couple of matters that need clarification for the committee. The child representative is not a representative of the court, it is an independently appointed solicitor whose role is to act in the best interests of the child. The age 12 is a myth; there is no magic age. That is all set out in case law and the Family Law Act. The cost of children is firmly set out in the Lee and Lovering Scales—the costs of transport, accommodation, health and all those issues, which do not seem to be taken into account with the child support assessment formula. Perhaps the old system needs to be revisited. But I think what has changed since the old system is an understanding of the quantum of maintenance that is needed.

A distinction needs to be drawn between the words 'shared parenting' and 'shared residence'. Shared residence does not necessarily mean shared parenting. What you will have is probably disputes over time rather than the roles of each parent in the bringing up of their children. Parenting plans are not used because they are cumbersome. Consent order process is generally used.

On the question of counselling before court, the Family Court did offer that but realigned its resources to accommodate more the report in court process. In fact, in relation to the gentleman who was the last speaker, the adversarial process then would assist in getting to the bottom of any problems with the content of a family report. There are many external organisations now offering counselling and mediation which can be accessed prior to any filing. It is a matter of educating the people as to where they can go for that.

As to the comment that solicitors and barristers cannot act for both people, they cannot, but they can certainly make themselves available as mediators to assist in the resolution of disputes. I am actually a mediator as well and do mediate both property and children's matters between separating couples.

I will talk a little bit my personal situation. I do have a shared residence arrangement. We do have equal time. But the basis of our shared parenting befits the nature of our jobs. I am able to work very hard in the week I do not have the children and then devote my sharing and parenting role to the children to a very high degree in the weeks that I do have them. Not many jobs allow you to do that. Things have got to be considered in relation to the practicalities of shared residence.

I have a certain socioeconomic status. My children have two sets of school uniforms and two sets of casual clothes. We do not have the trauma of packing up the car with everyone's bags.

The changeover for my children is extremely clean cut and it does not look like we are shifting house. It is about going to 'our other home'.

I think it should be noted also that a lot of men do take on a primary caring role. Do not forget them in the equation as well. A rebuttable presumption of—this may sound extreme—of shared time is someone coming to court and saying, 'I want to rebut the presumption because I don't want to have the children, I can't have the children. I'm a high income earner. I have always worked very hard. I don't want residence with my children on equal time as my wife.' That is probably a bizarre situation, but bear in mind that a lot of people, a lot of men and a lot of women, do not necessarily want their children for half the time. I could go further, but I know other people want to speak.

CHAIR—Thank you very much for that.

Kerry—My name is Kerry. I am here in my capacity as an individual, but I also have practised as a family law solicitor for almost 15 years. I just wanted to make a couple of comments. The Family Law Act underwent major reform in 1996. However, I find it interesting that that information has certainly not gone on to the community. There is a lack of knowledge. Our Prime Minister himself still uses the term 'custody', as does the media. The essence of those reforms, if they were properly applied, both with community education and out there in the community, would address a large number of the problems that the committee is concerning itself with in this inquiry. I certainly have looked at the Family Law Pathways Advisory Group report, and I feel that a large number of those recommendations are still not happening. I also feel there are a lot of myths out in the community, some of which we have heard about again this morning, and a lot of misconceptions about the realities involved in the family law and the Family Court process.

I understand the frustrations of many people in the court system, and I have long felt that it is very unfair, particularly to fathers of children, and I have represented both men and women in the Family Court and the Federal Magistrates Service. I think that the committee has to remember that every family is different and that children's lives are very different. You have to consider that many children are born out of a relationship these days. Children are born as a result of a casual relationship and may be estranged from their other parent. This concept does not take into account the many complex situations into which children are born in today's society. At the same time, using the section 60B factors, there is a lot of scope for a relationship, if it is wished to be had, to be introduced and maintained with another person important to a child's life.

Another thought that I had was, rather than a presumption of equal residence or shared time, perhaps along the lines of a presumption of no fault divorce the committee may wish to consider a presumption of no fault parenting. The basis of that presumption is that what I feel is being responded to is the frustration of many in having what they see as a fair amount of time with their child. My theory on the presumption of no fault parenting is simply that if a state welfare department does not see fit to intervene, the police do not intervene or there are not significant issues of concern around the care of children, each parent or each party seeking time with that child, if they wanted to have a dispute, could dispute the status quo and how arrangement have existed prior to separation or could dispute how arrangements are going to move forward in the future.

I would hate to see a system where fault is introduced or highlighted in family law matters and the best interests of children are moved away from. I think that has to be retained and introducing a concept or a presumption of equal time or shared residence would open the floodgates to create more conflict and more complexities for people in the system. However, a concept of no fault parenting would allow people to feel equal in their power over arrangements for children and allow them to negotiate on what they may feel is fairer ground in relation to children's arrangements. It is well known that minimising conflict in family breakdown or family dispute is the aim of any change and that should be promoted.

On a lighter note, I am in a situation where my husband is the primary carer of our five-year-old and four-month-old baby. When things have been rough in my marriage, I have been more than aware of the situation that I have put myself into as far as I would hate to be in a situation where I was reduced to seeing my children two days out of 14 because I have taken that responsibility for financially supporting my family. My husband can parent just as well as I can, if not better. Hopefully we will not ever separate, but I am sure that if we do we would work something out where I spend as much time with my children as I do now and it would not be two days a fortnight.

CHAIR—Thank you very much.

Lynette—Hello. My name is Lynette. I have driven two hours and taken a day off work to get here. I was one of the persons who was going to be asked for you to contact me, but because I do not have a phone and I live in the bush I did not get back in time. I have an experience I would like to share. It is regarding contact arrangements after separation, but this has been going on for around eight years. I separated and lived under the one roof with my then husband and I registered as a sole parent with Centrelink. I separated and lived under the same roof as I could not afford to leave the family home. I had been to court to try to remove my husband due to violence within the marriage, but this was unsuccessful. The magistrate told my husband to stop his behaviour and gave me the option to stay within the marriage or go and live in a women's refuge.

I chose to stay in the marriage to have a roof over my head and I did not want to be homeless with a two-and-a half-year-old. I am very fortunate that I work. I am actually a registered nurse and I negotiated at the time with my bank manager to secure a very small loan to get a unit which I rented out until I could separate from my husband. During the separation while living under the same roof as my husband I had difficulties with child care and work because I could not get the support I needed to leave, and it did take 12 months before I could actually leave the home and live in my unit. Once I did move, I found there was no support or available child-care places, so I could only work part time. I also attempted to negotiate access visits for my child and went to court in 1999 to finalise the orders.

This was done, but my ex-husband did not adhere to these orders and I found it difficult to further my career as I was constantly being left in the lurch with child-care problems: he did not turn up for access so I could not work or when I would finish work to try to pick up my son he did not turn up or he would turn up early so I could not go to work, leaving me to look after my child. I found the process of this erratic behaviour very frustrating and also frightening, because when he refused to hand over my son or just did not turn up the police would not give me any assistance as it was a Federal Court matter. I did not have the funds at the time to go to court and

charge him with breach of orders because I worked shiftwork and I had a mortgage. I find it very difficult with my career to take promotions offered because of the lack of child-care facilities outside of business hours, including overnight care if I have to do night duty. My ex-husband's consistent breach of court orders leaves me unable to secure set permanent working arrangements. Having to attend social activities for my son—Cubs, swimming lessons, basketball games, soccer—means that I cannot take extra responsibility at work and this therefore effectively stops me from gaining a higher position.

As to the cost of child care, if you are on a pension it is cheaper because you get assistance. If you do not get a lot of assistance, it can be expensive. An example would be child care after school hours costs around $27 a day or $135 a week. If you take home $500 a week, that only leaves $365 to pay the mortgage, bills, food and petrol. It is not really a lot. I went back to court in 2001 to change orders because I moved to the country. I have moved three times and changed my name because of the fear of violence. Orders for contact were changed and again my ex-husband still did not adhere to these consistently—that is, not returning my son after access visits. Again, the police did not assist and he has done this just last weekend.

My career has suffered as I have not been able to accept promotions again due to my child's school hours and lack of child care. I live in the bush. There is just no before school care whatsoever and if I have to start on duty at seven or 7.30 I cannot work. There is no way. There is a 12-month wait for after-school care and there are only limited places. External activities and the—it has just been very difficult. I have not been able to afford time or money to take my ex-husband to court to charge him. The process is very drawn out and frustrating and I did not want it to have a negative impact on my child with both parents constantly going to court. I have had to, though, go to court and amend orders as my son is now nearly 10 and wants to reduce contact as he cannot attend sport on weekends as his father is unwilling to take him to these events. We live—

CHAIR—I think you should not be suggesting where you live for your own safety. Also, could you please wind up as soon as you can.

Lynette—That is fine.

Mrs IRWIN—We could actually take the rest of the statement—

CHAIR—I could take that for you and we could—

Lynette—I have submitted it.

CHAIR—Okay. Thank you very much.

Barry—Good morning. My name is Barry. I am a father who has been separated from my son's mother for the last six years which, after numerous applications through the Family Court—there would have to have been at least five or six with their variations or interim orders—means that I am one of those five per cent outcomes that have been ordered through the Family Court. I think there is a bit of confusion around the five per cent. I presently have court orders for contact each second weekend, which is from the Friday afternoon to the Monday morning, back to school, and half the school hours and four hours each second Tuesday with my

son. At present the resumption of care arrangements for children of newly separated parents where there is no agreement is that the father will get only each second weekend or maybe only part of it, even if an application is processed through the time consuming and expensive courts.

I am a typical example of how the system has been operating for far too long. Personally I have witnessed and resemble what this process creates for families involved and the community in general. The children, in particular young boys—and it is well documented—are not getting sufficient male role modelling or bonding whether from the father or even the father's extended family such as uncles, grandparents, cousins and other long-term male role models. How can these brief periods of contact adequately establish and maintain important relationships? This is why I certainly support the idea of presumption of equal time with each parent or parent's family. Naturally, there must be circumstances where such a presumption could be rebutted, such as convicted persons in drugs, violence, sexual assaults and others. Some intervention orders are used all too frequently during a custody battle. I have been part of those intervention orders. I have applied for and been on the receiving end of one. Usually they are over minor issues, and I can vouch for that. I should not generalise, but I know of many and mine is an example.

Obviously if one of the parents is unable due to work commitments, as has been previously stated, or is not willing to assist equally assist in their parenting roles—and I stress 'equally assist' rather than what some people might label as they right—the presumption of equal time would easily be adjusted to an achievable proportion. Recently I have completed a parenting course locally in Geelong which I believe should be compulsory after separation—others would probably say before separation. Also, an appointed mediator or counselling service should be compulsory that would report to federal government departments such as Centrelink, CSA and the Family Court if required to ensure that both parties are aware of the process, entitlements and responsibilities and any agreements or otherwise are relayed back to the relevant government departments. It is like a post-nuptial, I would call it. These would also secure the best interests of the child through continued family love and care which otherwise may have been limited in some ways post separation.

The other thing I would like to mention, and I certainly do not want to get it confused, is to do with child support. They are totally separate issues. Concerning the family tax benefit part A from the Family Assistance Office, I have recently been assessed and qualified for a portion of that because I care for my son for 27 per cent of the year—they have assessed that—which is above the 10 per cent minimum requirement for this benefit. So if this federal government department can easily assess a court order to determine care proportions and then calculate entitlements to the parents, then why can't the Child Support Agency—that is, if greater than 10 per cent rather than the present CSA 30 per cent contact or the old famous 109 nights?

CHAIR—Barry, I am going to have to draw you to a close now, but we are quite happy to take your written material.

Barry—I have submitted it and I have a number there.

CHAIR—We are happy to take your written material with us, but we need to draw you to a close now. Sorry.

Barry—Sorry about that. There are a number of issues. I would love to highlight and go through half a dozen of them, but hopefully someone else will cover them.

CHAIR—If you have already submitted, those submissions will be taken into consideration. It is anything over and above your submission that you really need to point out, because those submissions are all going to be read and every one will be looked at and taken into consideration.

Barry—I hope so.

Elsie—My name is Elsie and I work at Geelong Community Legal Centre. I am a lawyer there and I have worked there for 17 years and seen many clients in different situations. In the last eight years I have worked as a child support lawyer helping liable parents. Geelong is one of only three community legal centres in Victoria which gets funding to do child support work. So I suppose I have seen about 1,000 liable parents who come to me primarily with child support problems. But a huge number of those, as we discussed in terms of child support, have problems with contact. I am really more interested in what happens to the 95 per cent of the cases that do not get to court, because in very many cases people make assumptions that they have reached agreement—the 95 per cent—and in a huge range of situations they do not reach any agreement. It is often as a result of a whole variety of things. There may be no agreement from the start—just one parent refuses to allow the other to see the children—or there may be a short-term agreement which breaks down for a whole range of reasons.

My main concern is that people often do not access courts at all and it is mainly because possibly they have been advised that they will not have any chance in there—'This what always happens'—or the cost. I deal mainly with lower income people, which I would class as earning under the average of about $45,000. So the less money they earn the worse off they are. If they earn above that, they will probably survive all right. That is on the levels of child support and affording access to justice. I actually support the proposal because, as it stands now with five per cent going off to court, things might not change at all. I cannot see why the normal Family Court section 68F matters would not still apply. So the actual outcomes of going through court might not change, but if people in reaching their agreements outside the court system could bear that in mind, they might well reach much more flexible and better arrangements than every second weekend.

I am particularly interested in child support and the issues of money. The ideal is that the two things are not connected, but the reality is that they are very closely connected. They are connected by all the government situations. Both parents know how well they are connected and basically the amount of time children spend with a parent will determine the parent's amount of property settlement and how much child support and Centrelink payments they get. That is reality. There are a whole lot of technical things I could go into, but often—

CHAIR—Have you made a submission?

Elsie—I have, but it is not all in there actually.

Mr PRICE—Why don't you make a supplementary submission?

CHAIR—Yes. We are happy to take this and—

Elsie—We only knew about three days in advance that things had to be in, so this was just thrown together.

Mr PRICE—Put in a supplementary submission.

CHAIR—I am happy to take a supplementary submission to go with your submission.

Elsie—Okay. In winding up, the National Welfare Rights Network did an excellent summary on the implications of Centrelink, which I thoroughly agree with. Basically, if this is a government cost-cutting measure and clawing back money from one party or the other or both, it is just not going to work. The bottom line is that if people cannot afford to keep their children, whether it is substantial contact or whatever, it is not going to work. There has to be the money to feed and clothe them and what not, whichever parent they are with. It is a tricky balancing act, but if people cannot afford it, it will not work. Thank you.

CHAIR—Thank you very much. We will have somebody take your additional paperwork.

Max—I am a member of the non-custodial parents group in Geelong. I am not representing the group today at all; I am here on my own account. I will just go through a bit of my history. Some eight or nine years ago I split up with my wife. At that time we had three children. I went and saw a solicitor who basically told me, 'Don't go to the Family Court because you won't get custody of your children. It's just a waste of time.' Thankfully I had a truthful solicitor for a change. He said, 'It'll cost you about $10,000 to $30,000 to go to the Family Court but you won't get custody so don't bother about it.' I thought that that could not be right and I then attended a Family Court counsellor who basically told me exactly the same thing—it is virtually impossible for a man to get custody of his children. That is what happened initially.

As I said, I had three children. Since then unfortunately one of my children died when she was 12 years old. My daughter has now come to live with me and my son is still living with my wife. I believe that had we had shared custody in the first place things would have been much easier for us. Initially when people split up they are splitting up because they do not get on, so how can anyone come up with a shared custody plan or any sort of plan for their children when they basically cannot talk to each other? Had we had a shared custody plan, the kids would have been 50-50 with each of us. It is my belief that we would have started off with the 50-50 plan and then go to three, six or nine months and then see a Family Court counsellor. Further down the track you do find that that may not suit them. One parent finds out it that does not really suit them or both parents find out that it does not suit each other and you all come up with a better plan.

As I said, initially when you first separate you are not getting on well. Six, nine or 12 months down the track you do start to get on well. I think anyone here who has been separated here will normally find that. I am also concerned about the domestic violence issue. There are a lot of claims of domestic violence. I just wonder how many of these domestic violence issues actually come up after people separate and not before. Is this just an avenue to get custody of the children? It makes me wonder. That did not happen in my case. I will just say that that was not a concern. That is all.

CHAIR—Thank you very much.

Graham—I am glad to share my experience. I know that I am just one of the thousands—maybe millions—of people who have been impacted upon as well as my children, my two girls. I believe in marriage and I wish there was a system that encouraged marriages to stay consistent and steady which does not help making it an easy path to being a single parent, which is I feel the case at the moment. The best interests of the children is my wholehearted concern. I feel that the present presumption in law is a horrible case and it does not help the children.

Ask any child what they want. It is very simple. As we get older we get complicated and we all have a vested interest, I suppose, in trying to justify our cases. Ask a child and a child will say, 'Half with you; half with mum.' I always had a positive view of the legal system. I thought it was about safety. These days I am extremely disillusioned by it. All my ex-wife had to do was just resist and throw a few stories into an affidavit. I am still scratching my head a few years down the track as to why my children just cannot have quality time—just a shared time, for me to be a father. We seem to negate the whole purpose of fatherhood. People do not seem to know what a father is today, what the role of a father is. I take these things very seriously. It has nothing to do with me. It is not my interests. It is for the children. We lay up for our children. It is not me just wanting to get that extra time. I brought up statistics. I had to self-represent; I lost the house and any money that I did get from the house I had to pay in legal fees. I quoted statistics in the Family Court of American cases showing how even under circumstances of conflict children still fared better. The studies showed overwhelmingly that children fared better. There is a book written by a QC, *Fathers After Divorce*. It has some quite astounding figures in it. It is a very depressing book. American studies show this. When I presented this evidence in court it was like they put their fingers in their ears.

CHAIR—I need to wind you up now, I am sorry. Would you like to make any closing comment?

Graham—I wholeheartedly support this amendment. If there are undue circumstances of child abuse and things like that, of course that would deviate from the whole plan. How did we get ourselves into this rotten mess in the first place?

Mr Meyers—My name is Kevin Meyers. I am a social worker working in mental health services in Victoria. I have been listening to most of the comments that people have been making. I have a sense that going down the line of saying that we have to argue in court if this amendment goes through to rebut why some other parent cannot be involved in having 50-50 care is not going to assist the process at all. I can foresee situations, for example, with my clients who have mental health issues where their mental illness, for example, will be utilised as a way of arguing as to why somebody should or should not be involved in 50-50 care. If the emphasis is, as currently under the act, as to what is in the best interests of the child, you have the capacity under the current act to discuss those points in and of the interests of the child in that way. If you do it the other way, where you have to rebut and argue against a particular parent, I think that will be a more caustic environment and in the long term it will not assist in the process of assisting families to continue to build and maintain relationships. I think we are in great danger of taking what is seen as a simplistic step to undo a very large issue. I do not think we should be doing that lightly. I am very concerned that if we rush through these sorts of issues in a

simplistic manner we are going to create an even more difficult scenario in the long term. That is something that we have to bear in mind.

People have asked about the child support issues in terms of funding. The issue of legal aid funding is also a major one. I do believe we should be looking at that seriously. If somebody is in a poverty trap-type scenario where they are in a low-paid job and have difficulty with funding cases because of their financial situation, then that is having an impact. The obvious answer to that is to massively increase the amount of money that is going into legal aid, rather than the process going in the other direction, as it has in the past, into funding more community legal services so that people have a choice, which is not cost-effective in terms of the type of representation they get. You cannot divorce one part of the issue from the other.

CHAIR—Thank you very much.

Kim—My name is Kim. I work with women and women with children who have experienced domestic violence or who are experiencing domestic violence. It is quite difficult for those women if you think that they have already been living in a relationship with an incredible power imbalance. It takes some time for them to gain strength to go through the legal process and protect their children. To also say that it is quite often put upon the women to protect the children from protective services—that is already difficult for them to do. If this was passed it would put them in an even more difficult position and the children are placed in potentially dangerous situations. I think that is really significant and we need to remember that; that they are victims and they are put at large risk when placed in the perpetrator's hands for some time. To talk about grandparents and extended family, whilst there is nothing like that for a lot of children, I think children should have extended family, but it is really about having appropriate care. Where there has been domestic violence and/or sexual assault, it is inappropriate.

CHAIR—Thank you very much.

Greg—My name is Greg. I fully support shared custody. I have just spent the last year in litigation in the Federal Magistrates Court. I found it a very expensive and frustrating process. I have a five-year-old son. We have been separated for three years. When we initially separated, my ex-wife was quite flexible with me having access to my son and also to my stepchildren as well. But then she met another man and things changed radically from thereon. We settled on a consent order back in February last year, but my work circumstances changed and my son was spending almost all of the working week in family day care. I have a lot more time off work, so I lodged an application to pick him up on a Thursday night and take him back on a Monday morning and also have some mid-week contact for a meal, which I thought was quite reasonable, especially when you are spending all that time in family day care. My wife opposed the application, but she would not say why. This commenced in August of last year. It ended up with a welfare report. She made outrageous allegations in her affidavit. I struck a very perceptive child counsellor. He brought us in both together, sat us down. We had a three- or four-hour session.

The welfare report strongly supported my application and heavily criticised the mother. We went to court on that. It was in Geelong with the Federal Magistrates Court. They only come down four times a year and sit for one week. The system is very clogged up. It took me a year to get to court. In the end, just back at the beginning of August, they had 100 cases listed for a

week. So we asked the magistrate to give us her thoughts on the case, like a preamble so we can negotiate. Because with 100 cases listed there was little chance of us getting to court again. The magistrate, after reading the welfare report which strongly supported my case, said that, no, it would be too disruptive to the child to pick him up on a Thursday night and take him back on a Monday morning. So we ended up with a compromise. Before he goes to school now I pick him up on a Friday morning and take him back Sunday night and he stays overnight on the following Thursday. But when he goes to school I can only pick him up at 3.30 p.m. on a Friday and take him back Sunday night and just have him around for a meal for three or four hours. I found the system very frustrating. I had a welfare report which strongly supported my case. I cannot see any reason why I cannot spend more time with my son rather than him being in family day care.

We live only half an hour apart. All the allegations she made in her affidavits were disproved. She has tried to get intervention orders against me. I contested one of the intervention orders. The second one she actually withdrew. I was told by the barrister that her case was very weak but he said, 'I've lost weaker cases.' We had a three-hour contested hearing. It ended up with the magistrate throwing out her application and giving her a lecture. A policeman approached me after the hearing and he said, 'My faith in the legal system has been restored.' He has seen so many men have their backsides kicked for such trivial matters but this time the case was thrown out. I have come to the end of my tether. I do not know where to turn next to obtain more time with my son.

CHAIR—Thank you very much.

Christos—My name is Christos. I am from Lorne. I am a single dad. I have not got that much to say; just a few words. There are no winners here. When things go wrong between two people and there is a child involved, there are no winners, and the Family Court cannot help us. The rebuttable joint custody idea I think is a good one because it will take away the slanderous affidavits that so-called once lovers throw at each other. They are mostly lies and hurt the kid—the one we both should really focus on.

I do not think we can be helped here. I went through the odyssey—like the rest of us. I urge everybody to be kind to each other for that child's sake. The Family Court cannot help you. It is a court of law and it is the only one we have got, but we cannot take the law into our hands, as a lot of people do. It will break around you. The Family Court is a Minotaur lost in the labyrinth awaiting Theseus to put it out of its misery. It is not going to happen. I am sorry, guys, you cannot help us, but thank you for being here anyway.

CHAIR—Thank you.

Individual A—Good morning. I heard about this on the radio at about 10 o'clock so I have come down. I am going to try to condense it. For three years I have been in and out of Family Court. I think the whole system needs a major overhaul—the Family Court, Centrelink and child support. For whatever reason I divorced, it has nothing to do with somebody judging me or my life or telling me how I can and cannot live my life in this country. I have done nothing wrong as far as caring for my children is concerned. I sympathise with these two gentlemen because what happened to them happened to me only I am female.

I am going to try to condense why I am here. I was married for 20 years. My mother has cancer, and I was supposed to take her in this morning for radiation so I am a little bit weepy. For 20 years I was married. I worked for 12 years in banking and for 10 years in my own business. I paid taxes for 22 years. When I divorced I lived in the home. My husband did not want to settle—not for money but to be bitter because he knew that I would walk away and get the children for 100 per cent of the time.

We finally settled in the Family Court. Prior to settlement I had a phone call from the Child Support Agency saying, 'We are reducing your payments to shared care because your husband has put in a claim.' I said, 'We have not settled in court, and I'm still living in the home and taking care of the children.' I was studying for a diploma at night, and I had worked for many years.

To cut a long story short, they cut my money off on a phone call because they said my husband put in a shared care claim. We had not settled in court, we had nothing in paper. Child support works on the number of nights that the children are with you. My point is this: my solicitor put papers in front of me when I divorced and said, 'Here you go. This is what you do to get the house. Your husband wants 50-50.' I said, 'I do not care that he wants 50-50 because I am going to give him 50-50,' but I said, 'I don't think Myer would give any of their shareholders 50 per cent of the company or 50-50. They would want 51 per cent. Someone has to have the final say.'

The Family Court needs to realise that 50-50 can work, but I was told by my solicitor, 'Sign this, get on with your life because your husband will walk in and he will then get 50-50 anyway.' So I did that. I moved to Geelong. When I moved he kept the children on my contact time. So I took a recovery order out, had the Federal Police return the children and then I got taken to court. My solicitor did not represent me very well. He did not mention the fact that there was a recovery order.

What is the point of the Family Court giving you 50-50 access and having a recovery order in place when you cannot get your children recovered? I then ended up getting taken to court. I lost custody of the children for three years. In those three years I have been belittled, I have lost self-esteem, I have got nowhere. I was retired technically. Now I am on a carer's payment because my mother is dying of cancer. The irony is some pen-pusher at the Child Support Agency decided to cut off my money, money I had worked for and was entitled to. They are just a medium for collecting my money because my husband would not pay. I would go for months without money. He says to me, 'Get a job.' I built the house we lived in.

The point I am trying to make here is the Child Support Agency ruined my life. I have been in and out with legal aid. They did not follow their guidelines. They did not even advise me that the money was going to be reduced. They just cut it off. They took a statement of my husband's sister that he kept a diary. I did not keep a diary. I should have kept a diary. I do not keep a diary showing money for my children. I have pursued the principle of how they could just cut the money off. They still stand by what they have done.

The irony is that if a male worker, being the parent, is paying a person child support and the wife does not get her money she can go to Centrelink and get her money increased. Do you not think there would be quite a few people out there who might just have a happy arrangement? A

major overhaul of the Family Court is needed because I am living virtually in jail but outside of jail and I still cannot see my children. For three years I have been fighting to get 33 per cent care, yet my solicitor says to me on the day I settled, 'Your husband can go to court and get 50-50 anyway. Just get on with your life.' I am fighting for 50-50 but I am not getting it.

CHAIR—Can I ask you to finish up?

Individual A—To finish up, I agree with what these gentlemen are going through. I think Centrelink needs a major overhaul, as do the Child Support Agency and the Family Court. The reason I have been fighting in Family Court is that I have lost custody of my children. I had 100 per cent care and I gave my husband access and, I even left the marriage giving him 50-50. The joke is that I am living in a country where we are creating a very poor society with poor relationships with our children. They need their mother and they need their father. You cannot get more than 50-50 because you cannot cut them in half anymore. That is about as good as it is going to get. They need both parents. Unless one parent is dead, then, yes, they go to the other one. I do not think women should pull back and not let their male partners see a child because they cannot get a job and they need the child support. They say, 'If you do not pay me that child support, you are not going to see your child.' That was not my case.

The point is that I have lost custody of my children in the Family Court. I have a point on the order that stipulates if I breach it I am in breach of a fine and I can go to jail or do community work. There is a point on there that says I cannot take my children to a medical practitioner save in the event of an emergency. I have been fighting that in court for three years, but I will not be told that just because my ex-husband has custody I have no rights to take my children to a doctor. That has cost me three years of a relationship.

I know my two sons psychologically are depressed because they have not had equal time with their mother. To cut a long story short, a child committed suicide at Thomas Carr College last week, and I have noticed my son is having problems. The bigger picture here is that I have sensed my son—

CHAIR—I need to ask you to wind up, please.

Individual A—Yes, I know that we have to speed it up and I will put it in writing, but the point I am trying to make is that the bigger picture is we are not creating a good society. We need to get rid of the $60 million that they spend on the Family Court, put it to better use and pay women a certain amount of money so they will allow the other parent to see the child, and then there will be no problems.

CHAIR—Thank you very much.

Jackie—My name is Jackie. I am married to Graham and therefore stepmother to two young girls. We were part of the five per cent that ended up in court mainly because my husband, in all good conscience, could not sign away an agreement reducing his time with his children. The 95 per cent that was bandied around earlier as saying that they come to an agreement: when you are presented with the costs—I think we were quoted something like $15,000—you are advised, as a gentleman said earlier, that you are not likely to get custody, that the most you are likely to get is probably every other weekend or every other Thursday night. Men just become resigned to the

fact that that is the way that the courts are, that is the way life is and there is not much else they are going to get. That is why I do not think that for those 95 per cent it is an agreement; I think it is the best that they can get.

As was mentioned earlier, we have always tried to make the girls feel that we are a family and that when they come they are not visiting us. They have their own clothes. Obviously we already have the costs of a household. We have a house and the associated costs. There are just the costs related to the children's clothing, maybe food and a few other items, but most of the costs are already there. Like I say, we have always stipulated to them that they have a home with us as well as having a home with their mother.

Much has been said this morning about abusive partners, and I do not want to take away anything from that. However, are these partners actually the fathers of the children in that relationship or are these partners maybe stepfathers? Who are these partners? We are pointing the finger saying that these partners are parents or the fathers of the children and that is why we should not give a 50-50 split time with the children.

I know from our own two girls after the court case—which was a terrible experience for me and my husband; we kept the children totally out of it and they did not know what was going on—they spent less time with us and the children were saying, 'Why do we always have to do what mummy says?' And then a year or two later having a five-year-old come up to you and say that she used to cry herself to sleep because she could not remember the sound of her father's voice. And we say that we make decisions that are in the best interests of the children.

When the parents do separate, these children had a relationship with aunties, uncles and grandparents on their father's side and on the mother's side there is not a lot of family. I am a great believer in family. I have had a very close family for most of my life. These children now hardly get to see any of these people that they grew up with, apart from the grandparents. We constantly have relatives ringing up saying, 'Can we see the girls?' And we are struggling to fit everybody in every other weekend. Thursday night being a school night, sometimes it is difficult with homework to fit in other family as well.

The last point I want to make relates to subsequent families. If Graham and I decided to have a child, how can we pull these two little girls into a family environment when, should we have a child, they are going to see their half-sister or half-brother only every other weekend? How can we try to create a family environment for those girls on our side as well as on their mother's side? Thank you for your time.

CHAIR—Thank you very much.

Ms George—My name is Amanda George. I work in a community legal centre but I come here in a private capacity. The first thing I would like to say is that when this inquiry was first announced many members of parliament were reiterating many untruths about the Family Law Act in the media on national radio—things like that grandparents do not have rights under the Family Law Act. Having people in positions of authority like that making ignorant statements basically fuels a lot of anger in the community that many people who have trouble with the Family Law Act experience. I would urge your committee to consider this as a really significant issue.

I would be suggesting that there is a real need for an increase in legal aid. Parties are told that it might cost $15,000 to $30,000 to go to the Family Court. Community legal centres in Victoria see something like 50,000 people a year. Many people come to see us with ignorant ideas about the Family Law Act. They talk to us and it is very clear to them that they would rather try to sort out their problems than spend $15,000 to $30,000 each party to go through the Family Court system. So I would suggest that money spent on community legal centres is a really good way of reducing the stress in the community associated with going to the Family Court.

The other thing that needs to be said is that in a community legal centre we try to refer people to counselling in the community. There has been a real reduction in the ability for people to access free counselling in the community. That is as a result of, basically, the Kennett years I suppose. It is also a result of the reduction in funding to the Family Court whereby they cannot give people counselling prior to initiating proceedings. So it is fair to say that in a legal centre we will say to people, 'Sadly, if you want to access free counselling, you've got to initiate proceedings in the Family Court,' which wastes their time, which wastes Family Court time and which puts people into a system that they do not want to go into. So there is a real need to increase Family Court funding and to allow them to provide services to people in the context of the Family Court but before people have to initiate proceedings.

It is also fair to say that this whole notion of considering who is contributing to parenting has to be considered in the context of other government policies. I would urge your committee to think about the financial implications of any changes you make around the issue of presumption of joint residency, because no doubt there will be plenty of people who use the court to basically have a go at partners which they would not have been able to do previously. Unless people get access to good, cheap child care in the community, and unless there are practices in the workplace whereby people can take time out to spend with their kids, this whole thing is just going to be an island of distress and anger. It has to be a whole-of-government approach.

The last thing I would like to say relates to the gentleman who said that going to community legal centres and legal aid you come upon a bunch of feminists. The reality is that people who work in community legal centres are the lowest paid lawyers in Australia. Yes, we are mainly women. There is a reason for that. The fact is that legal centres are one of the only parts of the legal profession, apart from barristers, that offer part-time work so that we can spend time with our children.

CHAIR—Thank you.

Witness 2—Is it appropriate to ask the committee a question?

CHAIR—We would not answer the question at this point in time, but we will take it on notice and provide you with an answer.

Witness 2—I just want to humbly request that a lot of the statements today seem to relate to facts and figures, and I am sure that the committee has the resources with which to derive accurate figures from. I am wondering whether or not the committee would look to see if that 95 per cent figure mentioned earlier is accurate. Also, of that 95 per cent, how many are in fact happy with the resolution, if there is one? Also it would be interesting how many times orders are changed second and third times—actually changed versus times taken to court. In terms of

the time to resolve disputes, child support payers who suicide is a figure that has been brought up a lot recently. Apparently it is up to three Australian men per day who will suicide. I ask whether or not the committee will look at those types of things in reference to part B of the terms of reference as to whether the existing formula works. The question I had which—

CHAIR—Is that not your question yet?

Witness 2—My question is: will those facts and figures be part of the committee's review in terms of working out whether the existing support formula works?

CHAIR—I cannot answer exactly what the result will be of the committee's deliberations, but certainly they are now on record and we will be looking at what you have contributed today.

Witness 2—Thank you.

Mr QUICK—I would like to know how much of the $800 million that is owed to the Child Support Agency is owed by the five per cent and how much is owed by the 95 per cent, too.

CHAIR—I wish to thank all of the witnesses who have appeared before the committee today at the public hearing, the community statements segment and the in camera segment. We appreciate this morning's effort and your patience and contribution to this inquiry.

Resolved (on motion by **Mr Quick**):

That this committee authorises publication, including publication on the parliamentary database, of the proof transcript of the evidence given before it at public hearing and at this day.

Committee adjourned at 12.04 p.m.