COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS

Reference: Child custody inquiry

MONDAY, 1 SEPTEMBER 2003

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BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

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STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS

Monday, 1 September 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 Dutton, Mrs Hull, Mrs Irwin, Ms George, Mr Pearce, Mr Price, Mr Quick and Mr Cameron Thompson

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 9.00 a.m.

CHAIR—I declare open this fourth 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, a record 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, and this is one important way in which the community can express its views. From the outset of this inquiry, I would like to stress that the committee does not have preconceived views on any outcome. Accordingly, throughout the inquiry we will be seeking to hear a wide range 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 the Child Support Agency, in Canberra or via video conferencing. Today we will hear from six witnesses—three individuals and three locally based organisations. 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 which have been or are now before the courts. About two hours has been set aside for the public hearing, and this will be followed by about an hour for community statements. In order that we give as many people as possible the opportunity to speak, it will be asked that individuals keep their statements to around three minutes.

[9.04 a.m.]

WITNESS 1, (Private capacity)

CHAIR—Welcome. 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. In saying that, if you would like to be heard in confidence, I am pleased to move the committee in camera. You may otherwise like to stay in the public hearing. Would you like to indicate your preference?

Witness 1—In my opening statement I have nothing that would be deemed a problem. I cannot say the same about questions I may be asked; I do not know.

CHAIR—So would you prefer to stay in the public hearing?

Witness 1—Yes, at this point.

CHAIR—Okay. I will just remind you again that you should not identify individuals, nor should you refer to cases before the court. If you would like to make a short opening statement, I will then proceed to invite members to ask questions.

Witness 1—I am a sole parent of three children currently aged nine, 14 and 16. We have been a sole parent household for the past eight years, since the youngest was 22 months old and the others were six and eight respectively. I am a teacher in a senior college which specialises in the re-entry of mature age and at-risk students. My teaching subjects include legal studies. I wish to emphasise that my viewpoints on family law and child support matters are based on an amalgam of personal and professional experiences as well as the representations of a wide range of personal and professional contacts. I further submit for the committee's consideration a number of case studies drawn from those contacts which aim to highlight what we perceive to be anomalies in a system that seems to punish rather than assist the very people it is supposed to aid.

All of the opinions I present are based on the premise that the best interests of children are paramount. We acknowledge that the Family Law Reform Act 1995 aimed to bring about a change for the better in society's attitude to the rights of children and the rights and responsibilities inherent in parenting. However, eight years on, and in spite of some amendments to the law in 2000, we believe that there is more confusion than ever, particularly with regard to the idea of shared parental responsibility. This confusion is serving to cause an erosion of children's best interests. The confusion is intimately linked with what we believe to be short-sighted calls for divided residence, which will serve to cause yet greater erosion of the best interests of children.

With regard to the fairness of the current child support formula, it is acknowledged that the formula is based on the average cost of supporting a child. Therefore, any argument to change it will be difficult to justify. However, our experiences of the poor organisation of the Child Support Agency and its seemingly inadequate and inconsistent administration of the Child Support Act are causing undue distress to both payers and payees. This impacts adversely on the lives of the children for whom the child support is paid. We believe this is also partly responsible for the disenchantment of particular groups lobbying to have the child support obligations of non-resident parents lowered. Whilst we share their frustrations with the system, we do say that to lower a non-resident parent's financial obligation to children from a previous union would be socially and economically disastrous for the majority of children currently being supported by this system.

We do not agree with any proposal that there be a presumption of equal shared time, because it would not be in the best interests of children for practical, financial, psychological and emotional reasons. One law cannot suit all variations of the human condition. The proposed changes will serve to perpetuate the existing problems of separation and create new and bigger problems: more financial hardship and social displacement. The presumption further promotes the idea of divided responsibility as opposed to shared responsibility, which will not be in the best interests of the children.

Divided responsibility will create more poverty for those separated families who are not wealthy in the first place. The poorest may even end up destitute, and an increase in the number of latchkey kids is predictable, given the undeniable stresses caused by the poverty cycle. The stability and security of children may be compromised further than it already is for some: for example, adjusting to multiple bases and multiple sets of rules and routines. Because of the nature of divorce itself, it cannot be presumed that ex-partners will agree on these things post divorce, as they were more than likely bones of contention pre divorce. Experts already agree that children must deal with periods of adjustment before and after weekend and holiday contacts. If now forced to live between two houses on a more regular basis, one can assume that these children will be in a constant state of adjustment and readjustment.

The presumption, whilst honourable in theory, is screaming out massive social and economic upheaval and this, of course, would herald political upheaval. Children are likely to end up in a constant state of transience, flux and insecurity. There will be a further erosion and undermining of family focus, which will have far-reaching implications for our children as adults. The presumption of a fifty-fifty split is not putting children, but rather putting the needs and wants of parents first. It is not going to solve problems of contact orders being agreed to and followed—rather, it will see an increase in breaches of dual residence and contact orders.

The Child Support Agency should not alter the child support formula to the detriment of the children it supports. However, the organisation and operation of the agency itself needs to be improved, particularly with regard to the offer of mediation at an earlier stage, the terms of reference for reviews, a decrease in the amount of time it takes for review processes and the managing of cases. Readjustment after separation is difficult enough without the added complications of an inefficient and cumbersome financial welfare process to tackle. The case studies included are ample proof of a system that is just not serving the best interests of the children and their major caregivers in this regard.

I remind the committee that the formula is based on the average cost of supporting a child. If a person has children then they can expect to pay for their upbringing. Any suggestion that a parent should expect to pay less than the cost of supporting their children would be grossly unfair and inequitable to all concerned and to the community at large.

In conclusion, I wish to comment on the voluntary nature of parenting. Shared parenting cannot be forced, and a change in legislation will not mean that it will happen. My final point is that we, as a society and our governments as leaders, must find ways to promote a radical mind shift with regard to equal and truly shared responsibility for our children. The commitment of governments, business and industry can make it possible and attractive for men to take extended periods of paternity leave and/or part-time employment, and for women to be enabled to participate in the paid work force in terms of really equal employment and educational opportunity. Because this lack of equity is often implicated in the breakdown of marriages in the first instance—and until this is properly addressed—no amount of law enforcement with regard to parental responsibility and associated paid work and domestic responsibility will make things better for the children. Properly addressing these issues, as opposed to just paying lip-service to the ideal of social justice, would absolutely be in the best interests of our children.

Mr PEARCE—Thank you very much for coming along this morning. In your opening remarks and in your submission, which we have a copy of, you make the point that you would not support any rebuttable presumption of joint parenting. You also make the point that you do not think that the formula for CSA should change. We have received a lot of evidence, over the past week in particular but also leading up to that—from our constituents in our roles as MPs—that suggests to us that the system overall is not working. We have heard from parents, grandparents, academics and the legal profession about the fact that the system is not working.

If we do not change the formula for CSA, nothing much will change there, and, if we do not look at some of the Family Court's acts, statutes and legislation, nothing will change there. What do you think will improve the system overall, from a government point of view, bearing in mind that—as I have said before—we cannot legislate for people to be happy; we can only try and put a framework in place? I get the sense from your submission that you think that the framework is okay overall, but clearly it is not okay. So what tangible suggestions or recommendations would you give us, based on your experience, that we could consider for improving the system?

Witness 1—In regard to your first point, there is a problem with that presumption. As I have said, a presumption of a fifty-fifty split at the outset may herald a lot of problems. So I have a problem with the word 'presumption'. What I have tried to point out is that there is not one law that will suit everybody and there has to be some kind of framework. However, I do not think that the machinations are working very well to support that framework. It is a very tedious and stressful process—both Family Court matters and the Child Support Agency matters. What I am afraid of with the child support formula is that, if the current formula disappears, there will be something in its place that is worse because this formula is based on the cost of rearing children.

Mr PEARCE—When you say the cost of rearing children, the formula is actually based on a percentage of income. As a person's income goes up, they pay more child support—regardless of the cost of raising the child.

Witness 1—Any documents that I have read say that it is also based on the average cost of raising children and lots of formulas are used as bases to look at that. The *Family Matters* journal, which has been published over many years, has regular updates on that.

Mr PEARCE—Regular updates on what?

Witness 1—On the cost of rearing children. Again, one formula cannot suit everybody so there is a system there for review and objection. However, the system is extremely cumbersome and, as I have said in my opening statement, it is stressful for both the payers and the payees.

Mr DUTTON—Obviously, your circumstances have been very difficult. You have presented confidential case studies, so I will not go into the details of them suffice it to say that they bring out difficult relationships whereby the fathers have not exercised what I would call a normal interest in their children. If you put that to one side though and accept that the majority of both fathers and mothers, although they may not have been good partners, are good parents—that fathers care and love their children as mothers do—do you think the presumption would work in those cases?

Witness 1—Not necessarily, no.

Mr PEARCE—Do you think that the fathers should be given sufficient access to their child—

Witness 1—Absolutely.

Mr PEARCE—if they have demonstrated that or shown a capacity to properly love and care for their children instead of bringing in—I would not say isolated cases—a minority of cases whereby there is that lack of support towards the child? Why wouldn't it work in those cases?

Witness 1—As I said in my submission, some of the problems inherent in family law are already there to start with. It is a much wider issue. It is still very difficult for men to be able to father in an equal capacity in a loving relationship because of the constraints of our lifestyle. We are not making it easy for them—for example, paternity leave. There still seems to be a really big negative reaction to any suggestions for paternity leave from industry, governments and businesses in general. I would like to see those basic problems be addressed. If they can be addressed and, on the other side of it, women are enabled to access equal educational and employment opportunity, then, even if a relationship breaks down, I think there is a far better chance of being able to work these matters out.

Mr DUTTON—Do you have a fundamental opposition to the presumption for those people? I understand what you are saying in relation to the societal barriers and those sorts of issues but, separate from that, are you saying that either parent lacks the ability to take care of their children? Why are you fundamentally opposed to the presumption for those people who have both demonstrated a love towards their children?

Witness 1—Because I think that once the novelty has worn off it will not work out, for the reasons I have already stated. Men are not being supported either in their role as parents.

Mr DUTTON—What do you mean by 'the novelty'?

Witness 1—I go into that in my submission in some detail. When separation happens there is a very difficult period of adjustment—separation from children is very difficult as well. But once that period of adjustment has been gone through and a new lifestyle has been found or cemented, the novelty of having to care for the children may make life very difficult. I, and the people I associate with, have fears that children may end up being displaced.

Mr DUTTON—All the people whom you associate with, which you have mentioned as your case studies, have had bitter problems. Is that right?

Witness 1—They are people who have had extensive experience of the Family Court and also of the Child Support Agency.

Mrs IRWIN—Thank you for your submission. I look forward to reading your further one. On page 2 of your first submission, which was received by the secretariat on 18 August, you state:

- Terminology needs to reflect reality. To my mind, there is little possibility of true "shared parenting" being reached, post-divorce. The term "divided parenting" is much more a reflection of the truth.

What do you see as 'divided parenting'?

Witness 1—I see it as children living in two separate venues with the possibility of quite different rules and regulations for their lives. It is everything actually. To me, shared parenting is something that you do together; divided parenting is something that you do that has similarities but many differences, and you do not do it at the same time.

Mrs IRWIN—I want to follow up on Chris Pearce's question regarding the Child Support Agency. Again in your submission, you say:

... I had to find part-time work to survive. I have finally secured full-time work but now my children and I are punished by having the child support reduced even though the children's father has earned a great deal more than me and has no child rearing commitments.

How much was your reduction and what were the reasons given by the Child Support Agency? Was it because you are in full-time employment now?

Witness 1—Yes. If your income goes up, there are bits within the formula—exempted income parts—that then bring down the commitment of the other parent. What it essentially means for people in this situation—and there are lots and lots of them—is that you never really get ahead; you just end up being on a stable income.

Mrs IRWIN—What changes would you like to see made?

Witness 1—I would like to see changes within the formula itself—revisiting things like the exempted income and looking at why there is an income salary cap—so that a person can earn as much as they like over and above a certain amount. And that has not been factored in. Also I would like them to look at some real lifestyle indicators.

Mr CAMERON THOMPSON—I have had an interesting time reading some of the case studies in your latest submission. In the various case studies, you talk about spouses leaving families to pursue their own interests or issues. I am concerned about the perception in the community that people can do that—that they can dodge their responsibilities: they can leave the children, just completely depart and have no further part at all. Do you think the system encourages that?

Witness 1—Yes, I do to some extent. People would be aware of Daniel Petrie's book, *Father Time*. On page 179 he explains this admirably. I recommend the book to you.

Mr CAMERON THOMPSON—You have highlighted a couple of cases—

CHAIR—You should not speak about them if they are confidential.

Mr CAMERON THOMPSON—I am speaking generally about cases in which spouses have left a family environment—in one case for nine years and in another case for 20 years—but are now in second relationships that are stable. Clearly those spouses must have been capable of forming a level of responsibility in their second relationships but failed in their first. Why could they not be put upon to take responsibility in their first relationship?

Witness 1—I think there is a presumption there that subsequent relationships in those case studies have worked out. We had a limited amount of time. I had only seven days to prepare that submission, so I had to be selective to a point without trying to be too biased about it. As it said in today's paper, it is very easy for people to walk away from relationships at the moment. You can do it without any counselling and without any real regard for what is going to happen to those children.

Mr CAMERON THOMPSON—Here is the cruncher: don't you think people would not walk away if they had a shared responsibility for looking after the children?

Witness 1—As I said, legislation is not going to make that happen. It may make some difference in the short term but in the long term I do not think that is going to happen. I recommend to you the publications that I have mentioned in my submission, where research has been done into that very thing.

Mr PRICE—I was interested in your comments on the formula. What do you want to happen with exempt income?

Witness 1—For both payer and payee I think that that has to be looked at.

Mr PRICE—What do you mean by 'looked at?

Witness 1—It should not be looked at in isolation; it has to be looked at in terms of the cost of living for everybody, as well.

Mr PRICE—The resident parent has an exempt income level. I think it is about $46,000, isn't it?

Witness 1—I think it is less than that—about $35,000.

Mr PRICE—It is average weekly earnings. Okay, it is in the thirties, and it is much less for the other parent. Are you saying that exempt income for both should go up?

Witness 1—I am not sure whether it should go up or down. I am saying that it needs to be revisited in the context of the whole.

Mr PRICE—The context of the whole what?

Witness 1—It should be looked at in the context of how much it costs to raise children—

Mr PRICE—But there is so much false information about it. The formula referred to is not a formula in the sense of being scientific and precise. It is quite arbitrary.

Witness 1—That is right and there is a review process that one can access. However, it is often iniquitous because it is a cumbersome, time-consuming process that may take as long as 12 or 16 months. Meanwhile people are suffering economically.

Mr PRICE—Getting back to the joint residency arrangement, does that conjure up 50-50 or could 60-40 or 70-30 be examples of joint residency?

Witness 1—It is possible, yes.

Mr PRICE—How do we get enforceable contact orders?

Witness 1—That is a good question because, as I have put in my submission, we cannot force parents to spend time with their children.

Mr PRICE—No. I am talking about allowing parents to have time with their children.

Witness 1—I would suggest that a lot more time, effort and money needs to be put into marriage guidance counselling in the first place so that you have a very solid contact base within the marriage. Then, if that does not work, you need a lot more money, time and effort put into counselling at the time of separation.

Mr PRICE—I do not disagree, but how do you provide counselling when people are in relationships? More people are entering relationships today than are being married. I am a great advocate of pre-marriage counselling, but it is pretty hard to organise pre-relationship counselling because they do not have the same trigger points.

Witness 1—I agree. One of the positive developments over the last couple of years is the number of private counselling or group meetings that are offered. You see them advertised in school bulletins and things like that. I would like to see the government put a lot more money into promoting those things that are already beginning to happen in society.

Mr QUICK—We have a family with a couple of kids. They have problems and split up, and we are trying to sort out shared responsibility and shared parenting. Then over a period of time

two new families are set up because of new relationships, and they have children. In some cases, they break up and we have the McDonald's version of families where people meet on the weekends. Then we have the grandparents, whom we have not spoken about, and their access. How do we come up with a template for three or four sets of grandparents and three potential relationships with a multiplicity of children, in some cases in the same neighbourhoods. Then we introduce CSA, then the curse of Centrelink and then the paper war, and we have not even introduced the legal fraternity yet.

Mr PRICE—They are the big winners. God help us!

Mr QUICK—We are expected to come up with a series of recommendations, when basically we ought to be putting the heat on—

CHAIR—What is the question, Mr Quick?

Mr QUICK—How do we put the heat on people when they enter relationships to realise they have an enormous responsibility for those children? It does not matter what formula we use to divide custody—whether it is 30-70 or 50-50—someone sooner or later has to accept responsibility for bringing children into this world. We need some sanctions to say, 'If you don't shape up, we are going to financially punish you.' What are your views on some of those issues I have raised? It is too easy at the moment.

Witness 1—Yes. We are spending a lot of money in schools on drug education programs, on driving education programs and on alcohol education programs—you name it—but there are no relationship education programs. That is what I would like to see.

Mr QUICK—If we do accept that there needs to be some shared responsibility and a shared parenting plan—whether it is divided 50-50 or whatever—how do we factor in things like special events and illness of children and the ordinary, everyday things that put enormous strain on families that are happily living together? As an ex-schoolteacher, I wonder. Who do you ring? Who is responsible? These are especially issues in that warring situation and when parents are interstate and the like. How do we introduce that into a template?

Witness 1—I do mention that in my submission and I ask the very same questions myself. In some cases, I am sure it would work out quite amicably. But my point in my submission is that if we make a presumption of a 50-50 split from the beginning then those problems are going to be exacerbated, not solved.

Ms GEORGE—In your submission you seem to imply that any outcomes might be 'forced' on people. You say:

- I contend with the greatest certainty that if reform forced the shared/divided care of children by giving carte blanche to splitting children between households, a high percentage of those parents would soon run a mile.

I think there is the impression among some people that that is the way the committee might head. What would your objection be to a template that began between two parents? It might say, 'The starting point in this template is equal time. Let's try and get a mediator in, if we need to, to work out how that can work in practice.' It might well end up with the consent of parents for a

70-30 residential split, for example. Would you have the same objection in principle to the notion if it were a matter of mediation and negotiation between parents, but with a 50-50 split as the starting point—rebuttable, of course, on grounds of sexual assault or violence in the home?

Witness 1—Theoretically it sounds good. However, again, one law cannot suit everybody, and I would suggest that you would have to look at each and every case on its individual merits. You might have, for example, as I say in here, a mother who is breastfeeding. So is there an automatic presumption that the child should be split between two households? I think not.

CHAIR—You speak about exempt income and you speak about a formula for child support being indicative of a formula for the cost of raising a child. Could you explain to me, then, why the cost of raising a child in a first relationship is much higher than the cost of raising a child in a second relationship?

Witness 1—I could not explain that to you at all. In fact I think that is one of the problems: there are too many inconsistencies within the whole thing.

CHAIR—In essence, then, with respect to the point that you make about the child support formula and exempt income, you would rather what you have now than what you do not know, basically. Yet you agree that, if you have a child out of relationship No. 1, it costs so much, but, if you have a child out of relationship No. 2, it costs half that much.

Witness 1—It is not quite as simple as that. You also have to look at the lifestyles of relationship No. 1 and relationship No. 2. You have to look at what is happening with other incomes into both of those households as well.

CHAIR—Okay. I just wanted to make the point that I fail to see the formula determining a standard of living for one child out of one relationship and then a lesser standard for another child out of a second relationship. Thank you very much for appearing this morning.

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

That the submission from Witness 1 be accepted as evidence and authorised for publication as part of the inquiry.

[9.38 a.m.]

WITNESS 2, (Private capacity)

CHAIR—Welcome. 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 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. Having said that, I would like to give you the opportunity, if you would like, to be heard in confidence, or you can continue to be heard in the public hearing.

Witness 2—I will continue in the public hearing, thanks.

CHAIR—So I just remind you again that you should not mention or identify individuals nor speak of cases currently before the court. I ask that you would give a five-minute overview, and then I will proceed to ask the committee to ask you questions.

Witness 2—I am the grandmother of six grandchildren and three step-grandchildren. I have not seen or spoken to one of my grandsons for nearly four years. He will be seven years old next February. The child's mother refuses contact in any form with the child's father or members of his family. She blatantly refuses to abide by any court orders and she has no legitimate reasons for doing this. The mother also took the child to live interstate for two years without informing the father or anybody else. The father continues to pay child support and has also spent over $10,000 in legal fees. The only thing he is guilty of is ending the relationship with the child's mother.

Factors which should be considered when deciding how much time children will spend with each parent should include, first and foremost, the child's safety and emotional wellbeing. If there is any history of child abuse, drug abuse, alcohol abuse or violence et cetera, that should be taken into consideration. In these circumstances, only supervised contact visits should apply. Therefore, it should not be presumed that children will spend equal time with both parents on separation. Each family's circumstances are different and custody issues should reflect that. The child's welfare should be put ahead of the parents' wishes for contact.

Will children cope emotionally moving between two households? Young children can fret and worry when they are away from their parent for a long period of time, and older children could resent having to leave their friendships and social and sporting activities behind only to start these things all over again in another area. They just get settled into one routine and then have to adjust all over again with the other parent. Children need one stable environment to call home.

The age of the child should be taken into consideration. If the child is old enough to express their own feelings and wants, will this be taken into consideration? With regard to their schooling, will it mean children will have to attend two different schools, especially if their parents do not live close by? If they live too far apart, what time limit would apply to each parent? Children should have basic rights to know and be cared for by both parents so that they

can learn from both parents and not end up with a biased point of view. Children have a right to be shown love by each parent and not to be made to feel any blame.

Grandparents have a major role in a child's life, especially if they have been the child's carer while the parents work. Grandchildren often form strong bonds with their grandparents and, if this bond is abruptly broken, the child can become confused and upset and start to think they have done something wrong. This could also be the same when a child abruptly stops seeing one parent. Children have a right to see their grandparents and other members of their family or extended family. Children should not lose the right to see both of their parents or members of their family simply because their parents separate.

Child support payments should be reviewed and take into account whether the other parent has entered into another relationship and, if so, whether their new partner is working. If there are other children to be supported in the new relationship and if contact with the child is denied for no legitimate reason, child support should be put on hold until contact is restored and, in this case, no arrears of child support should arise from this.

In summing up, when I first read about equal custody, because of my own situation, I thought it was a good idea. But after considering all the factors I have mentioned—and I am sure there are more—I found more reasons against equal custody than I did for it. I do believe, however, that something should be done so that children can spend more time with each parent, and their families, on a regular basis. Instead of equal custody, I think the current contact system should stay in place, with strict guidelines and a look at factors which would improve this system. These factors could include harsher penalties for breaking a court order and more power for the police to enforce contact orders by way of maybe issuing warrants for a person to appear in court to explain why the child could not be handed to the other parent. As I mentioned before, if contact stops for no valid reason, child support should stop. If the custodial parent knew their child support payment was in jeopardy, it could make a big difference.

A substantial fine could be applied to the breaking of a court order, and the time a child spends with each parent could be increased if there is only minimum contact. Also, continuous breaking of contact orders could result in that parent having to pay the legal costs, if any, for the other parent. Why should the law-abiding parent continuously pay legal fees when it is the other parent who is breaking the contact orders? Thank you.

CHAIR—Thank you.

Mr QUICK—How do we take the heat out of the situation without it, as you state, costing $10,000 and helping to fund the lawyer's new car? How do we take away that adversarial approach that leads to 'Let's pay the lawyers lots of money'? In the example you cited, there has been a long-term angst in place. Do we drag both people screaming and kicking to a mediation and say, 'In the best interests of this child, forget about the hatred?' How do we as male and female come together? How would you see it working?

Witness 2—It is easy to say 'forget about the hatred', but there are parents out there who just cannot get on with each other. One parent is trying to do the right thing and the other parent won't have a bar of it.

Mr QUICK—You said that harsher penalties should be introduced. Isn't that going to make the person who is obstinate more obstinate—for example, if you fine them $1,000?

Witness 2—I do not think so. I think it will make them think twice about what they are doing.

Mr PRICE—When people have previously suggested that child support payments should be withheld where contact has been reasonably established to have been refused, they always run the argument: 'But then you'll just be hurting the children.' How would you counter that argument?

Witness 2—In many instances I presume that a lot of the child support payments are not spent on the child.

CHAIR—That is okay; you have only to answer what you think you can answer.

Mr PRICE—On the same issue, obviously there are cases where—and I think you refer to it in your submission—there is a 'wilful denial of contact' by one parent to the other.

Witness 2—Yes.

Mr PRICE—We do not know what the catalyst is. To withdraw child support payments is a serious issue. Do you have a 'three strikes and you're out' approach? How do we make sure that we are not, if we were to accept your suggestion, going to the other extreme? Where would you see a bit of safety in it?

Witness 2—I think if that were introduced—

Mr PRICE—Just the introduction would have the effect; is that what you are saying?

Witness 2—Yes. I think the parent would think: 'I'd better let the father or the mother'—whichever is the case—'see the child, otherwise I'm not going to get my child support payment.' That could make a big difference.

Mr CAMERON THOMPSON—I am concerned about urban myths and attitudes that the community in general has towards marriage or relationships. When I go around my electorate and I talk to kids, even teenagers, they seem to have a view about marriage that, if the parents splits up, one can run off and duck their responsibilities or they can use the children as a weapon against the other partner or they can get the best lawyer and take the other partner for everything. Do you think they are current myths and views among younger people in particular? Do you have any idea about how to address those kinds of views?

Witness 2—I do think young people of today maybe base their future relationships on the relationships of their parents. If the parents have been in a bad relationship, the child might think, 'I'm not going to get married. I'm not going to have that happen to me.' I do not know what could be done about that.

Mrs IRWIN—You are a grandmother who has not seen her grandchild for four years. Are you aware that, under the Family Law Act, a grandparent can apply to the court for contact?

Witness 2—No. I was not aware of that.

Mrs IRWIN—You can apply to the court. But sometimes, when I have put this to other grandparents or they have been made aware of it, they have referred to the cost factor. As you would know, it can cost between $10,000 and $20,000 to go before the court. A lot of the submissions we have been getting from individuals have stated that before it even gets to the court there should be compulsory mediation between both parties. What are your feelings on that?

Witness 2—I think it would only work if both parties are in agreement with that. If you have two parents who cannot talk to each other, they are going to be stuck in their ways and they are going to want what they want and no amount of mediation is going to make any difference to the person who does not want it.

Mrs IRWIN—You have also stated that the child should have equal contact with both parents and their families if it is in the best interests of the child. That is what this inquiry is all about: the best interests of the child. But you have also stated that if there are circumstances where this is not appropriate then that should be taken into consideration. What circumstances do you feel would not be appropriate?

Witness 2—Child abuse, sexual abuse, alcohol, violence in the family—situations like that.

Mr DUTTON—Thank you very much for your evidence today. I think the situation of grandparents is one of the great tragedies in this whole circumstance, so I feel very much for you. Your grandson was three years old at the time of separation. What was your relationship up until that point?

Witness 2—I did see him when his father had him.

Mr DUTTON—But prior to the separation.

Witness 2—I saw him quite often and I would look after him. I would take him for little walks and different things like that.

Mr DUTTON—You spoke before of your other grandchildren and step grandchildren. Are there any others in a similar relationship that may have broken down, and what is your relationship or how does that work with the other children?

Witness 2—They are all in stable relationships.

Mr PEARCE—Thank you very much for coming today. You have said a couple of times, regarding the suggestions about mediation, 'If you have two people who won't talk to one another and won't have a bar of each other then it is not going to work,' so even if harsher penalties were put in place regarding denial of contact, isn't it a similar situation, in as much as, if somebody has made up their mind that they are not going to give that other person contact, they are not going to do it? Clearly, in your case, there are orders that exist and, for whatever reason, this person has contravened those orders time and time again. So do you really think

something like that is going to work? You have said that mediation will not work because they do not want a bar of one another. To think more penalties will really make a direct difference?

Witness 2—I do. Mainly the financial penalties—fines and things like that—will have a big impact because a lot of parents, let's face it, think of the financial parts of it before the children.

Mr PEARCE—Is there any particular reason in this case that the contact orders have been denied? Is it just bitterness?

Witness 2—It is just because the mother does not want the father seeing the child. Not now, but maybe a year or so ago, she would only let the father see the child when it was convenient for her—when she wanted to go out or have a weekend away or something like that.

Ms GEORGE—One of the things that is coming through the hearings we have had is the high cost of accessing justice, be it for mum or dad, under the current system. About five per cent of cases go to the nth degree and I think a lot of people drop out, which does not necessarily mean they have reached an amicable solution. We are going to look at alternatives to the highly legalistic, expensive system that operates. Do you think there would be a role, say, in your situation for the mother and father to have been required to sit down to try to work out a parenting plan that incorporated access issues before any lawyer got involved in the case?

Witness 2—Yes, I think it is a good idea if the parents can be civil to each other but, if they cannot talk to each other, as I said before, no amount of counselling is going to do any good.

Ms GEORGE—But if this happened, if this was to be worked out at the time of separation, not years later, so that they both understood what their responsibilities—

Witness 2—It could work in that case, yes.

CHAIR—Thank you very much for appearing this morning. It is very good to have individuals come before the committee and we do appreciate you having the courage to come before us this morning.

[9.55 a.m.]

WITNESS 3, (Private capacity)

CHAIR—I welcome you to today's public hearing. 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. Having said that, I give you an opportunity to move to giving confidential evidence if you prefer, or you can stay as you are now, in a public hearing.

Witness 3—I will stay in the public hearing.

CHAIR—I will remind you again, then, that you should be mindful of not identifying individuals or anything before the court. Please give us a short, five-minute opening statement, and then I will invite members to proceed with questions.

Witness 3—I am a non-custodial father of five children aged between six and 15. My written submission, which you have, deals mainly with the issue of shared parenting. My presentation here today will focus on the Child Support Agency. I do not believe the Child Support Agency should be reformed; it should be abolished. It cannot be reformed because its fundamental principle—that is, the idea that governs and directs its every action and decision—is wrong. This idea is that, from the very moment of separation, every non-custodial father becomes incapable of or unwilling to provide for his children. The Child Support Agency removes from separated fathers the freedom to make decisions about the financial support and wellbeing of their children. It hands this parenting authority over to anonymous government bureaucrats who know and care nothing about the fathers or their children. The intervention of the Child Support Agency means that parenting decisions are made not freely by fathers as an expression of their fatherhood and of the love that they have for their children but by government agents according to rigid formulas.

The effect of this is to prise children away from the care and nurture of their father and to make them dependent on the state. The traditional instinctive role and responsibilities of fathers are removed from them and placed in the hands of government officials. The Child Support Agency becomes a de facto parent and also an incompetent parent—a delinquent parent. The concept of child support is reduced to nothing more than the forced transfer of a sum of money. The Child Support Agency would argue that it does not discriminate against fathers. In one narrow sense, this is true. It also removes the rights and freedoms of non-custodial mothers and treats them with the same degree of contempt and disdain as fathers.

Where is the evidence to support this foundational presupposition that each and every non-custodial parent needs to be compelled and coerced into managing the responsibilities? There is no evidence. What research was undertaken to support this foundation upon which the Child Support Agency was built? There was no research. What then is the driving force that established and sustains this Child Support Agency foundation? The answer is the influence of a

militant feminist culture that demands dominance not equality. With separated fathers, the custodial parent becomes the controlling parent and is rewarded with benefits and entitlements.

The Child Support Agency must be abolished. Reform is not an option. Even radical reform simply means rebuilding on the same foundation. The Child Support Agency cannot be reformed because it is fundamentally flawed. It must be abolished. The question then arises, and it has been posed to me by many people in various forms: what do we do about the father who refuses to pay child support? I have a lot of problems with the question. The question assumes the validity of the practice of post separation single parenting. It assumes the single parent should be the mother. The question reduces the role of the father to that of a financial resource. It diminishes the value of fatherhood; it ignores the probability that the property settlement has left the mother with the family home and the father with nothing. The question does not define the term 'child support'. It implies that child support means the same as the financial support of children.

So before I answer the question I will consider what the Child Support Agency means by child support. For the Child Support Agency child support does not include the cost of food, clothing, shelter, transport, entertainment, birthday presents, ballet lessons, tennis coaching, school fees or holidays. Child support is simply a debt created and collected by the Child Support Agency. It is effectively a financial inducement for one parent to restrict the child's contact with their other parent.

What do we do about the father who refuses to pay child support? The answer is simple: we do nothing. The payment of child support pushes the father to the periphery of his children's lives. The payment of child support underpins a structure that deprives fathers of their children and children of their fathers. Every responsible father is happy to care for and financially support his children but no responsible father should pay child support. Child support has got nothing to do with the protection, nurture and care of their children. No responsible father should cooperate with the Child Support Agency. To do so would be to abdicate their role as a father and to abandon the welfare of their children. Every responsible father should do everything they can to remove the influence of the Child Support Agency from their lives. To do otherwise would be negligent in their duty as a father.

What do we do about fathers who are irresponsible? The same as we are currently doing about irresponsible custodial mothers, those who gamble and smoke and drink too much Coca-Cola; the same as we do about irresponsible parents who are not separated—nothing. The question we should be asking is: what do we do about the tragedy of a million Australian children living without their fathers? The answer to this question is also simple: post separation shared parenting.

CHAIR—Thank you.

Mrs IRWIN—You have just stated that you think the Child Support Agency should be abolished. You also stated that fathers should not pay. How would the children receive financial support?

Witness 3—In exactly the same way that they receive financial support before the separation. The children receive financial support through the father feeding them, clothing them, sheltering

them, transporting them, entertaining them and doing everything that fathers did prior to separation. The father should be allowed a relationship with his children that permits him to do that.

Mrs IRWIN—You are virtually saying that you feel that fathers should not give 'money' to assist with the upkeep of the children if the ex-wife has got custody of the said children?

Witness 3—The problem lies in the concept of custody. Custody brings about the ownership of a child. When one parent gets the ownership of the child the other parent has been deprived of the opportunity to care for that child. I am suggesting that we do not deprive any parent of the opportunity to care for their child, and treat them exactly the same as they were treated prior to separation.

Mrs IRWIN—On page 4 of your submission, where you refer to the failure of single parent fatherless families, which you also referred to in your opening address, you have four dot points: (a), (b), (c), and (d). I want to refer to (b) and (d):

(b) The militant feminist culture of the senior bureaucrats of the CSA.

I am a feminist. I believe in equal rights for all—for men and for women. I would like to know what you actually mean or feel by stating that. Dot point (d) reads:

(d) Welfare benefit driven out of wedlock births.

What do you mean by that?

Witness 3—I can only think of one thing at a time so I will answer your first question and then perhaps you can repeat the second one. I am also a feminist because I believe in equal rights for men and women. I have four daughters and I expect them to achieve just as much as my son achieves. I have two sisters and a mother and I am proud of their accomplishments. What I mean by militant feminism is a culture that goes beyond that whereby there is domination of fathers or of men by women and there is a control factor coming in.

Mrs IRWIN—Can I suggest to you that you have most probably had a very bad experience with a woman in the Child Support Agency, either face to face or over the phone.

Witness 3—No, I have not, actually. I have just had a bad experience in having my role as a father removed from me by the Child Support Agency whereby I do not have the freedom to make decisions about how I care for the children. That has been directed to me by people who do not know me, do not know that I love my children, do not know my children, do not know my background—know nothing and care nothing.

Mr QUICK—Surely that is done through the Family Court and not the Child Support Agency?

Witness 3—No, it was not. It was the Child Support Agency; it was not a Family Court issue. Regarding my belief about the militant feminist culture of the senior bureaucrats of the Child Support Agency, that was an expression from the person who probably knows them best—that

is, the minister responsible for the Child Support Agency, the Hon. Larry Anthony. He told me that he has tried time and time again to bring reform to the Child Support Agency but has been obstructed in that by the militant feminist culture of the senior bureaucrats of the Child Support Agency, the Labor Party and the Democrats.

Mrs IRWIN—What did you mean by 'welfare benefit driven out of wedlock births'?

Witness 3—I worked for a year up in Muswellbrook where a common feature of the town was young girls, who should have been in school, pushing prams along the main street. The single mothers pension, as it was known when it was first introduced, provided a career option together with a general falling away of moral standards within the community that took away the stigma of premarital sex and childbirth. I believe that we should be treating those people with compassion and acceptance but there is no need to anymore because it has become a part of the general fabric of society and an opportunity, almost like a career option, for a young person that received no income to suddenly have this flow of income coming in. That is compounded, of course, by things that have happened since the Child Support Agency was first introduced.

Ms GEORGE—You talked about the responsibility of fathers and I know you because we have had discussions and I know that you are sincere in your belief. What do we do about the situation where fathers, when a relationship ends, do not accept their responsibility? I would have thought that that was the reason we had the agency in the first place, because under the previous system not all men accepted their responsibility for the care and upkeep of their children.

To that extent, you paint this kind of vision where everyone is going to act responsibly and we should get the bureaucrats out of it. But that did not happen in reality. That is why the agency was established. How would you get around enforcing a situation where every child from a broken marriage knew that there would be the ability—with income into that household from the mother or father—for that child to be able to look forward to a reasonable standard of living in the absence of any government decision about the issue?

Witness 3—Because there are some irresponsible parents, including fathers, I should not be treated as one of them—nor should all of the other fathers who love and care for their children and whose lives are centred on their children. Why should I be treated like that—and I am being treated like that—simply because there is some father out there who will not behave in the way that other people expect him to behave? At the end of my presentation I dealt with that question, I believe. What is being done about irresponsible parents prior to separation? Nothing is being done; we leave them alone. What is being done about irresponsible custodial mothers who do not spend their income on their children but on frivolous or addictive behaviours? Nothing is being done about it. Why should fathers be separated from the rest of society and dealt with differently to those people?

Once you start to do that you then penalise decent, caring, loving fathers. My solution is that we do nothing about it. In my written submission I talked about the model of the family where there are the biological parents and the children, and surrounding that is the extended family of relatives and the general community. The government should not be cutting into the heart of that through enforcement and intervention; it should be providing a safety net around it. What do we do about it? Let them drop them into that safety net. Do something about it as a government—

Ms GEORGE—What would the safety net be? How would it apply?

Witness 3—The safety net is already there in a sense, in the form of social security payments. If we stop treating responsible fathers as irresponsible fathers there would certainly be a lot more cash in the kitty to deal with those problems of children who are not being adequately cared for.

Mr PEARCE—Thank you for your time. It is not clear to me from your proposal exactly what you advocate. I think you said that in the event that there is separation nothing would change in terms of the non-custodial parent's role; they would continue to care. That is, if the children stayed with the mother you as a father would continue to care just like you did prior to separation. That is your proposal as I understand it.

Witness 3—In your question you said that nothing would change as far as the non-custodial parent was concerned upon separation. Why should there be a non-custodial parent after separation? There is not a non-custodial parent prior to separation.

Mr PEARCE—Use any word you like. I am referring to the parent that is living with the children in the house; you can call them whatever you like. I am trying to understand what your proposal is. It is not clear to me. How can you provide as you were in the past, because you are not there?

Witness 3—When you say that you can call them anything you want, we are getting back to the assumption that you have made that there is a non-custodial parent—that there is a parent that gets control of the children and a parent that does not get control of the children—and their contact with the children is entirely at the whim of the controlling parent.

Mr PEARCE—I am not making any assumption. I am trying to understand your proposal and how it can be implemented, because I do not understand what you are saying. I am trying to get to the bottom of what you propose, because it seems to me that what you are forgetting—or what I cannot get right in my mind—is: how can somebody post the marriage breakdown, whether it is the mother or the father, provide in precisely the same way as they did pre the breakdown?

Witness 3—They cannot.

Mr PEARCE—But isn't that what you are proposing?

Witness 3—No, it is not. They cannot, because they are now in two separate households.

Mr PEARCE—That is right.

Witness 3—The child lives between the two households. I am not proposing anything other than those two parents going about the business of supporting their children. Both the mother and the father have that responsibility and that duty.

Mr PEARCE—But you said that nothing should be done.

Witness 3—That is right; nothing should be done. They should be left—

CHAIR—To sort it out themselves. Is that what you are saying?

Witness 3—To sort it out themselves without an intervention that requires enforcement and coercion. I do not like being forced to do something for my children; I want to do it for my children. It ought to come out of me, out of my father's heart, not out of some formula that I am constrained by.

Mr PEARCE—I do not think anybody would disagree with that basic moral position—I think that, as parents, we would all think like that—but, almost without exception, the reality is that that is not what happens.

Witness 3—That is because of the system that we have at the moment.

Mr PEARCE—It is not; it is because of individuals. The system does not exist for the sake of individuals. It exists as a result of individual behaviour and, at the end of the day, that is the problem, isn't it? The same could be reversed. The whole psyche could be reversed and you could say, 'Why should the taxpayer have to fund all of this; why shouldn't you have to deal with it yourself?' The reality is that people cannot.

Witness 3—People respond individually to the way the system operates. With this system, the Child Support Agency and the Family Court of Australia are engaged in social engineering that has brought about the situation that we have at the moment, and therein lies the problem.

Mr DUTTON—Do you think part of the problem has been in the set-up of the formula for the Child Support Agency? We took some evidence before, and have done so on previous occasions, that showed, obviously, that it is on a sliding scale. It is not necessarily married to the cost of raising a child, because some people pay $260 a year and others might pay $2,000 a month. Part of the problem where you are coming from and where a lot of people in the non-custodial situation who are paying come from is that they see child support not as child support but as former spouse support. So there is no accountability for the money they provide each month—as to how that is spent on the child. Even if it is at a reasonable level, the money over and above that is spent nurturing the lifestyle of the former spouse. If we put some more accountability into that system or looked at child support being for the child and not for the former spouse, does that clear up some of the problem for you?

Witness 3—It certainly would, but I do not really believe that it gets down to the fundamental problem, which is that the Child Support Agency, whatever its formula, bases its methods on coercion and on forcing a parent to behave as a parent. The Child Support Agency basically declares a separated non-custodial parent to be incapable of caring for their children. You can play around with the formulas as much as you want, but I do not really believe it will ever solve the problem. But certainly those things that you have indicated, such as a greater degree of accountability, would make a difference and improve things. In fact, at the moment, a lot of separated fathers struggle to care for their children while they are with them. They simply do not have any financial resources available for that, but they see their children living in a fairly comfortable style. I know fathers whose children go off and stay at five-star resorts for their holidays but, during the half of the holidays that they are with their father, he can hardly feed them without the assistance of friends and family.

Mrs IRWIN—Do you pay child support?

Witness 3—I never paid any voluntary child support from the moment I began to understand the Child Support Agency, which was within months. I made two voluntary payments, initially in late 1997. I have made no voluntary payments since then. However—I need to make this clear—you do not have any choice. If you work, the child support is simply taken out of your pay. So you really do not have any choice. I have gone off to work, as recently as just a few months ago, knowing that I would have, through agreement, 50 per cent of my income deducted for school fees. I will give you an example of my last salary statement. I earned $1,200 in the pay period. Fifty per cent went in school fees, 30 per cent went in child support and 20 per cent went in tax. My net income was nil. I did that for the first six months of this year.

While I declare that I have never made a voluntary payment in child support, I have gone off to work and earned money knowing full well that I would not get to keep what I had earned. It would go in either school fees, which are for the care of my children, or child support. The 20 per cent that went in tax would come back as a tax refund and then be taken by the Child Support Agency. So in fact 50 per cent of my income went in child support. I have also put in my tax forms knowing that I would get about $3,000 or $4,000 back in the refund and knowing that that would go directly to the Child Support Agency. I have not lived my life necessarily around the avoidance of child support, but I probably intend to do so in the future.

Mr PRICE—Are you actually paying more than the formula in support of your children?

Witness 3—The formula in my case is 36 per cent, but because the Child Support Agency have deemed an income based on what I earned six years ago—I have not earned that amount of money since—they take 30 per cent out of my gross earnings. That is what they have the power to do.

Mr PRICE—You are arguing about the abolition of child support and saying that you should let parents pay, not pay or whatever. Wasn't that the pre-existing scheme? Wasn't the very motivation for introducing the child support scheme that people were not paying at all?

Witness 3—That is clearly stated in the Child Support Agency facts and figures, but where is the research for that? I do not believe that is true. My understanding is that that is based on a study done where custodial mothers were asked whether they were receiving regular and adequate child support.

Mr PRICE—I am talking about pre the Child Support Agency.

Witness 3—That is right; I am too. A study was undertaken asking single mothers whether they were receiving regular and adequate child support payments. This is court ordered and pre the Child Support Agency. Most of them said 'No.' But the fathers were never asked, and afterwards a study was done where a vast number of fathers that were being asked said, 'Yes, we are.' It is like a study recently reported in the *Herald* where women were asked a question and there were three different answers depending on whether they believed they were observed writing the answer, whether they believed they were not observed or whether they were attached to a lie detection unit. There were three different levels given.

Mr PRICE—Just for the record, I think it is a reasonable belief or attitude to have that the system prior to the Child Support Agency was an utter disgrace. The people that were walking away from their responsibility were fathers. That does not mean that the scheme, having come in, should not be reformed, but we should be under no illusions that your proposed free-for-all in fact was tested prior to the child support scheme and failed dismally.

Witness 3—I do not believe it was tested, because there were court orders regarding child support at that time.

Mr PRICE—We could have a debate on that and I am happy to do that.

Witness 3—I believe it is an utter disgrace now.

CHAIR—I will move on to questions from Mr Quick and those will be the final questions.

Mr QUICK—It is very hard not to want to ask a dozen questions after hearing some of the rubbish that I have heard this morning: the statement that a career option for young women is to get pregnant and the belief that single female parent families are a chosen career option. I am not surprised to see American evidence on page 5: 'Children in single parent fatherless families are—' and a whole list. That is American evidence and you have not provided any Australian evidence. Why are you just stating 'children in single parent fatherless families'? Why not children in single parent motherless families?

Witness 3—That is certainly a problem too—

Mr QUICK—Of course it is; it is a bloody big problem. I can understand you have been burnt by the system, but to promote some of this crap, as I call it—and I say it advisedly as a federal parliamentarian in a public inquiry. Obviously we are going to hear other points of view, but some of this is demeaning to people in society. I know you have been burnt. To take the soft option of saying, 'Do nothing,' I think is not the way to go—

Witness 3—That is not a soft option; that is the hard option.

Mr QUICK—and I would like to see more concrete evidence. I do not have any questions.

Witness 3—Could I make a quick response? You said it is a big problem, but it is with relation to mothers who are just 10 per cent—

Mr QUICK—It is an $800 million problem of money not paid to parents.

CHAIR—Excuse me.

Witness 3—Fathers are 90 per cent and that is nine times the big problem that you are talking about.

CHAIR—Thank you. Thank you very much for appearing this morning. We certainly welcome all individuals who come before the committee and we appreciate your attending this morning.

Resolved (on motion by **Mrs Irwin**):

That the submission from Witness 3 be accepted as evidence and authorised for publication as part of the inquiry.

[10.28 a.m.]

FLANAGAN, Mr John Edward, Assistant Secretary, Fairness in Child Support

CHAIR—Welcome. I have to inform you that 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 court. I invite you to give a brief five-minute overview and then I will ask the committee to ask you questions. Thank you very much for coming.

Mr Flanagan—The Fairness in Child Support group is based in Coniston, which is a suburb of Wollongong. Fairness in Child Support seek shared parenting and fairness and equality in child support. On 3 June 1998 a group of people met at Albion Park Rail community centre. We formed a group and we called it Fairness in Child Support. Forty-five people were in attendance that night. We have been meeting on a monthly basis since that time at the Coniston community hall.

On 23 July this year we held a public meeting at the Coniston community hall. Our keynote speaker was Senator Len Harris from the One Nation party. I was also a speaker, and the other speaker was Mr Warwick Marsh from the Fatherhood Foundation. The key issues were shared parenting and child support. We had 85 people from the community at that meeting. At public question time all people who asked questions were very concerned about the lack of shared parenting and the lack of fairness and equality in child support.

On 18 and 19 August, two representatives from Fairness in Child Support went as delegates to Canberra. We attended the National Strategic Conference on Fatherhood held in Parliament House. The conference was sponsored by the Fatherhood Foundation. Fourteen strategies were adopted by the conference, and I would just like to mention two of those strategies. Adopted strategy No. 4 is to legislate for a rebuttable presumption of joint physical custody and equal parenting with fifty-fifty residence as the starting point, and this can be rebutted on the basis of proven mitigating circumstances. Adopted strategy No. 6 is to replace or modify the current child support scheme with a fairer more equitable and flexible family support arrangement and to investigate the fundamental premise of the CSA.

We believe that, for these two strategies to work, there have to be some changes made to the Family Law Act. We would commend two changes to the committee. The first is that section 121 of the Family Law Act should be removed. At the present time the Family Court and all other courts are effectively unaccountable for their decisions. Approximately 50,000 non-divorce applications go to the Family Court and to the Federal Magistrates Court every year. From those applications, on average 1.2 cases go to the High Court, of which 0.9 are ultimately successful. I believe 1.2 cases out of 50,000 is not accountability. The other issue that I would like to bring up is section 65E, the best interests of the child principle. The United Nations has adopted the Convention on the Rights of the Child. The convention says that the best interests of the child

shall be of particular concern. I have photocopies of section 3, and I would like to distribute those to the committee.

ACTING CHAIR (**Mrs Irwin**)—Do you want to table that as evidence today, John?

Mr Flanagan—Yes, I would like to table that as evidence. I appreciate that the United Nations Convention on the Rights of the Child has no legal basis in Australia because it has not been passed through legislation. But I believe that principle should be adopted rather than the fact that the best interests of the child are paramount. The Attorney-General has said that, notwithstanding the fact that Australia is a signatory to that convention, it has not been passed into law and therefore is not effective.

Four issues are important to Fairness in Child Support. The first one is that we seek a rebuttable presumption of shared parenting, and we ask that legislation similar to that proposed by Senator Harris be passed by parliament. The second one is that we ask that the child support legislation be repealed and the Child Support Agency be abolished. The third one is that we ask that the Family Court be abolished and be replaced with a family tribunal. The fourth one is that the possession of children should not be an overriding factor in property and superannuation settlements. We believe all four of those points have to be adopted before real reform will work. That is the end of my speech.

The other thing I want to raise is that I would like to make one correction to our submission dated 7 August. It is at paragraph 4, on the very first page, and at the present time it reads:

As a result, eighty (80) per cent of fathers lose total contact with their children within five years of separation—

That should read ‘forty (40) per cent’.

ACTING CHAIR—Thank you. You have just stated that you feel that the Child Support Agency should be abolished. What sort of system should be in place to assist children financially?

Mr Flanagan—The reason the Child Support Agency should be abolished is that it is fundamentally wrong. It is not based on individual rights. It is not based on first asking a person if they want to pay. The person is told—that is not the Australian way. The basic premise should be to get back to the individual. The individual should be asked to pay child support in the first place. If that does not work, then it should go to family tribunal; if that does not work, then perhaps it should go to court. But the Child Support Agency should not be the first option. The first thing people know about a child support payment is a letter they get in the mail. They do not know that they have to pay child support.

ACTING CHAIR—We have actually talked about mediation and counselling for both parents. We sometimes tend to forget about counselling for the children. On page 2 of your submission on the problems when families separate you have said:

Children growing up without both parents:

- are seventy five (75) per cent more likely to need professional assistance for emotional problems.

- are twice as likely to fall behind at school

- are eight (8) times more likely to be in juvenile prisons

Sixty three (63) percent of youth suicides ...

And you go on. Do you think state and federal governments are doing enough for children of separated parents regarding counselling and ongoing support?

Mr Flanagan—Those are American figures. I suspect that they would be similar in Australia. I think there are two types of counselling: one is counselling before the problem occurs and the other is counselling afterwards. I believe that counselling during the problem is better than trying to fix the problem afterwards. So, yes, counselling and mediation are good, but I believe there should be education at the start. This would be at the very start of the break-up, even beforehand—during marriage and even at school. Children should be given education about what relationships are about and how to overcome problems. It is not the end result; the initial problem needs to be fixed first.

Mr PRICE—I think you are the first organisation to raise section 121 of the Family Law Act. For my own part, I have a great deal of sympathy for exposing the Family Court to public scrutiny. I have lost my way, I am sorry.

ACTING CHAIR—We can come back to you.

Mr CAMERON THOMPSON—Your group has had all these consultations and meetings. In your view, looking at the system overall and without making any decisions about what should happen to it, do you support the principle of doing what is in the best interests of the children? Without codifying it or anything, do you think the approach should be whatever is in the best interests of the children?

Mr Flanagan—The best interests of the children should be a particular concern but should not be paramount. The best interests of the children should come into play, but so should the rights of the parents. At the present time the parents have no rights.

Mr CAMERON THOMPSON—Okay. Leaving that aside, should the system encourage—for whatever goal you think is the goal to seek—greater contact between the parents of the child or less contact between the parents of the child?

Mr Flanagan—I do not think it matters. I do not think it affects things. Once the separation has occurred, the child should have equal right of contact with both parents. The contact between the parents does not come into it.

Mr CAMERON THOMPSON—I was starting from the principle of the interests of the children being the important part of this and then looking at whether the strategy should be to get these parents more together or further apart.

Mr Flanagan—I personally believe that once parents decide to separate they are going to separate. I do not believe any amount of counselling is going to solve most of the problems in 90

per cent of the cases. Once people get to that stage, they will separate. Trying to get people back together again nearly always does not work.

Mr CAMERON THOMPSON—But I would submit that, whether we are trying to resolve the arrangements for transferring the kids from one parent to the other where there is shared parenting or just those day-to-day factors, a shared parenting arrangement would of necessity mean that there would be greater contact between the partners than in a system where only one had them and the other parent just paid. Would you agree?

Mr Flanagan—Yes, in that regard there would be more contact.

Mr CAMERON THOMPSON—What I am trying to say is: do you then support a system that means the parents do have greater contact?

Mr Flanagan—No, I only support a system where it is in the interests of the children that the parents have contact. In most cases, the parents do not want to see each other.

Mr CAMERON THOMPSON—I know that view.

Mr Flanagan—That is reality, right? In the interests of the children, people will get together and discuss the future of the children—where they are going to go to school, what sport they are going to play and what church they are going to go to. They will do that, but they obviously will not get in contact for other reasons. So, in terms of what you are saying, the answer is yes.

Mr CAMERON THOMPSON—Do you think it assists by trying to facilitate more of that contact?

Mr Flanagan—I think that will happen. I think you are looking at the end result. You need to look at the shared parenting solution in the first place. What is currently happening is that children are seen as the possession, and you have to take that sense of ownership away. The children have the right to see both parents, and I think that will happen. The conflict is basically set up by the current system: the current system has caused this problem.

Mr PRICE—Would you agree with the proposition that, whether we are talking about family law or the child support scheme, neither one encourages parents to make mutually satisfactory arrangements between themselves?

Mr Flanagan—I could not agree with you more.

Mr QUICK—How would you envisage a family tribunal working? Would it be a federal system?

Mr Flanagan—No, it would not necessarily be a federal system. It would be based on having people from the community involved in the tribunal—church people and people from different walks of life.

Mr QUICK—If you saw a couple in Wollongong whose marriage had come to an end, what would be the next step?

Mr Flanagan—First of all, they would try and sort the problem out themselves. If that did not work, they could go before the tribunal. There are plenty of tribunals at present available as an example of how they work.

Mr QUICK—Yes, but you are advocating the abolition of certain things and the introduction of other things. I would like some details. This is the third day of our wandering around Australia, and as we go around we pick up ideas from people and throw them into the ring. For example, in Launceston I suggested that we should drag the Family Court judges in front of us and ask them some questions about some of the interesting decisions they have made. You are saying we should set up a tribunal. I would like you to take it on notice to give us some further details so that we can take that around.

Mr Flanagan—I will take it on notice, but we presently have a community justices tribunal in New South Wales that also handles family law issues but not many people know about it. The problem is you have a big stick at the end: the Family Court. People know that if they do not get what they want before a tribunal they can take it to the Family Court and get what they want. That is not true negotiation or counselling.

Mr QUICK—So you would see this as a one-stop shop and it would end there?

Mr Flanagan—A one-stop shop with the possibility of going on to court later on, but not in that usual way of going on to court.

Mr QUICK—So you think it would be keeping the lawyers out of the system?

Mr Flanagan—That is correct.

Mr QUICK—Your organisation is called Fairness in Child Support: is it fairness for families in child support, fairness for children in child support, fairness for fathers in child support or all of these?

Mr Flanagan—It is everyone.

Mr DUTTON—Can I just take you a step further when you talk about the tribunals, which I think is a very interesting concept. Trying to keep lawyers out of the process should be one of the main objectives. We have taken some evidence on this before but what if we set up these tribunals which have the focus of mediation to start with but with some teeth so that two people sit down and, if they cannot sit in the same room, they sit separately. For argument's sake, the tribunal would be made of three people: somebody who was a child psychologist and acted in the best interest of the child; a legally qualified person that could put the orders together so that they are legally sound; and somebody else perhaps with a mediation or a financial planning background. Those three people would come together and try to nut out at least some interim orders and then make it very difficult to go to the next stage of trying to contest it in court. Essentially, it may be that that is where the rebuttable presumption comes in at that stage and it would be set in place for a 12-month period. Do you think something like that would work if we were able to give it the teeth to have binding conditions at the end of that process?

Mr Flanagan—As I said in my speech, you have to consider all four options that I proposed. You have to consider shared parenting as one of the options. Shared parenting would reduce the amount of conflict to start with. So we are thinking in terms of conflict.

Mr DUTTON—But some people have suggested to us that, if we put the 50-50 presumption in there, it would actually increase the conflict between the two parties. Do you see it that way?

Mr Flanagan—No, because one of the problems in the present time is that a lot of it is over money. Obviously it is possession. If you get possession, you get family allowance entitlements, child support and the majority of the house. It is the mother that takes possession of the child 90 per cent of the time and that is therefore where the conflict goes. So we have to take away that conflict in the first place and then I believe that that work for the tribunal would not be that great.

Mr PEARCE—Thank you very much for coming along today. You talked about the fact that the system is not working. I, for one, absolutely concur with that; I believe that the system is not working. However, your proposition is that we should abolish the Child Support Agency and I think you say because it is basically un-Australian and its basic tenet is flawed. Then you propose a tribunal process, and if that did not work you could go to a court, and if that did not work et cetera. But if the Child Support Agency was taken away—in other words, the compulsion for the noncustodial person to pay some sort of child support—what difference is it going to make? Aren't you just going to prolong the agony anyway? Because if somebody is not prepared to meet their obligation or responsibility through something like the Child Support Agency, if we took that away tomorrow and they are not doing it, they are going to end up going through the court system anyway. All you are going to feed is the whole legal profession more and more, aren't you? Your proposal, if I was right, was saying: 'Abolish the Child Support Agency. Ask people to do the right thing. If they do not do the right thing, then they could go through a tribunal and then they could go to a court and then they could go somewhere else and get a final outcome.' Aren't you just feeding the whole legal profession if you do that?

Mr Flanagan—I think that you are missing the main point here. The main point is the fundamentals. Back in 1989 the government had two approaches. They could have gone through one of individual justice or they could have taken the approach of using a formula. They chose to go through the formula approach. They have gone the wrong way to start with.

Mr PEARCE—What do you mean by individual justice?

Mr Flanagan—It means asking the people if they want to pay child support—not telling them, asking them.

Mr PEARCE—Let's say that we have Bill and Mary and an individual justice system. Let's say, for example, that Bill has custody of the children and we ask Mary, 'Do you want to pay child support?' and Mary says no. What happens?

Mr Flanagan—Then you go to a tribunal.

Mr PEARCE—So you are extending the process?

Mr Flanagan—Yes, we are extending the process, but at the present time the process is pretty long anyway. You can be in court for years at the present time.

Mr PEARCE—I know, but my point is that you are not actually changing anything. You are taking away this thing called the Child Support Agency and just replacing it with a court process.

Mr Flanagan—There was a decision called Luton v. Lessels in the High Court just recently in relation to the Child Support Agency. Anthony Luton attempted to have the High Court rule that the Child Support Agency was unconstitutional because it was acting in a judicial manner. Unfortunately, the High Court said that it was not, but I believe that the Child Support Agency are acting in a quasi-judicial manner and therefore they are affecting the lives of people. They should not be making decisions that are enforceable without asking the people in the first place.

Mr PEARCE—I accept all that. But if we took that away, if we abolished that tomorrow, the fact of the matter is that there would be a large proportion of people who would not meet their responsibilities and obligations—they do not today.

Mr Flanagan—Is the Child Support—

Mr PEARCE—Let me finish because I am really interested in your proposition. If it was gone tomorrow, if it was not there, then those people who were not willing to meet their obligations and responsibilities through a voluntary code would automatically be forced into a judicial system. How would that be better than the Child Support Agency? Wouldn't it end up being the same thing, if not worse?

Mr Flanagan—I think you need to go back to fundamentals again. Back in 1988 the Fogarty committee was misled. It was misled about the numbers of people not paying child support. It is as simple as that. You have the same premise: that people are not going to pay child support. I do not believe that is the case; I believe the majority will want to pay child support.

Mr PEARCE—I do not have any premise at all. What we are trying to do here is come up with recommendations. What I do have is reality. There are a large number of people who live in my electorate who do not pay child support. That is reality.

Mr Flanagan—The reason is that the system itself has caused that. There is no individual justice. People get told they have to pay it and they say, 'No, why should I?'

Mr PEARCE—But inevitably a tribunal might tell them; a court might tell them. It is no different. I do not know what your alternative is; it is not clear to me.

Mr Flanagan—Have you been to a tribunal?

Mr PEARCE—Yes, I have.

Mr Flanagan—At a tribunal they take time. They go through the issues and they pick the main points out. They get the people to decide on the main issues. At the present time the main issues are not even addressed. People do not have a chance to sit down and discuss the issues. The first thing they get is a letter from the Child Support Agency saying that they must pay this

amount of money. When a person gets that they say, 'It's from the government, it must be right.' So that is where the conflict starts. You have to take away that initial conflict. You have to bring the two people together in the tribunal so that they can at least get down to what is important. Some issues may not be important to a certain person but they might be important to another person.

Mr PEARCE—In other words, it is not the agency that is the problem; it is the process that you are concerned about. You would like to see the process changed?

Mr Flanagan—That is correct.

Mr PEARCE—It could be called anything—it could be called the Child Support Agency, it could be called the ABCD. It is not the abolition of that that you want; you want the process changed?

Mr Flanagan—That is right.

Ms GEORGE—In the appendix there are a lot of figures and you have gone to a lot of trouble to try and provide evidence to support your contention. When I looked at it last night I was interested that you were arguing that if we had no child support and if you indexed the payments that were made pre the Child Support Agency, on average there would be a higher rate of payment for children without the system in place. That is predicated on your belief that a large number of men in particular are dropping out of the formal system and becoming unemployed. Could you please expand on those two issues?

Mr Flanagan—If you go to figure 7 on page 26 of the submission you will see that, based on the pre child support scheme payments indexed to 2000-01, children would be receiving $46.74 per week per child. That is based on the court orders that were given before the scheme came into place. Four years ago the figure, based on the Child Support Agency administrative assessments, the figure was $45.39. Three years ago it was $39.78. Two years ago it was $34.14. Children would be 37 per cent better off if the Child Support Agency had not been implemented in the first place. This is because more and more people are dropping out of the system. Whether you like it or not there must be a reason for that.

Ms GEORGE—What do you base that evidence on, John?

Mr Flanagan—I based it on the Child Support Agency's own figures. The Child Support Agency publishes a booklet called *The Child Support Scheme—Key Facts and Figures*. I have attached the last two or three pages of that report. They come from the latest report, which was for 2000-01 and dated April 2002. Those figures are obtained purely from the Child Support Agency's brochure. I have not made them up; they are real figures.

CHAIR—Mr Flanagan, we really appreciate you coming in this morning on behalf of the Fairness in Child Support group. We are sorry we are running over time. The committee members are tending to take a little longer than perhaps they might in their questioning although their role is to try and get through the process.

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

That submission No. 548 from the Fairness in Child Support group be accepted as evidence—with amendment as stated—and authorised for publication as part of the inquiry.

[10.55 a.m.]

BARTHOLOMEW, Ms Karyn Marie, Acting Principal Solicitor, Illawarra Legal Centre

CHAIR—I welcome you this morning to the public hearing. 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. I invite you to make a short five-minute opening statement, and then I will invite members to proceed with their questions.

Ms Bartholomew—The Illawarra Legal Centre provides legal advice and representation on a wide range of matters, including receiving federal government funding to represent carer parents in child support matters. Our submission, which has already been made to the inquiry, is directly informed by the experiences of those clients. In the last financial year we had 205 child support clients. The majority of our clients in child support matters are women, although we have represented men if they are the carer parent. Admittedly, we have only represented two or three men over the years, which presents an accurate picture of the reality—many mothers experiencing significant difficulty with respect to child support.

We acknowledge the significant role which fathers play in raising their children and fully support in principle the notion that fathers continue to play a significant parenting role following separation, should that be their choice and should that be in the best interests of the children to do so. We do not support the proposition for the introduction of a presumption of shared residency following separation. Our experience is of non-carer parents doing their utmost to avoid parental and financial responsibility for their children. The stories we hear are monotonously similar. In the majority of cases we see involving a failure to pay child support, the payer parent is a self-employed father who does not disclose his full income. In such instances, it is almost impossible to establish a true financial picture on which to make an accurate assessment of child support. Our experience is corroborated by child support solicitors in other community legal centres across Australia.

We agree that the child support formula is very complex and difficult to calculate. However, it is fair insofar as it attempts to provide children with the same level of financial support which they would have received if the family had stayed intact. The question of whether or not it is fair is hypothetical as far as we at the Illawarra Legal Centre are concerned. We see significant problems with the Child Support Agency in a failure to collect child support, resulting in the accumulation of arrears of almost $700 million to date, based on the Child Support Agency's own figures. That is a huge amount, representing many thousands of children who are not being properly supported by the non-carer parent. It also represents thousands of non-carer parents who have successfully avoided their child support responsibilities.

We are very concerned at any proposal to link the payment of child support to contact hours. We see that child support is commonly used as a means to antagonise the carer parent and to 'obtain revenge'. We regularly see clients whose children are confused and hurt when the non-

resident parent fails to exercise contact, despite the existence of Family Court orders. We also regularly see clients whose children are confused and hurt when the parent with child support obligations does not pay for their care and upkeep. It is not uncommon for our clients to be living on Centrelink benefits or struggling to work part time while caring for the children while the non-carer parent becomes re-established. The children observe this, and it is only commonsense to know what the impact will be.

As expressed in our written submission, it is abhorrent to contemplate linking payment of child support with contact. This inquiry accepts that the rights of the child are paramount. Among those rights is the right of the child to be supported equitably by both parents, as stated in the Child Support Assessment Act. Children cannot and should not be rented for the amusement and gratification of the non-carer parent. If contact and child support are linked, then that is the situation that will inevitably arise. We already see non-carer parents who refuse to pay child support because of what they perceive as an unfair situation with respect to contact. What they fail to appreciate is that, in failing to support their children, they are doing irreparable damage to their children financially and emotionally. In failing to pay child support, the payer parent does not have the best interests of the child as a paramount consideration.

We appreciate that the clients we do see do not represent the majority of families who have separated. We appreciate that there are very many non-carer parents who willing accept their child support obligations. We appreciate that there are many families where there is no need to invoke the regulation of the Child Support Agency. We also appreciate that in the majority of instances of family breakdown there is no need for court orders regarding contact and residence and that amicable arrangements are made for the care and support of the children. We appreciate that those non-carer parents who have always been a good role model for their children and shared in their care before separation will continue to do so after separation. The Family Law Act and the family law system already provide for that to occur.

Extensive statistics have been gathered by a range of researchers from a number of sources in Australia and overseas on this topic, and they support our position. I have no doubt that the inquiry has these statistics at its disposal. The fact that in so few instances do families agree to shared residency is very telling and should be very persuasive to the inquiry. Family law already allows for such orders for shared residency to be made if to do so would be in the best interests of the children involved. The fact that they are not made in the majority of cases strongly indicates that this situation is simply unworkable.

To consider introducing a presumption of shared residency following a family breakdown is very disturbing. At such a time children need stability. They do not need to be moving between two parents, two homes, two schools, two towns or even two states. If it can work for some people, then that is fantastic and those families should be supported. The fact that it does not occur by choice in the vast majority of families should be a very strong warning that it is a situation that will be fundamentally unworkable in most cases.

The introduction of a presumption of shared residency will case chaos as it has ripple effects across a wide range of areas—for example, the implications for Centrelink and family tax benefit calculations; the implications for the education of the children as they move between schools or even between states; the need for significant redrafting of legislation; and, in our opinion, the increase in Family Court litigation. A presumption in favour of shared residency will

have many negative effects and be very difficult to implement. It will not be in the best interests of the child in an overwhelming majority of cases, and the Illawarra Legal Centre opposes it.

Mr PEARCE—Thank you very much for coming along today. I want to talk about the concept of a rebuttable presumption of joint residence. I fear that there is some misconception about this particular theory. Nobody has articulated in any way, shape or form that if there were a presumption it would be automatic, but rather a starting point that could be moved either way based on evidence or fact and the environment. Given that there is the flexibility there, that the court would still have flexibility in the case—very much like they have today, with a case-by-case flexibility where they can take affidavits and submissions, look at evidence and bring down some determination—why would you be so opposed to there being a starting point of fifty-fifty but with all of the provisions for the court to have flexibility, as they do today?

Ms Bartholomew—Basically, my opposition is based on an assumption that that would be the situation that is imposed immediately following separation and that that would be an imposition that would be unworkable in the majority of cases at that time. I do not for a minute dispute that it is in the best interests of everybody—parents involved as well as the children—to have the capacity to have a strong involvement in their children's upbringing. It is in the legislation now and it is a situation that can be made available now if that is in the best interests. My feeling would be that it would better to allow a period of time—similar to in a divorce, where you have to wait 12 months before you can apply for a divorce. It may be that there needs to be a similar cooling-off period, if I can use a legal term, to let the dust settle and to see how people's new accommodation arrangements are working out and where they are going to live—to let there be time to cool down and then talk about it. I have heard other speakers talking about mediation and counselling and all of those things. If those mechanisms can be put in place, that is a good starting point, but it is certainly not a situation that should be imposed on couples as a starting point following separation.

Mr PEARCE—So you have no problem with the long-term structure and decision? Is your greatest concern only about the interim period between when the marriage breaks down and when the final arrangements are made? You have no issue with it once the hearing goes to court, the cooling-off period has happened and a determination has been made?

Ms Bartholomew—It is a terrific concept. It is just whether or not it can be made to work. The million dollar question is going to be: how do you make it work? I do not practise in family law—I have never been a family law practitioner—so I like to distance myself from having any vested interest in keeping the family law fraternity in employment. That is not where I am coming from at all.

Mr PEARCE—Me too.

Mr PRICE—I think the committee is totally behind you on that.

Ms Bartholomew—I have heard comments from other people at the back, and I distance myself from those. The Family Law Act already allows for those arrangements to be put into place, and they are. It is only a minority of cases that ever end up requiring Family Court orders. The majority of families can come to an amicable working arrangement that suits everybody and provides stability for the kids.

Mr DUTTON—We hear the word 'amicable' thrown around a fair bit. We took some evidence in Melbourne last week and it was said that the figure of five per cent of cases that are determined in the Family Court is an indication that 95 per cent of the cases are dealt with amicably, which from my perspective is rubbish. I understand and hear what you are saying, but I hope that you are not suggesting that that may be the case, because is it not true that most people—95 per cent, I would imagine—would like a final determination or would like to push their case further if they could afford to do so? You are talking about tens of thousands of dollars for either party to enter the family law process, and a lot of people just throw up their hands and give up. They think, 'Why throw good money after bad if there's a preconceived outcome in mind?' A huge proportion of the 95 per cent would pursue right to where the five per cent ends up if they were able to. Would you agree with that? Doesn't that skew the views we have because of some of these preconceived outcomes you are talking about?

Ms Bartholomew—That is probably a fair observation, but what is the alternative? We have people entering into a realm where there are going to be rules and regulations that need to be understood and implemented. Nothing is black and white; it is such a complex emotional area. I cannot see how it can really exist without having, if not lawyers, people in a similar role to guide the people through the process and to help them understand the rules and regulations and what is relevant. From my observation, the Family Law Court already has a huge number of unrepresented litigants involved. Quite a lot of research and statistics have been done on how that bogs down the process, because people are in court and they are unrepresented. There are mechanisms there to help unrepresented litigants and they are given a fair go by the courts. A lot of family counselling and mediation is in the process already. My question—and I do not have an answer—is how do these people access this decision-making process? This is the first time they come into it; it is highly emotional, they are hurting, and it is very difficult to be objective about what the rules and regulations and requirements actually are. It is a huge problem that needs to be addressed.

Mr DUTTON—Do we run the risk of focusing too much on the extraordinary cases, for argument's sake, when we talk about the presumption not working? Every time you talk about a presumption or the father's role it gets thrown back at you. They say, 'There's sexual abuse and violence within the home.' I am sure that all of us would agree that they should be the rebuttable part of the presumption. I suppose the majority of your cases are the ones with difficult circumstances. But isn't it true to say that, in the majority of cases of separation, both the mother and the father equally care for and love the child or children of the relationship? How does that change so that we would want to preclude both mother and father from the parenting role post separation?

Ms Bartholomew—My feeling is that, if the parents have truly shared equally in the parenting prior to separation, that is going to be a strong argument after separation for the amount of contact that they are able to be awarded, granted, ordered or whatever the situation is. I think that you need to look at the true situation prior to separation. I do not have any figures to support this, but there has to be acceptance of the fact that, in a very large number of cases—especially where there is a high-income earning father or mother—one parent will have the majority of the earning role and the other parent will have the majority of the staying at home, doing the housework and caring for the children role. There are plenty of statistics about that, which I do not have at my disposal, but they are bandied around from time to time. So I think that that has to be a factor that is looked at as well.

Mrs IRWIN—I want to talk about the voice of the children. In your submission you state:

> We have a real concern as to what will occur in cases where there is good cause for the presumption to be rebutted, but where the parent seeking residence cannot afford legal assistance or is lacking in resources to obtain court orders. In such cases children will be forced into residence arrangements which are not in their best interests.

In some of the submissions that we have received, and in the public hearings that we have held in Victoria and Launceston, some people and organisations have suggested that children should have separate representation. When do you feel that children's voices should be heard and at what age? Do you also feel that they should have separate legal representation? We hear the mum's point of view, we hear the dad's point of view and we hear from the grandparents, but we do not always hear from the children themselves.

Ms Bartholomew—At the moment in Family Court proceedings children can have a separate representative in certain instances.

Mrs IRWIN—I guess we are talking about before the family court process. We get keep getting bound up in a family law court. There are other things before family law courts, so we are looking to have some response to that.

Ms Bartholomew—It is a difficult question to answer. Obviously, there are going to be variations in the maturity of the children, and in their ability to express what they want and have the courage to say that they would rather live with one person over another. Yes; I think it is a good idea. It is something that I have not thought about, but it is—

Mrs IRWIN—You can take it on notice, give it a bit of thought and then get back to the committee.

Ms Bartholomew—That would be good.

Mrs IRWIN—That is something that I would really like to look at.

Mr CAMERON THOMPSON—I turn to the problem of gathering child support from a self-employed payer. It seems to me that the problem here is that the whole thing is based on a percentage of a person's income; when that can be disguised or changed so readily, it is hard to determine when it is based on percentages. Do you have any suggestions for ways to deal with that? Would one suggestion be to allow some sort of default that comes down to a dollar amount rather than a percentage amount in terms of the cost of caring for a child?

Ms Bartholomew—No, I do not think so. I think that the premise of child support and the way that it is assessed now is to allow children to have the type of financial support from the non-carer parent that they would have had if that parent were still in the family. So I do not think that you can put a dollar value on it. I just do not think that it is in the best interests of the children to say, 'The research shows that it costs $100 per week to raise an eight-year-old,' regardless of the fact that the non-carer parent might be out there earning $100,000 a year and have a far greater capacity to pay than that. It is unrealistic and unfair.

Mr CAMERON THOMPSON—How would you say we should attack that?

Ms Bartholomew—It is a huge problem. It is a problem that is already there. I am just identifying the problems as I see them. How do you get these people to disclose their incomes?

Mr PRICE—There is some confusion in my mind about how much flexibility the concept allows. If there is a presumption of joint parenting, but in that interim period an agreement is reached that 60-40 or 70-30 is appropriate, I would have thought that that is not precluded under this concept. People can voluntarily still come to the arrangements that are the best fit for their particular circumstances. So, unless I am misunderstanding it, it is not that you have to force everyone through the fifty-fifty prism; that is just the starting point. Particularly where there is a voluntary arrangement, I would have thought that that would give the concept more force. If I am correct, what would your objections be to that arrangement?

Ms Bartholomew—There cannot be any objections to that arrangement, and I do not see that arrangement as being any different to the way it is now. People can make their own arrangements.

Mr PRICE—Except that they know that, if they get into court, it will not be fifty-fifty. They know that statistically it will be distinctly different from that and, in lots of cases where there is an argument for a greater share—if I can put it that way—it will be denied by the court. The court argues that it does not have a starting point presumption that it is in the interests of the child to be with the mother, but the statistics out of the court certainly show that.

Ms Bartholomew—I have never practised in family law; I do not have a working knowledge of it.

Mr PRICE—I respect you for that.

Ms Bartholomew—From my observations, the way the Family Court makes its decisions is that the status quo remains—that is a starting point. You would have to extrapolate from that in what instances does the father leave the home and leave the children with their mother in the family home? If that is the situation, that is probably going to be what stays in place.

CHAIR—Ms Bartholomew, if you would like to expand further on your answer, please feel free to take it on notice.

Mr PRICE—With respect to the arrangements, you raised the issue of the impact on the formula and on clawback by Centrelink of payments. Isn't one of the biggest problems that we have at the moment with the arrangements the effective priority given to clawback by Centrelink? Aren't there any number of people who have jointly agreed what is a reasonable child support arrangement or payment only to be caught up by Centrelink and the formula, and the government's necessity for clawback?

Ms Bartholomew—I agree, but I do not have any answers. I see the problems, but I do not have anything constructive to say about that.

Mr PRICE—I guess the answer is that if we are sincere about parents making mutually satisfactory arrangements then as taxpayers we have to understand that we need to pick up more

of the burden rather than trying to say, 'No, that's not satisfactory,' and get them at each other's throats again.

Mr QUICK—On the second page of your submission, you state:

- The fact that so few families find this situation workable strongly indicates that it will impose a situation which is not appropriate in a majority of cases.

You then give some statistics:

3% of children from separated families were recorded as being in shared care arrangements in 1997…

Further, you state:

Less than 4% of parents registered with the Child Support Agency … had equal (or near equal) care of their children …

What is the number of families? Are they in the tens of thousands? Three per cent and four per cent seem very small numbers.

Ms Bartholomew—I have taken those statistics from the Bureau of Statistics.

Mr QUICK—The ABS and the A-G's department. I suppose we could ask them.

CHAIR—That would be good, Mr Quick.

Ms Bartholomew—I do not know the actual numbers.

Mr QUICK—From your experience in dealing with people since 1985 would you agree with the statement, which was made to us earlier in the week, that women are more likely than men to experience financial hardship following divorce?

Ms Bartholomew—From my observations, absolutely.

CHAIR—Thank you very much, Ms Bartholomew. We appreciate you coming before the committee this morning.

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

That submission No. 238 from the Illawarra Legal Centre be accepted as evidence and authorised for publication as part of the inquiry.

[11.19 a.m.]

MARSH, Mr Warwick Andrew, Founder, Fatherhood Foundation

CHAIR—I welcome Mr Warwick Marsh from the Fatherhood Foundation. Thank you for coming this morning; we really appreciate your time. We are sorry we are running over time. The committee has been decidedly longer in their questioning than usual. 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. I invite you to make a short five-minute opening statement before the members proceed with their questions.

Mr Marsh—It is a great pleasure to be here and to see my local member, Jennie George, here and also some friends I have met in parliament: Mr Harry Quick, Mr Roger Price and a few other gentlemen here. It is great to be here. In some ways it is a very difficult job you have, and I want to congratulate you for your work. I understand you have another six months—or three or four months—ahead of you, so all the best with it. I do believe it is a major step forward that the debate is actually happening, and it is healthy that we are here today to talk about these issues because these certainly are pretty important issues right now in Australian society.

It is important for me to explain who and what I am in the Fatherhood Foundation. We are an organisation, based in Wollongong in Jennie George's electorate, with a dream to encourage dads to be better dads and to inspire fathers to be better fathers for the benefit of their children, so we are actually all about preventive medicine. I would like to table a few things here as I go. We have a newsletter we send out each week and I will send copies for each of the members here. That is just to encourage dads to be better dads. We are not actually a divorced dads group; we do have a section for single fathers, in which we have had different single dads speak about the problems they face, but essentially we are about preventive medicine: an ounce of prevention is worth a pound of cure. It is an old saying; I do not know how we can convert that to the metric. We believe that the best thing to do is to keep mothers and fathers together and to keep children with their mothers and fathers. I know it sounds simple, but that is the best way and that is what we are shooting for.

Another very important point is that we really believe that we have to applaud all sides of politics when they make positive decisions. We had a media release regarding Mr Howard's announcement of this particular inquiry by the House of Representatives Standing Committee on Family and Community Affairs, which I would like to table as well. I congratulate Mr Howard on that and I congratulate each one of you, as I have done before. I would also like to point out that we have a media release regarding Mr Crean. Mr Crean has put a proposal that we should really revitalise Father's Day. So we have sent that out right across the whole nation, because we believe that we have to encourage fathers and get to the core issues instead of always dealing with the end results.

We had a National Strategic Conference on Fatherhood most recently and before that a fathering forum—again, I will table those documents here for the committee. In my speech I said that what we need is to rediscover love. We have to find a way to maybe redefine love in our society. We have a lot of notions about romantic love but not a lot of notions these days about what it means to be committed. We are very much in favour of the idea of a presumption of shared parenting—in other words, that on a separation there is a presumption that children should be able to see mum and dad at least half the time. I believe that even if it did come in there would be a gravitational swing and mothers would still probably end up having children maybe 60 or 70 per cent of the time, but at least it would be a good starting point, because fathers are very important in the lives of their children. We get a lot of emails—again, I would like to table something from Dr Robert Kelso on the family law court. He makes some very interesting points. I would also like to table the strategies from our most recent conference, which were also read out earlier.

We get a lot of emails from people. Some of those emails make me cry. I get emails from single mothers who are absolutely distraught. In fact, I invited a single mother—and paid her plane fare to come down from Newcastle with my own personal credit card—to speak at the most recent conference in Parliament House. She told me the story of how she wanted her child to be involved with her father but that the father just would not turn up. It really broke my heart; that does happen out there. But there are other situations where fathers write in to us—and, again, it breaks my heart—and say that they really want to be involved with their children but that they are unable to be. I have before me an email from a fellow who is living on carrots. The bottom of his feet are yellow and the palms of his feet are yellow because he is living on just carrots because he is absolutely broke. If this was the only email I ever received, I would be hesitant to believe it, but unfortunately the story is told time and time again.

I am really glad you are looking at this whole issue of child support. I cannot say it is something I know a great deal about, because I am happily married and want to stay that way. I certainly do not want to go through the family law court or the Child Support Agency. It is great to be here. I realise time is precious. I am happy to table these documents so you can look at them at your leisure. It is indeed a pleasure, and I congratulate you all.

CHAIR—Thank you very much. I turn to Mr Quick. Could we make the questions short and succinct?

Mr QUICK—Yes. Quick by name, quick by nature!

CHAIR—We are running significantly over time and I would like the community statements to proceed in the way in which we have envisaged.

Mr QUICK—Good to see you again, mate. Thanks for the wonderful things you are doing out in the community. I admire and respect what you have been doing, and I strongly support you. I would like to ask you about the whole issue of prevention rather than cure. How do we reintroduce into Australia responsibility for relationships, when the media and a whole lot of other avenues are promoting self and self-image rather than shared responsibility? How do we get that message across? We have people at the end of the pipeline who are a mess and there are a million fatherless families, but we have people coming through the pipeline. How do we stop it?

Mr Marsh—It is a brilliant question, and that is the question on my mind. I guess one of the reasons we have a weekly email go out to dads is to drip feed them encouragement. I think a lot of men do not think they need help. I speak as a man now, and I guess my own ego stops me from asking for help. I mean this: it is a very good question. In fact, it is the question I think we should be trying to answer today, but I understand the terms of reference the committee have and you have to follow those. Really, that is what the Fatherhood Foundation is all about. It is about trying to encourage relationships between fathers and sons, fathers and daughters, fathers and mothers. I might add that we are equally supportive of mothers. We ran national TV ads for Mother's Day. We are running ads on national TV for Father's Day. Unfortunately I just cannot answer your question and do it justice in the short time I have. I am sorry.

CHAIR—Thank you. If you feel that you want to go further, please feel free to take it on notice and provide further information.

Mr Marsh—I will do that.

Mrs IRWIN—With respect to your newsletter and weekly emails, may I ask how many members you have on your records for the Wollongong area?

Mr Marsh—On a national level, there are a little fewer than 1,000. But we have no way of telling. Sometimes certain individuals are replicated dozens of times, so it could be 10,000. I cannot honestly give you an exact answer.

Mrs IRWIN—Why do you think people would be more likely to pay child support if the system were based more on choice, as you have suggested in your submission? Would other strategies be necessary to encourage voluntary payments?

Mr Marsh—The idea of shared parenting, if it is followed through into child support, would solve a lot of the child support issues. A lot of fathers have to pay for their children but are not able to see their children. If there were more of a consultative approach, I believe a lot of fathers would be more willing to pay. We had Adrienne Burgess out here recently and she made an interesting comment. She was our keynote speaker in Parliament House. I think some of you might have met her. Adrienne made the point that money coming to children from a divorced father is used better than money coming from the government. That is a very interesting point. In other words, money coming from a father is very valuable money; it is used better. She is a sociologist, and she is able to say those things. I believe it is a good thing for fathers to support their children, but it is also a good thing for fathers not to be deprived of their children at the same time.

Mr DUTTON—How practically would a presumption work? If you say that you are in support of it, would parents be required to reside within a particular locality? Would the child go to one school? How would changeovers work?

Mr Marsh—I do appreciate that your situation is very difficult, because I think that whatever you do in this situation almost nothing works, in one sense. But I do believe that, if children are very important—and we all believe they are—and if mothers and fathers are very important, there should be an onus on those mothers and fathers to be able to stay connected to their children. Unfortunately, after divorce there is still a linkage. Even though a man and a woman

are cut off by a piece of paper—a court order or whatever else—when they separate, there is still a link with their children. I believe you have to look at maybe staying in the one place. I have also had emails from mothers who talk about the fact that their ex-husbands, whom they want to remain connected with their children, move away and that there is no restraint on that happening. That is a very interesting aspect from the point of view of mothers wanting the access to continue. I do believe there will need to be some reservations and consultations. I think the key word is 'consultations'. I think shared parenting will force people to talk more and to consult more and the needs of the child will become more paramount.

Mr PEARCE—Warwick, thank you very much for everything that you do through the foundation. I was particularly impressed with the sentence in your submission that says:

The Fatherhood Foundation believes that the greatest thing a man can do for his children is to love the children's mother.

I think we would all agree with that. You advocate in your submission—and we have heard it in a lot of evidence—the need for massive reform of the Child Support Agency and the Family Court. On a personal level, I feel that need as well; I really do. What seems to be happening is that we hear a lot about the need for reform or for the abolition of this or that, but we have not heard a lot of direct, tangible, practical suggestions about how you replace that or what you do instead. I am concerned, if you like, about the level of expectation, that it is one thing to criticise a particular agency or entity but it is another thing to abolish it on the assumption that all people will all of a sudden work better together. We would all love that to happen. I think we would all love to see the end of courts and of all government agencies, but the reality is that people do not do what they are supposed to do. Some will and maybe more would, but there is still a large proportion of people who just will not have a bar of one another. If we do away with these institutions, what is the practical alternative that will work? You must have met people who simply cannot get it together—for whatever reason. What do we, as a government, do in that case? What practical recommendations would you give us?

Mr Marsh—Mr Pearce, again, you have asked about three or four very good questions.

CHAIR—Yes. If you would like to take those questions on notice, we are most happy to provide you with the details and you can respond to them further at a later time.

Mr Marsh—Could you give them to me in written form?

CHAIR—Yes.

Mr Marsh—Maybe I could attempt to answer one of those questions.

CHAIR—Please do, Warren.

Mr Marsh—Chris, in regard to the Family Court, you have brought up a very good point. People often say, 'You've got to get rid of the Family Court,' and for years and years a dad who does not understand these things—he is still in love with his wife and he wants to stay that way—may not understand the problem. I find people major and minor in this area so often, that nobody seems to be able to get to the root of the problem with the Family Court. It is only recently that I have come across Dr Robert Kelso, a gentleman who lectures in law at

Rockhampton University and who also lectures in public ethics. I would suggest to you that he makes the most sense of all the people I have heard comment on the Family Court. He basically said this: theoretically, the Family Court should work quite well—in other words, it has the ability to work quite well but for some reason it does not. Why doesn't it? The reason is that it is like a judicial sputnik, it is out in space. It bears no relationship to what is happening in common law or to what is happening in the community. There is no trial by jury. We can understand why trial by jury was taken away from these things—because of the pain and everything else—but, of course, in taking it away you lose the relationship to what people are up to and to how the average person thinks. Judges actually hate juries, I am given to believe, but we need juries, because juries actually connect judges to the people—to how the people are thinking and to values. The second thing—

Mr PEARCE—Are you suggesting we have juries within the Family Court system?

Mr Marsh—The Family Court is shot, in my estimation. It is not because of the laws: it is because of the people that are administering it—if I can say this very carefully, honestly and openly—and the way that they have set up a court culture over the last 20 years which has gone too far astray. It has not been able to link in and be earthed into public opinion and what is actually happening out in the community. The other problem is that it is a closed court. Again, we can understand why it was made a closed court, because we did not want the embarrassment of all these things being aired. But, of course, as things are closed, there is no relation, again, to what is happening in the community.

The actual judges themselves, too, are in a judicial enclave. As I understand it—again, from Mr Robert Kelso, who is far more intelligent than I am—it is almost like a law unto itself. Mr Roger Price here made some tremendous recommendations in the inquiry in 1994, but a lot of those suggestions have not been heard by the Family Court. In fact, a number of times the parliament has actually said this, this and this and the Family Court has basically said, 'See you later, boys.' How can I say that on tape?

CHAIR—And girls.

Mr Marsh—Yes.

Mrs IRWIN—You said it very well.

Mr Marsh—So the problems in the Family Court in some ways are not there, because it seems like it should all work, but, for whatever reason, it is not working. Therefore, it is almost that a new body needs to be set up. It will have to be a court, unfortunately—heaven forbid—because of the sorts of situations, but it should be a court that is linked to common law procedures and trial by jury, if necessary; it should have open court mechanisms, so at least there is a linkage that gives justice and fairness. I do not believe that men should have it over women or women should have it over men; there should be a sense of justice. When a man and woman go to court, they should receive justice and fairness—and that is all that can be asked for.

Mr PEARCE—Hear, hear!

CHAIR—Thank you, Mr Marsh.

Ms GEORGE—Those comments imply that your solutions are more legality and more lawyers, whereas I think a lot of us are looking at the possibility of a less confrontational, less adversarial, less legalistic and less expensive system. So I would like your views on the issue of mediation before any lawyers get involved. Secondly, one of the things that distresses me when I deal with constituents is that the issue often becomes one about money—the 109 days. I think to myself, 'This is not the issue; the issue is the children.' Is there any way that you see whereby we can divorce the issue of payment, support and responsibility from contact and contact days? Do you think it would be a good thing if we could?

Mr Marsh—Please forgive me when I talk about the Family Court. You ask a very good question. You are 100 per cent correct: we have to steer away from family law courts and find a way to mediation; we have to try to do predivorce counselling; and we have got to find ways to do courses in schools. Harry is very strong on the idea of bringing in mentoring courses for young boys and mentoring courses in schools for relationships. I talked a bit about the Family Court to answer Mr Pearce's question, but, honestly I couldn't agree with you more that we have to try to get away from legality. In fact, I believe there should be a ban on advertisements for divorce lawyers, because they are making a lot of money and a lot of people are hurting because of that. That is a simple idea that I would put forward here.

On the issue of divorce and money, unfortunately they do go together. At the present moment, whoever has the children, has the money. Obviously, if you have the children, you need more money to look after the children, so there are good reasons why we need to have help for the parent who looks after the children. It is one of those questions that, again, would take a little while to answer, but it is a great question and, if I had more time—

CHAIR—I am happy for you to take that on notice. We will provide you with a list of those questions and if you would like to add further to that we would be happy for you to do so. Thank you for appearing this morning. It has been a great pleasure to have you here.

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

That submission No. 715 from the Fatherhood Foundation be accepted as evidence and authorised for publication as part of this inquiry.

CHAIR—We will shortly go into the community statement process. Before we do that I would just like to outline again, as I did prior to the inquiry commencing this morning, that over a period of time we will hear a diverse range of opinions. It may seem that we are hearing more from men than from women or vice versa. But, over a period of time, we will have heard from a good cross-section and a balanced cross-section. However, sometimes it may appear that there is not that balance in the inquiry at a particular location. I would just like to remind the audience that over time the committee will hear a cross-section of all the issues associated with this inquiry and it will be very balanced.

[11.42 a.m.]

CHAIR—In moving to the community statements, I recognise that we are running 45 minutes late but we will still endeavour to have the allocated one hour. It is a three-minute statement process. Of course, if we allow an hour and there are three minutes for each statement that is a maximum of 20 people, so if I do sit you down at the time of the 20th person, I do apologise, but the committee runs to a very tight schedule in order to do all the hearings it has to do. Please keep your statements succinct and to the three minutes. If you do not wish to give your full name, please feel free just to give your first name.

Paul—I have four points to make. Firstly, child support should be directly related to contact; secondly, education as a cause of support for the children is controlled—regardless of intent—by the custodial parent; thirdly, success of family law court hearings, counselling et cetera is directly related to the ability to purchase 'legal' results. And finally, getting back to several comments I have heard today, whilst judges are permitted to act contrary to or beyond the law, nothing said today will resolve any issue of responsibility.

Stephen—I have several points I wish to raise before this committee. Firstly, I do not think this committee should be here: you do not have the power. What we really need is a royal commission into the abuses of both the Family Law Act and the Child Support Act and I am afraid that you cannot get to the bottom of it because of section 121—the Family Court and the Child Support Agency hide behind that. We keep using the phrase 'the best interests of the child'. There has been the recent case of the children in detention centres, and the Family Court's first decision was that, in the best interests of the children, they should remain behind razor wire.

I do not know about the rest of you but, as an Australian, I found that totally unacceptable. The full bench of the Family Court then overturned that, but that was only because of community uproar. Now that is 'the best interests of the children'. This is how it is interpreted, and 'the best interests of the children' should be eliminated from everything. It should be what is in the best interests of the parents and of the children. I agree with what the committee is doing here today. I was pleased to hear that everybody is interested in the children and how to get their interests. The only way to do that, in my experience, is that children must have their own legal representation. They cannot have the mother's or the father's, because lawyers should be eliminated totally: we should have a tribunal.

I came to a conclusion with my ex-wife only after we lost a house in legal costs fighting it in the Family Court and then, after four years, they decided to start back at square one and we were both broke. Then we had a mediation session and we sorted it out. I now am a non-custodial parent under the family court act and under the decision of that court, but I am a shared parent: I have two children; my ex-wife has two children. We have alternative weekends. And this was sorted out after we lost everything, after we sat down. I was not the one—my ex was told by her lawyer she would get everything. So for four years I fought her to prove that she was not going to get everything. That was between us. Our children suffered. Now our children are better adjusted.

Everybody here seems to think that shared parenting means fifty-fifty; that is not what it is. It is this: get your nose out of my personal business and my wife's and my children's; let us sit down and sort out our shared parenting. Our shared parenting is not fifty-fifty. Centrelink has dictated that I get 20 per cent of my girls, who live with their mother. My ex-wife gets 20 per cent of one of my sons. That is shared parenting to me, because it fits into both our lifestyles. The thing with property settlements and paying child support is that it only looks after one—I heard a comment here from a legal person that the money has to maintain the level of existence of the family prior to separation. The father pays; the mother gets the children. That is shared parenting under the Family Law Act and under the child support act. That is not right, because there are now two families and two family homes. Whether we like it or not, that is the reality. You cannot fund one to the level of what it was before and then let the other one live in poverty. The majority of men have to fall back, when they separate, on family support. Most of us at some stage have lived with ageing parents who are on age pensions. That is the only way we survive, and a lot of people are still surviving that way.

We do not want governments coming in saying: 'You can't have your children. You will do this. You will do that.' Let me and my ex-wife work it out. That is what we do now—now the lawyers have had their feed of our money and there is nothing left, so they cannot screw us any more, they now are listening. We have to sit down and sort this out, and our children get a say. We hear our children. This is not what the lawyers hear; this is not what the Family Court hears. Nobody listens to the children. We have one of the highest youth suicide rates in the Western world and nobody cares, and most of those children, when you look into their backgrounds, come from separated families and a current situation where they do not have contact with their fathers.

CHAIR—Thank you, Steve. Thank you very much.

Marina—I am the stepmother of a non-custodial child. I see the family law system as fundamentally flawed because of a backlog. There were reforms to stop that backlog, but unfortunately they are not working, due to the judiciary not being in touch with the community. I actually have a member of my family who was a family law magistrate. He left, due to the inconsistency and families not being able to put in the right amount of evidence. Evidence is scrutinised so much that the right evidence is not put in. He is now a family law lawyer and he is fighting an uphill battle because the kids do not have a say.

There are parents who are neglecting their children, yet they still get custody of them. This is the story I hear from mothers and fathers from day to day. For the majority of the time, I notice, both the mother and father are on welfare because of the judicial system not being fair to both parties. They have to go on welfare. The mother cannot get a job because she has to look after the children. The father is not willing to get a job because of the CSA. It is unfair to both sides. The judicial system, as it is, needs to be abolished. There needs to be a panel of three judges who decide, so every issue can be scrutinised and the proper evidence can be put in. In my case, we were not allowed to put in the proper evidence because we did not get legal aid. Luckily, the firm we were with wrote off a $6,000 bill for us. Every single day, a firm writes off a bill because people cannot pay it. That is why there should be a tribunal.

Parents should settle their differences in the relationship before they enter into any residency appeals or anything. The parents should go to counselling and work out their differences in the

relationship. During that period, there should be a fifty-fifty split, unless the mother or the father does not want fifty-fifty custody or there is a domestic violence situation. I have seen children who have been given to their mother and father and the children have been bashed. Their parents are drug users, and these kids are growing up not having the right influence in their lives. They are ending up on welfare. We are breeding a class of people who are on welfare due to the Family Court judicial system not working.

CHAIR—Thank you, Marina. I really appreciate that.

Martin—What I would like to see come out of any kind of reforms would be assistance for parents who have divorced overseas but who are Australian citizens. I am an Australian citizen and my daughter was born here in Wollongong, but then I moved with my ex-partner to Switzerland where I got hit with a divorce. I had to come back because I could not handle living there. I had no rights in Switzerland for work or anything. I could not afford representation at the hearings. I did not understand the hearings as they were all in German. At the moment, I have to make child support payments of $400 a month, even though I am unemployed. There is no provision under the reciprocal agreement that the governments have to assist me with that, so I am basically left high and dry, even though the Australian government say, 'Fine; if he doesn't pay his child support, we can put him in jail.' I cannot pay it. There is no option. I would like to see some assistance.

CHAIR—Thank you, Martin.

Barbara—I am a mother of three. I am separated and I have shared residency with my ex-husband. He is a Qantas pilot, so there can be absolutely no routine to my children's lives whatsoever. I think that we underestimate our children. You constantly hear people saying, 'Two different houses, two sets of rules; two this, two that,' but I think children are very adaptable. My three children are definitely a case in support of that. The courts are no place for deciding where a child should be. The court has a win or lose outcome—one person wins, the other loses. That sets up an imbalance of power. In some cases—like the big genie in the bottle—it can be used against the other party. You talk about a case for having mediation. People say that they do not want to mediate, but if they do not have an option and it is the first place they have to start at then I think they will do it. If there is representation for both sides then people feel safe. In a court of law, people do not feel safe. Criminals go to court. The end result is somebody is either right or wrong.

CHAIR—Thank you very much.

John—I am happily married, I have a son who is with me this morning, and a son from a previous marriage. I wear parenthood as a badge of honour, as all of us do. I have a shared arrangement for contact with my son every second fortnight and half of the school holidays, so I am in a fortunate position where I do have quite good access. However, with that comes the irony of having to deal with the Child Support Agency, and there is a financial inducement because of the amount of support that I have to pay which prevents me from seeing my son on some occasions. I find it absolutely abhorrent that the system is set up in such a way that it can be used to prevent fathers from being able to have contact with their children.

My wife and my son are dependent upon me, upon my sole income that comes into the household. At the start of my separation, which was eight years ago, I was actually paying out nearly three times the amount of money that I had left to support myself, after I had met all of my commitments in terms of rent and a loan, which was a joint loan at that particular time that I had to take responsibility for. I think that, with respect to the way the system currently stands, it needs to be fundamentally changed because it is significantly flawed and it does not take into consideration the facts of all dependants, or that a parent from a broken marriage may remarry and have additional income coming into that household that is not taken into consideration by the CSA. So I am now paying out money that is being used to support another person, who I have no legal responsibility to support, that being my previous wife's new husband, and I think that that absolutely stinks. I take my responsibility for the financial support of my son very, very seriously but I feel that I should not be burdened with supporting a lifestyle for my former wife and her husband in doing so. Thank you.

CHAIR—Thank you.

Kathleen McCormack—I am from Centacare, Wollongong. I am also a member of Catholic Welfare Australia. I will read out what I have to say, because we have a united voice on this, and I think I can speak quite freely, because we service so many families and children. We see them before and after the event. We supervise their access to and contact with their children.

The presumption of shared time in separation is likely to have both positive and negative effects. It is usually in the best interests of children to have time with both parents, provided it can be organised in a way that does not impose on the child the responsibility to make it work. This means conflict does have to be resolved.

What we are recommending from Centacare is that, as a matter of urgency, consideration should be given to strengthening commitment to the relationships in marriages, and relationships of people. Arranged dispute resolution resources should be expanded to safeguard children's welfare post-separation. As part of any court order, parents should be required to participate in a program to maximise the chances of the order working. As a matter of urgency, the federal government should dedicate funding to programs that strengthen parents in their parenting role, resolving conflict and maximising children's contact with both parents in a way that is beneficial to the children.

Let the federal government lead the way for the country by having families as its No. 1 priority, and all government policies should be examined for their positive contribution to family functioning before being implemented.

CHAIR—Thank you very much.

Dennis—I am employed as a miner and I earn pretty good wages. During the four years since my divorce I have never missed paying child support. I believe all custodial parents should pay some sort of support for their children, but I believe that the system in place is harsh and unfair. For instance, I believe that non-custodial parents should pay child support only on their basic wage, after tax. The non-custodial parent usually has to pay 60 to 80 per cent of their assets to the custodial parent on separation or divorce, leaving them in hardship when they are trying to start their lives again, as they still have to pay full child support as well.

The system for payments now is unbelievably unfair. You pay 18 per cent of your gross income in child support for one child and 27 per cent for two children. It is usually worked on a day's basis, but the percentage is only reduced if you have the children for 110 nights. A lot of non-custodial parents have to go to court to get orders to see their children if the other parent is vindictive. What right does a girlfriend or boyfriend of the custodial parent have to see the children more than me, their father? We still have to pay for these 90 days that we usually get on every second weekend and half of the school holidays. They are only visiting rights to see your children—and you have done nothing wrong. Why should we pay for these nights as well as paying for when the custodial parent has the children? We still pay for these 90 days when we have them, and we still have to feed them, clothe them, run them around and do other things. Surely, if both parents are of good character they should share the children. It would be beneficial for the children and it would stop one parent from using them as goldmines and benefits in child support.

Shelley—I am currently engaged to a father who pays child support. We have had to postpone our marriage for a year at half because we cannot afford it. We have been in court for a year and a half and we have spent $30,000 on court and legal fees; it has been quite drawn out and expensive. Now that is over—we have had quite a good outcome, as most other fathers I have heard about have not—we have to look into child support and how my income will affect his child support, our future and our future children. I do not think that is something I should have to be worried about with my first marriage. I do not begrudge supporting his little girl; I am quite happy to. But I do have an issue with how the money is spent—how my money will be spent. Once it has gone to the mother there is no guarantee about how the money is spent on the child. An example is that on a recent excursion the child did not have the full school uniform; whereas my partner and I have everything for her—we have to—and we also pay for her mother to buy everything for the child. She did not have a full school uniform for the child but I am sure she does not go without her cigarettes—I am positive of that.

Another point I would like to make is that, without the presumption of shared parenting, there is the presumption that both parents are not equally important and not equally capable, which I think is not fair. It is not true. My experience of my partner is that he is very capable and very important. I was fortunate enough to grow up in a two-parent household and I have to say—and my mother will attest to this, as well—my father was the single most influential person in my life. I think it is really awful that so many children are denied the opportunity to have that relationship with their father. There are many other issues I would like to bring up but I would like to find out how I can make a submission.

CHAIR—I will get the committee secretariat to speak with you afterwards. Thank you very much, Shelley.

Lily—I have stood up to make a comment as a practitioner, as somebody who works with children and has worked with children who are the victims of broken marriages and separated parents. For me, the inquiry saddens me somewhat because it is a refocus on parental rights rather than on their responsibilities and is a direct move away from the focus on children. I am here to state my support for those people who spoke about the voices of children, and I would really challenge the committee to try to engage children in their inquiry.

We can use rhetoric but we should also make it happen, because what we are doing is addressing something about very important people in our community—again within an adult system and with adults' perspectives—and I would really encourage that. I think we need some clarity about what will be seen or what can be used by those of us who work in the welfare sector as guidelines for the best interests of the children. I think that varies according to our roles. The views of a counsellor, for instance, when they are looking at the best interests of children will be quite different to the views of a mediator. I strongly encourage the appointment of separate representatives for children. I definitely concur with the parent who stood up and said that this might be a mechanism whereby we can hear children's voices. That is what we need to do.

Val—I have two children. I am separated from my husband because my husband was a violent domestic so-and-so. I took my kids out of that environment so that they could have a decent life. My daughter was sexually abused by her father at the age of six, and at the age of three my son was physically abused by his father. I am sorry if I am emotional.

CHAIR—That is fine; this is an emotional topic.

Val—The financial responsibility for looking after the kids is 100 per cent on my shoulders and I get no support from him. I get bits and pieces here and there. He goes out to work for four months then gets out of work for eight months and does not pay the Child Support Agency. Then he comes back on the scene like a bad smell and says, 'Yeah, I've got to pay my kids $100.' I am on a pension too. I cannot go out and work because I have children to look after. I am there with them 24/7, 365 days a year. So I would like to ask the committee to do something about the type of people who do not pay and do not take responsibility for their children. I am sorry, I feel for the fathers who are doing the right thing. I congratulate them, but the majority of them do not do their work.

CHAIR—Thank you, Val.

Robert—I would like to spend more time with my daughter. Meanwhile, she is stuck in day care because the mother is worried about her pension being reduced and her family payments being reduced. To go through all this she has wasted taxpayers' money through legal aid and day care.

CHAIR—Robert, thank you very much.

Andrew—I am the secretary of the Non Custodial Parents Party. I would like to ask: will all the submissions that have been put into the committee be read? You have only had two weeks to look at some 1,500 submissions. So it would be pretty good work for all of you to have read them by now.

CHAIR—By the time we have finished we will have read all the submissions. All the submissions will have been read. They have been coming in since July.

Andrew—I would probably be the worst politician in Australia, with the small party that we have, but we represent non-custodial parents. We have approximately 800 members. Since we have been running, the Electoral Commission has been giving us a hard time and trying to get rid

of us but we hope to be here for the next election. We are mainly looking at which parties are going to do something. I hope this committee is not just going to sit on its backside, after all the other commissions we have had, and do nothing about it. It is very important for all of us. I feel for mothers and fathers. We have mothers as non-custodial parents as well.

Please, it is very important for our children that we do something about the system. In relation to lawyers, it is a disgrace. Why do we spend $120 million per annum on the Family Court? Why do we spend millions of dollars on the Child Support Agency when they do not do their job? I am sure you know that they are not efficient. I have had my wages garnisheed and I have had my tax return taken from me. I have a second family now with three children under eight years of age so I know what it is like from both sides. I have not seen my first two children for the last nine years. My oldest boy is 21 and my daughter is 14 and I do not even know what they look like.

I have done nothing wrong. I have got no criminal convictions whatsoever. I was led astray by my own solicitor and barrister. I took them on as well. You have got lawyers investigating lawyers. You have got barristers investigating barristers. It is an absolute joke. I lost $50,000 to $60,000 of money which I did not have. I had to get a mortgage to pay for it. I lost my property outright at the court hearing. I was told to pay for her costs as well. I have done nothing wrong. I am just here for justice for all of us, and we have to do something. Please do something.

CHAIR—I thank all of the witnesses and all of the people who have appeared before the committee today, both at the public hearing and at the community statement segment. I also congratulate all of you for the way in which you have been involved in and the way in which you have cooperated with this committee inquiry. This is a hugely emotional issue, not just for yourselves but actually for the committee members as well. We are hearing some significantly difficult issues that we need to come to terms with and be able to understand completely so that we can, hopefully, put forth recommendations that will try and redress the problems that are out there at the moment.

You do need to be congratulated, because it is such an emotional issue that it is very easy to become emotionally torn in this whole debate. We thank you very much for the way in which you have conducted yourselves this morning. Thank you for your attendance this morning, and we hope that we will ultimately deliver something for your benefit.

Resolved (on motion by **Mr Quick**, seconded by **Ms George**):

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

Committee adjourned at 12.11 p.m.