COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS

Reference: Child custody inquiry

THURSDAY, 28 AUGUST 2003

KNOX, MELBOURNE

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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS

Thursday, 28 August 2003

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

Members in attendance: Mr Dutton, Ms George, Mrs Hull, Mrs Irwin, 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 1.52 p.m.

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

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

From the outset of this inquiry I would like to stress that the committee does not have any preconceived views on the outcomes of the inquiry. 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 of one set of views than of another—for example, more from men than from women—by the end of the inquiry we will have heard from a diverse group and thus receive 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 law court and Child Support Agency, in Canberra or via videoconferencing. Today we will hear from six witnesses—three locally based organisations and three individuals.

About two hours has been set aside for the public hearing. This will be followed by around one hour for community statements of about three minutes duration each. So that we can give as many people as possible the opportunity to speak, I ask that each individual speaking in the community statements segment keeps their comments to the three minutes. I will advise you when three minutes is finished. The first witnesses are from the Youth Affairs Council of Victoria.

[2.22 p.m.]

FERRARI, Ms Georgie, Executive Officer, Youth Affairs Council of Victoria

GROGAN, Ms Paula, Policy Officer, Youth Affairs Council of Victoria

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. The Youth Affairs Council of Victoria Inc. has made a submission, submission No. 861, to the inquiry and copies are available from the committee secretariat. I now invite you to make a five-minute statement and then the committee will ask questions.

Ms Ferrari—The Youth Affairs Council is the peak body for youth issues across the state of Victoria. We have a membership of over 270 individuals and organisations. We represent the views of young people and people who work with young people.

Ms Grogan—When this issue became an issue within the media, YACVic was contacted by several members disturbed that the debate became one, really, between mothers and fathers and that the voice of children and young people was not really heard in that media debate. We were asked by several of our members to make a submission to this inquiry. So that is the perspective from which we are coming. I do not think we would claim to be experts in family law in this particular matter but we do want to highlight the fact that the interests of the child and the young person in this issue should remain paramount.

While we certainly believe that it is preferable for all children and young people to have frequent and positive contact with both parents after separation if that is appropriate, we do recognise that that is sometimes very difficult, given the often acrimonious situations that arise from relationship breakdowns. For this reason we do not support the presumption of joint residence. Such a presumption we believe offers a simplistic one size fits all model, and you certainly cannot impose a one size fits all model on the difficult relationship issues that we are talking about here today. We believe that the Family Law Act currently provides the court with the discretion to make orders for the residence of children looking at the individual situation of each family, and that discretion must be maintained. The court looks at all these issues on a case by case basis. Again, we want the court to retain that discretion.

We also note that the Family Law Act has clear principles about the parenting of children, one of which is that it encourages parents to share the responsibilities of their child's care, so we believe that that is already in our legislative framework. The act also allows for joint residency where it is in the best interests of the child and where the parents agree to it. The presumption of joint residency we believe ignores the factors in the Family Law Act which must be considered by the court in determining parenting orders, such as the child's interest, very importantly; the capacity of the parent to provide for the needs of the children; and maintaining children in a settled and stable environment. Studies—and we quote some of the studies in our submission—

also show that the relationship between shared residence parents is typically characterised by low conflict prior and during separation. Unfortunately, often cases that end up in the Family Court actually involve a very high degree of conflict between parents.

We also believe that any presumption of joint residence also ignores some practical difficulties. Parents must be able to live close to each other, they must be able to negotiate flexible working relationships, they must be able to communicate very easily and regularly and, importantly, they must be able to afford to actually maintain two separate households, with two separate sets of toys, two separate sets of clothes—two separate everything. We believe that any presumption might actually damage children and young people where parents live considerable distances apart from each other, where they continue to express hostility towards each other, where their work and living arrangements cannot accommodate the demands of their child and where their accommodation facilities might not support the child and their needs. I guess the thing we want to stress today is that children need stability and security in their lives. We believe that any presumption of joint residence would actually undermine that stability, based on these practical considerations.

We also believe that providing for rebuttable joint residency will lead to more contested hearings in court. I think the Family Court itself says, 'We don't want any more adversarial situations in court.' We are very concerned that this might lead to more contested cases in court. Alternatively, some families might actually be forced into joint residency arrangements when it is not what they really want, but they just cannot afford to take it to court. Again we believe this undermines the child's best interests. Fundamentally, we believe that flexibility is the key—flexibility in parenting arrangements that take into account the different needs of children, particularly as they develop—and that the court must retain the discretion that they currently have to provide that flexibility.

Mr QUICK—How do we hear the voice of children? They are the kids that are suffering, the kids that have been torn between choosing mum and dad. You are a peak body. We are hearing from mums and dads. I have not seen any 10- or 12-year-old kids putting submissions in. How do we get to hear the voices of the kids that are hurting, the kids that are suiciding, the kids that are acting out antisocially at school?

Ms Grogan—When we were invited to come to present today I asked if we could bring a young person who has been in contact with us about this inquiry. I was told it would not be appropriate for a young person to come along with us today. I think it is very important that arrangements like this are made accessible to children and young people. There are guidelines—they were draft guidelines when I last looked at them; they could be finalised guidelines now—about actually speaking to children and young people and representing them in the court. It is very difficult. We know ourselves, just from chatting to children and young people, particularly about some of these tough issues, that it is a very difficult process. Things need to be put into place to allow them to speak—at things like today, for example. As I said, I know of a couple of young people who possibly could have joined us today. They are articulate, confident young people; they could have spoken on behalf of themselves.

Mr QUICK—So should we hold a forum at random high schools and get kids—even those who are not part of this pulling and tugging but can see the impact on their peers—to articulate their concerns? Quite often we hear coloured versions from mums and coloured versions from

dads and everything in between, but if we heard the kids in one of these forums, even if it was in camera, it would educate us.

Ms Grogan—It would. One of the other difficulties in terms of a court situation is—you are right—that the child does not want to speak out against a parent or choose one parent over another. I would not choose a random high school; I would probably do it in an advertised, targeted way.

Ms Ferrari—There are peak bodies of youth organisations in every state and territory in Australia, and you could go through them if you wanted to organise forums. They could put it out through their networks to ensure a good cross-section of young people.

Ms Grogan—Often we find that young people and children prefer to discuss their issues in a hypothetical situation. They do not want to talk about their personal stories necessarily. But if you present the issues to them, they are quite happy to actually talk about their experiences when it is a little bit arm's length. We would certainly encourage the committee to consider doing those sorts of forums.

Mr QUICK—My second question is: how do we put in place child support arrangements that reflect the cost of raising a child? There are differences between the costs of someone doing their VCE—or whatever they call it these days—and the costs of going to university and the costs for the preschooler and the kid in grade 7 or grade 8. How do we weight that? What are your views? Do we have a flexible CSA formula to say that you do not need as much at this end or you need more at that end? Rather than being just a flat formula, how do you see it?

Ms Grogan—One thing we did write in our submission is that we are not experts in that area.

CHAIR—You do not have to respond to the question.

Ms Grogan—Good.

CHAIR—If you want to take it on notice, you can, and provide a response to the committee. But certainly you do not have to answer any of the questions that you do not feel in a position to be able to respond to.

Mr QUICK—The reason I raised it is that you mention here:

> Parents should not pay for children according to time spent with their child. Rather child support arrangements should reflect the cost of raising a child.

Hence my question.

Ms Grogan—That is why we kept that section very brief. We certainly do not claim to be experts in that area.

Mrs IRWIN—I have two questions, but I am only going to ask one. If time permits, after all of my colleagues are finished, I hope to ask my second question. I refer to page 8 of your submission, where you say:

The key messages coming through from research about children's participation in family law matters include:

- Children want to know what is going on.
- Children want to be consulted and their views taken into account.
- Children want flexible, workable arrangements that change to meet their changing needs and circumstances.

Through your work with children and young adults, what do you feel are their major concerns when the family separates?

Ms Grogan—One of the key concerns of the several young people who have contacted us since we said we were putting a submission in to this inquiry was being fair to both mum and dad. They find that so difficult to balance. One of the other key concerns—and I am thinking of a person who contacted us just last week—is trying to balance the rest of their lives: going to school, still working, still trying to maintain peer relationships, knowing that this conflict is actually happening at home. It means trying to be fair to both mum and dad but also just trying to get on with their own lives and wanting that conflict to be sorted out in the most timely and efficient manner possible. They do want to have a say in court and about their interests and needs. More importantly, the young people I have spoken to are of an age where they realise that their views might not necessarily determine the outcome of the court hearing, but they want to know that their views are being heard and taken into account in some way.

Mr PEARCE—I want to firstly touch on the presumption of rebuttable joint custody. I noted that your submission almost entirely revolves around the presumption issue and your statement this afternoon was very much focused on that area. I notice in the submission and in your statement this afternoon that you seem to separate the discretion of flexibility of the Family Court, and you seem to give the impression, anyway, that if the presumption of rebuttable joint custody were in place, the Family Court would not have discretional flexibility. Am I right? That seems to be the way that you are presenting it to us. But, if it were introduced, the presumption of rebuttable joint custody would not—unless it was expressly stated—take away any flexibility or discretion of the Family Court. It would only be a starting point. The court could potentially start at a position, evidence could be provided—as it is today—from both sides and the court could, at any point, bring down an order in any degree of flexibility. I wonder why you feel that, if there were a presumption of rebuttable joint custody, that flexibility would be gone.

Ms Grogan—From our perspective we are again going back to what is in the best interests of the child. 'Best interests' is not necessarily automatic equal time from the very beginning. A court should actually have the discretion from a starting point of deciding what is in the best interests of that child, without automatically suggesting, at least in the short term, that that is equal time spent with both parents in a shared parenting situation.

Mr PEARCE—Are you saying that, post separation, equal access is not a good model to start from? Is that what you are saying?

Ms Grogan—No, I am saying it could be a great model for some parents, and I think we highlight where it possibly does work and where parents choose to make it work in the best interests of the child. I would suggest it would not be in the best interests of the child in some cases—absolutely—and that is why the court needs to retain that discretion to decide where it is not in the best interests of the child so that it is not imposed on that child.

Mr PEARCE—But that is my point: the court could still have all of that. I got the impression—tell me if I am wrong—that you seem to think that if the presumption were introduced the court would lose its flexibility. But I do not think that has ever been discussed. I wonder why you have that particular perception? You obviously are worried that if the presumption were introduced the court would lose its flexibility, but actually both could be introduced.

Ms Grogan—We are concerned, as I highlighted, that that presumption would mean there would be more cases then having to be taken to court to contest the presumption. The current legislative framework actually allows either for parents to choose or for the court to determine that shared parenting is in the best interests of that child. The fundamental point of our submission is that we think the current Family Law Act actually allows for shared parenting if it is in the best interests of the child.

Ms GEORGE—You say in your submission:

The overwhelming majority of parents agree on arrangements for the care of their children. Only 5% of custody orders are made after a contested hearing.

On what basis did you come to the conclusion that the overwhelming majority of parents agree?

Ms Grogan—Reading and researching statistics.

Ms GEORGE—So you are saying that, if it is not contested, the 95 per cent have amicable agreed arrangements?

Ms Grogan—No, you are right; it might not be amicable. I guess the point we are making is that very fortunately most cases do not go to court to that final contested hearing, which is a good thing.

Ms GEORGE—I am asking that question because this morning we have spent a bit of time on it. There is this assumption that if 95 per cent do not go before a judge then everything is fine out there. I guess what we are hearing is that it is not all fine, and sometimes it is not all fine because either parent does not have the means to pursue the case to the ultimate.

Ms Grogan—I would agree. I am not suggesting that 95 per cent of cases are amicable. Our key point is that we do not want even more cases to be contested in our court system, which is unfortunately an adversarial system.

Ms GEORGE—What are your thoughts about the option of some kind of enforced mediation before legal proceedings commence?

Ms Ferrari—We have not looked at that, but if it kept cases out of the court and allowed for a more harmonious discussion arrangement, I think we would be in favour of that. Research that we have looked at suggests that it is not necessarily the separation or the divorce that is damaging to children; it is the amount of acrimony or animosity around those arrangements that can actually have damaging effects on children and young people. Certainly that is what we would like to lessen in the arrangement.

CHAIR—Just to pick up that point, Ms Grogan, you say that 95 per cent do not have to go to court, and that is a good thing. It is just an assumption that that is a good thing. It may be that 40 per cent of those people do not go to court because they do not have enough money, so is that a good thing?

Ms Grogan—No, that is not a good thing. In fact, we have picked that up in our submission when we say that if you are introducing a rebuttable joint custody then you could have people forced into a shared parenting situation simply because they cannot afford to go to court and contest that.

CHAIR—But isn't that the same circumstance now, that they are forced out of a shared parenting because they cannot afford to go to court?

Ms Grogan—Yes.

CHAIR—Thank you. I just wanted to make that point.

Mr CAMERON THOMPSON—You are the Youth Affairs Council of Victoria and you are talking about what is in the best interest of the child. What numbers and what proportion of children are telling you that they do not want to spend 50 per cent of the time with either parent?

Ms Grogan—I would not want to give you that statistic. We are representing 270-odd members. We went out to them publicly and said we were contributing to this inquiry and to feed us back information. We were contacted by only a small percentage, so I am not saying X percentage contacted us and said they did not want to spend 50-50 time—

Mr CAMERON THOMPSON—You are the Youth Affairs Council. How important is this issue to children?

Ms Grogan—We would say parenting arrangements is an extremely important issue to children and young people.

Mr CAMERON THOMPSON—I am putting to you that if it is that important shouldn't you be able to tell us more emphatically just what children themselves are thinking? Shouldn't it be part of your responsibility to tap into that?

Ms Ferrari—Perhaps I can wade in here. We are funded as the peak body. We are funded by state government to carry out the roles of a peak body. We are given that money because we are seen to have expertise on issues pertaining to children and young people in the roles that we have, so we consult with our membership and people will come to us on issues, or we will put things out to our membership and seek advice. But we also have expertise within our organisation. Within our members, our board of governance, we have a policy advice group that we refer issues to and we have a youth reference group that we refer issues to. We use all of those mechanisms to gather the expertise and the information that we need to put a submission like this in. This submission is also on our website, and it has been up there for a number of weeks since we put it into you, so people can also look at it there and feed back to us in that way if they want. We have not had anybody feed back to us that the information that we put in our

submission was incorrect or did not represent their views. So that is probably just as important as the number that came to us and said, 'Yes, these are the issues that we want you to present.'

Mr DUTTON—I just wanted to follow on briefly, touching on the point that Mr Pearce raised before. You made mention in your submission and in your oral evidence today of section 60B of the Family Law Act, which outlines, at least in part, an aim to have shared parenting where possible, and obviously that has some particular application for that 5 per cent at the hard end of the court process. Part of the reason that people have suggested, and I suppose support, the issue of the rebuttable presumption is that practically that desire in section 60B is not reflected in the outcomes from the court. So I understand what you are saying on the one hand, but the problem is still there. We are not keeping people out of the courts or putting them into the courts because of that desire under section 60B, and the thought is that if there was a presumption, on my understanding of some people's submissions, then it may be either party that opts out of that. Because of the fact that it is a rebuttable presumption, there would be certain points which could be rebutted. How do we make the section that you have mentioned effective, if we do not make it rebuttable in the first place? There are no practical outcomes from it at the moment. Even though it has been the desire of the legislators, it has not been put into practice by the courts.

CHAIR—If you think you cannot appropriately address a question, you can take the question on notice. We will provide you with a copy of it and you can respond to it, if you would like. Alternatively, please feel free to indicate that you do not feel able to respond to the question.

Ms Grogan—I need to clarify the question. Are you suggesting that, when looking at the outcome of cases, there is not a situation of a 50-50 split?

Mr DUTTON—I understood your evidence to say, at least in part, that we do not need a rebuttable presumption because already in the act we speak about shared parenting, and that is one of the desires; therefore, we do not need the presumption that we are speaking about. For whatever reason, that part of the act is not working, either because of the costs of court or people saying, 'I'm fed up with this process and I'm opting out'—and I suspect that they are a large proportion of the 95 per cent that we were speaking about before. We are saying that, even though it is there in legislation, we acknowledge it is there and you have said that it is there as part of your evidence, it is not coming through in some of the outcomes or the decisions that the court makes.

CHAIR—As I say, you really do not have to respond on this point.

Ms Grogan—We will take it on notice.

CHAIR—Thank you. We certainly appreciate you coming this afternoon and being a part of the hearing.

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

That submission No. 861 be placed on the public record.

[2.47 p.m.]

TUCCI, Mr Joseph, Chief Executive Officer, Australians Against Child Abuse

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. The Australians Against Child Abuse group has made a submission, No. 703, to the inquiry, and copies are available from the committee secretariat. Would you like to make a five-minute overview statement and then answer questions from the committee.

Mr Tucci—I am the CEO of Australians Against Child Abuse. We are about to change our name on 9 September to the Australian Childhood Foundation. Just in case there is any confusion—you might be seeing us in the media today and tomorrow as the Australian Childhood Foundation—that is our new name. I appreciate the opportunity to come and present to the committee today. You have the submission in front of you. Rather than go through what you already have, I will talk about a concern in a composite case that is the experience of our staff at Australians Against Child Abuse in providing counselling to kids who have been abused. It has been our experience that the case that I am about to tell you about is not unusual. Whilst it is not an actual case, its elements are very true and very real.

A little girl, seven years old, was referred to us because she had a whole range of behavioural problems at school and at home. She comes from a family where her mum and dad are separated, and she has a little brother. She had a whole range of behavioural problems at school that included problems of a sexual behaviour towards other children, where she would hurt other children in a sexually inappropriate way. She was also very difficult to manage at school. She was very difficult to manage at home when she was with her mum. She almost always did not want to go and see her dad when access was occurring on a fortnightly basis. She was referred to us because of the sexual behaviour problems. We spoke to her and did some counselling with her for a period of about two months before she finally told us that her dad had sexually abused her and was doing so on access all the time.

We made the appropriate report through the child protection system. They told this mum that, because she was the parent who had residency, she was able to protect and that if she was able to stop the access they would not become involved. Indeed, they did not become involved. The mum tried to stop the access by withholding the child. She made application to the court—it took a long time for that to occur—and she withheld the access; she stopped the child from going to access on advice from her solicitor. The little girl's dad has refuted that the abuse has occurred and continues to press for contact with her—and I apologise for having the old terminology—and it is going to court. This little girl has now had to see four Family Court counsellors. She has not given another statement to anybody else—only to me, in fact—and I think it is unlikely that the court will make an order that will stop contact between her and her father, even though she has made what I think is quite a clear disclosure of abuse and, quite clearly, her behaviour has changed since the access has stopped.

The thrust of our submission to you is a fairly simple premise—that is, that if you move towards having an assumption that is not centred around what children need, you will introduce a new hurdle that I think eventually will make it even harder for those children to be protected. The reason I say that is that, if the mum, in this situation—and, equally, it could be either parent—has to start from the position that shared residency is the best option for this little girl and there has to be evidence put up to counter that, to say that that is not the way forward, then I think it is unlikely, even as we stand today, that the evidence that we have in relation to this child's sexual abuse experience will be heard and listened to. It is unlikely that if you start from a presumption of joint or shared residency you are going to end up with this child being protected.

Mr DUTTON—Thank you very much for your submission. I suspect that, if we were to embark on a rebuttable presumption, at the very least the first rebuttable aspect would be the suggestion of child sexual or physical abuse. I think all of us would support that. Can you tell me the percentage of sexual abuse cases in Australia where the natural father is the offender?

Mr Tucci—I am not exactly sure. It is very difficult to get those statistics but, overall, the natural parent represents about 70 per cent of the perpetrators of child abuse.

Mr DUTTON—Just break it up into sexual abuse for me first, though, because that is the example that you have given.

Mr Tucci—The statistics do not break it up between perpetrators of physical abuse and sexual abuse.

Mr DUTTON—If you cannot give a definite percentage, is it fair to say that the perpetrator would normally not be the natural father?

Mr Tucci—No.

Mr DUTTON—Would it be an uncle, an introduced boyfriend or a stepbrother? You would think that the natural father would be the most likely offender.

Mr Tucci—I would suggest that, in a large proportion of the sexual abuse cases—those that involve the Family Court at least—it would be the natural father.

Mr DUTTON—I am not just talking about the Family Court; I am talking about sexual abuse in Australia. I ask you that question because I assume that, as CEO of Australians Against Child Abuse, you would have some access to those figures.

Mr Tucci—Unfortunately, none of us has access to those figures. Those figures are just not available.

Mr PRICE—Would it help you in your work if those figures were available?

Mr Tucci—Absolutely. Have a look at the Australian Institute of Health and Welfare report: it tells you that 70-75 per cent of the time biological parents are named as the perpetrator of child abuse, but it does not break it down in terms of the types of abuse.

Mr DUTTON—I will just ask one final question, then: if a rebuttable presumption were to be introduced, and it turned out that an introduced male partner of the natural mother was an offender or was accused of offending against the child, how would that situation differ? How would the father's capacity then be any different to stop that contact?

Mr Tucci—If the rebuttable presumption—

Mr DUTTON—If the natural mother and father break up, there is a presumption of joint custody—so it is fifty-fifty with each parent: the little girl goes to her mum for one week and her dad for the next week. But, as it turns out, an allegation is made by the little girl to her teacher at school that her mother's boyfriend, who is now living with them, is sexually assaulting her. How would the father then address that issue?

Mr Tucci—In the same way that I have described. He would have to either report the case to a statutory child protection service or take action through the court to change contact or residence. Again, he would have to prove that what the child is saying is right.

Mr DUTTON—So it could cut both ways.

Mr Tucci—It could cut both ways; yes, absolutely.

Mr CAMERON THOMPSON—Do you think that, as things stand, there are sufficient safeguards and protection for children at risk in the process of determining residence and contact arrangements?

Mr Tucci—No, there are not.

Mr CAMERON THOMPSON—Even as it stands?

Mr Tucci—Even as it stands there are not enough provisions. The process of determining the assessments or undertaking the assessments takes far too long. It relies on children repeating their stories to sometimes two or three different adults, who are asking them quite sensitive questions within 10 minutes of meeting them. If you wanted to have a child-centred system that encouraged children to talk and tell you about what their experiences were, you would not have designed the system the way that it is now. On top of that, the child protection systems in the Family Court do not communicate very well at all. Child protection systems believe that, once it has become part of the Family Court jurisdiction, they are able to wash their hands of involvement—they rarely become involved. I think that the lack of a legislative framework to combine Family Court and state child protection systems is another hurdle for children who have been abused to surmount in order for them to be protected.

Mr CAMERON THOMPSON—Do you see it primarily as being a jurisdictional thing, where you have state bodies versus federal bodies?

Mr Tucci—It is partly that; it is also partly the resourcing and the approach of the courts. They are reluctant to take on board hearsay evidence from people outside the Family Court system. So, for example, if a child discloses to one of our counsellors, unless we are determined to be some kind of expert—which generally we are—they are unlikely to take that evidence. A

child is more likely to disclose to a teacher that they are being abused than to a Family Court counsellor. But that evidence will not be permitted in court, and that child will have to go through a number of interviews: with a separate legal representative, the mother's appointed counsellor, the father's appointed counsellor and sometimes a court appointed counsellor.

Ms GEORGE—Thank you very much for your submission. We had one this morning from the Domestic Violence and Incest Resource Centre. When we make our recommendations the last thing any of us would want to do is potentially set up a situation where, unconsciously or not, we might be putting a lot more children at risk. It is a vexed issue because a lot of domestic violence and sexual abuse cases are not reported. On the other hand, we hear from people who say that allegations of domestic violence and sexual abuse can be used as a weapon to deny the parent contact and access. Have you come across any cases like that? Could you elaborate?

Mr Tucci—Of the Family Court cases we become involved in where child abuse is alleged, between 15 per cent to 20 per cent have elements within them that are not true, or that have been exaggerated. That is not to say that some level of violence or distress or harassment has not occurred. It has, but the statements around the abuse and the extent of abuse are sometimes exaggerated in order for the contact and the residency to be modified or terminated.

Ms GEORGE—How do we overcome that problem? Have you any ideas about how we deal fairly with both aspects of this vexed issue?

Mr Tucci—I would like to think we could develop a system in which children are able to, over time, speak more accurately about their experiences. It is not so much that children make up things as that parents who are in high conflict situations shape and influence their children to believe that what they are experiencing is as difficult or as hard as they say it is. The suggestions are to introduce some earlier measures in the separation process where there is potential conflict, to put as many resources as we can into easing that conflict and stress. If that stress and conflict are inevitable, we should have a system that focuses on the child and supports the child over time—that does not see the child as an adjunct to a decision, but as a central focus of the decision.

Mrs IRWIN—I want to get something here on the public record. Your submission suggests strengthening the family law principles to protect the needs and interests of children. What changes would your group like to see to strengthen the family law principles that protect the rights of children? What is your wish list?

Mr Tucci—In essence, it would be about ensuring that some frameworks or opportunities are made available to parents so that they can think of their kids before they think of the separation. I am not opposed to enforced or mandated intervention where there are situations of high conflict or tension. I think that in those situations parents should be forced to undertake some kind of course or counselling. The strengthening is about how you resource the system so that it deals with issues of child abuse and family violence more sensitively and accurately, and quickly, so these cases do not end up waiting for a long time. That, in essence, is probably as clear as I can make it.

Mrs IRWIN—Do you feel more resources should be put into mediation? The reason why I ask this is the number of parents—mums and dads—and even grandparents I have spoken to

who state that you might wait months to get a court hearing and then you go to court and they say, 'Hey, you need some counselling or mediation.' Then you go to the mediation and sometimes it does work for you but you have wasted all this time. What is coming out is that more resources should be put into this field. Do you feel that there should be mediation first before they go into the court?

Mr Tucci—I think that would help. A whole range of alternatives should be available while they wait.

Mr PEARCE—Mr Tucci, thank you for your time and your submission. As you well know, this whole area is complex. We hear a lot that everything we do and that the court does should take into account the interests of the children or the child. Clearly, the system overall is not working. Based on your experience, what do you consider to be the strongest one or two things government could do to improve it? We as a committee have to come up with a series of recommendations and, at the end of the day, governments cannot do it all. Unfortunately we cannot legislate for people to be happy or to be civil to one another, but we can do some things. Based on your experience, what would be the most significant one or two things we could do?

Mr Tucci—Give every child who appears in the Family Court separate legal representation.

Mr PEARCE—Give every child separate legal representation?

Mr Tucci—Absolutely, first and foremost.

Ms GEORGE—From what age?

Mr Tucci—From about five or six.

Mr PEARCE—You are saying that, separate from mum and separate from dad, they should have a state funded legal representative?

Mr Tucci—Absolutely. You could make it either a separate legal representative or some kind of guardian ad litem—someone there whose focus is solely to represent the child and make representations to the court not only about the child's wishes but also about the child's development and the child's context and what they need in relation to that.

Mr PEARCE—That is a very interesting idea. The question that comes to mind straightaway is whether that would increase the manipulation by either parent to try to influence the child.

Mr Tucci—In the situations where I have seen good child reps work, they have helped resolve conflict more often than not.

Mr QUICK—This is our first day, so we are all casting off into uncharted waters and asking questions that might seem a bit irrelevant and that might make you wonder where we are all heading; but I appreciate what you are on about. The thing that worries me is resourcing the system and the safety net. How many other specialist counselling organisations are there in Victoria? Who refers to you? How do people know about you and other organisations? Who

funds you? Are you doing something that the state departments should be doing but that they find too hard and so are outsourcing? How does the system work in order to protect the kids?

CHAIR—That is a fairly sensitive question. If you would like to take it on notice, feel free to do so and provide us with a response at your earliest opportunity.

Mr Tucci—I can answer that question. There are a number of organisations in Victoria and elsewhere that deal with families on the brink of abuse and violence. They are the family support organisations. There are probably fewer that would deal specifically with the aftermath of abuse and violence. I could count on one hand the number of specialist agencies in Victoria that work with children—the Gatehouse Centre at the Royal Children's Hospital, us, the Children's Protection Society. There are probably a few smaller ones as well—Berry Street would do a considerable amount as part of their accommodation and support role for kids.

Providing specialist counselling to children who have experienced abuse and violence is not on the agenda of most state governments. New South Wales is probably the best government in terms of its allocation of funds; most of the other states fall behind. Our service, which sees 300 children, is funded to see 40. Ten per cent of our funding comes from the state and 90 per cent from our own fundraising.

Mr PRICE—With regard to your earlier comments about the Family Court, isn't it a disgrace that it takes so long in the court to get those cases heard? Without wanting to lead you, isn't it the case that at your level both in the Family Court and in the departments we are spread so thinly across so many children and that we need to spend a lot more money on the severe cases?

Mr Tucci—It is disgraceful that children in cases that involve child abuse and family violence have to wait for long periods. It is not unusual for children in those situations to wait four, five or six months, in our experience. Should we be focusing our attention on the cases where abuse and violence have actually occurred? I would like to think that, when governments are talking about early intervention, it would be on the agenda of all governments, especially this one, to find the opportunity to do both. We should not have ideas around early intervention and providing support programs at the risk of the children who have already been abused and who need sensitive specialist counselling and support to get over the trauma. You are talking about the next generation of people who will be having problems with unemployment, crime and mental illness.

Mr PRICE—I take issue with one aspect of your submission. You say that a presumption of equal time focuses on parents' rights, rather than on the best interests of the children. As a general proposition, isn't there a presumption that children are going to benefit from both parents? Let us put aside an abusive situation. Why can't equal time be the starting point for those considerations? It does not have to be the template with which you force all situations through, but what is wrong with that as a starting point?

Mr Tucci—The way you have put it, there is nothing wrong with it. You want to leave aside the issue of child abuse and family violence—

Mr PRICE—I am sorry; I think they are always going to be an exception and that you need to deal with them separately.

Mr Tucci—In a separate way—I understand the question. I also put in the submission when equal time can work. I think that equal time will not work if the parents are far away from each other and the children travel in between. That is one of the issues you have to take into account. The second point I made is that they have to be able to communicate and negotiate around that equal time. If they cannot do that, you are going to have problems. If equal time works, it is great. If it does not, what are you going to do about it?

Mr PRICE—Your submission is around the residency issue, and that is fair enough, but if your association has views about the handling of these family law issues where abuse and violence are an issue, we would welcome a supplementary submission.

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

That submission No. 703 from Australians Against Child Abuse be placed on the public record.

[3.15 p.m.]

BRAYSHAW, Mr Geoffrey Douglas, Founder, Australian Family Support Services Association

CHAIR—Thank you very much for attending this afternoon. 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 this committee is a very serious matter and could amount to a contempt of the parliament. I remind you that the comments you make are on the public record. You should be cautious in what you say to ensure that you do not identify individuals and that you do not refer to cases before the courts. The Australian Family Support Service Association has made a submission to the inquiry, submission No. 191; copies are available from the committee secretariat. If you could provide a five-minute overview, we will then be open for questions from the committee.

Mr Brayshaw—I have a little package here for each member of the committee that goes through what the organisation does, and some documentation we have as evidence from various groups, organisations and professional bodies.

CHAIR—Thank you. That will be exhibit No. 3.

Mr Brayshaw—Australian Family Support Services Association was set up to help individuals going through marriage breakdown and family separation. We look at the aspects from a grandparent's perspective, a male's perspective and also from the second family's perspective. Recently we have been more involved in the women's side of the problems because, as you would appreciate, when a marriage breakdown happens there is good and bad on both sides. We are not an organisation that will just look at one side; we look at both sides of the coin. If somebody is having difficulties, we will help that person. As a result, we have developed a network of professional people whom we can tap into, whether it is counsellors, lawyers, et cetera.

The organisation is very concerned about the processes. We are looking very closely at children's issues. Children have the right to access both parents and the right to develop a relationship with both parents. The financial or property aspects of a marriage breakdown should be left until at least the youngest child is 18. Both parents would have the final separation or split at that point in time. We believe that joint parenting or shared care—whatever you want to call it these days—should be the starting point. As we have heard, there are obviously times when this is not necessarily the right way to go, but the feedback we get from fathers, grandparents and second families, in particular, is that if we start at the middle, with shared care, we can then go either way.

Mr PEARCE—Mr Brayshaw, thank you for your time today. I am interested to know who the members of your association typically are. I am presuming from their names and what have you that they are generally couples who have been through separation and who have had practical and tangible experience with the Family Court. Is that right?

Mr Brayshaw—Sometimes I get them before separation happens—pre-separation. Initially, the brother, sister, grandparent or mother will ring us to find out who and what we are, how we can help them move through these processes, and what their entitlements are. Then the individuals, whether they are male or female, will ring us and talk about their specific issues.

Mr PEARCE—That was going to be my next question. What types of services do you provide, and what is your experience? Take the hypothetical situation of a couple who are going through a difficult time. What sorts of support services do you provide, and what has been your experience of what works and what does not work?

Mr Brayshaw—Basically, people come in and we offer them a friendly ear. First of all, people have got to get their problem out to us. They see their problem as unique and think nobody else is facing these situations—although over the five or six years that we have been doing this we have seen that every situation, or the principles behind it, is very similar. The way to deal with it on an individual basis is by helping people to understand what we can and cannot do. There are certain things we can help them out with, but when it gets to a certain level we have to hand over to a professional organisation, such as a legal, counselling or mediation organisation. We can tell people the processes that they need to follow. In the information kits we provide fact sheets showing what they need to know and how to go about doing those particular functions. Getting people to understand the emotive issues behind everything, such as what happens with a marriage breakdown and the effects on their children, their former partner and, more importantly, their immediate family, and to then prioritise their issues—what they can deal with today and what they cannot deal with—is the most important thing.

Mr PEARCE—What has been the most revealing facet of your five or six years experience? What has been the single most common theme, the most substantial thing that has come through or the greatest success that you have had? If governments could provide funding or do something to improve things, what does your experience tell you would make the most significant difference to the people that you have come across?

Mr Brayshaw—The biggest problem with any marriage breakdown is that men are very much still the so-called breadwinners as far as the court system goes. Society sees it as a changing thing. However, men themselves are not ones to seek support, to go and find out more information about their current situation and about what they are entitled to and what they are not entitled to. The whole idea of our organisation is to give people—men, in particular—the tools to network and meet other people in similar situations and to work with them through their processes. There are certain things that they have to do, and there are certain commitments that they have to make. To get them to understand and work through those situations is very important.

Mrs IRWIN—Page 2 of your submission says:

> Unfortunately I see too often, one parent use the children against the other parent, for a financial advantage or control over the other parent for self satisfaction.

Then you give examples of a husband's wage compared to his partner's wage. In your submission—this is the feeling I am getting from reading it—you have suggested a cost-sharing approach to the financial support of children based on the incomes of not one parent but both

parents. Could you describe what you see as the main differences between the proposal that is in your submission and the existing child support scheme? What would be the main benefits of your proposal?

Mr Brayshaw—Everybody's case is unique. If we could pigeonhole everybody in the same category it would be fantastic and it would make our job so much easier. We have people who are on incomes of in excess of $100,000 a year; we have people who are living on the poverty line and, as a result, their standards of living are extremely different. The difference is vast. One parent may have a good income and the other parent may choose not to have a good income. We look at the last couple of years' tax returns for both parents, for example, based upon contributions as income. That then becomes the basis of their commitment to the children in meeting requirements and their expenditure.

The way the current system works is that, if you have a single child who is two, three, four or five, you can pay anywhere between 18 per cent to 36 per cent of your gross income out of your net pay. That does not necessarily reflect the children's needs. Some children may have extra activities, such as piano lessons or sporting events and things like that, and those needs may not be taken into account. However, with the current child support system, you can apply to have additional moneys given to the carer parent to maintain those activities. That may not necessarily be in the best interests of (a) the child or (b) both parents.

Ms GEORGE—We have heard the argument that nothing needs to change because the changes to the Family Law Act in 1975 put the primary focus on the best interests of the child. The changes are posited on the view that—with the exception of cases of domestic violence—children have the right to know, and be cared for by, both their parents and parents should agree about the future parenting of their children. A lot of the grievances we hear hinge on the fact that those principles are not necessarily being enforced in practice by orders the courts might make. Do you want to comment on that and on where you see the breakdowns occurring in applying those principles?

Mr Brayshaw—Personally, I think the Family Court's principles are quite good—that is, until you bring lawyers into play. There is a cost involved in going through the Family Court. It is far easier from a legal perspective to say, 'This is the norm,' without looking at what the individual's needs are. We heard that only five per cent of all marriage breakdowns actually go to litigation. Well, I can tell you that 95 per cent of them would love to go to litigation. However, they do not have the spare $30,000 in their pockets to do it—and that is both parties.

I believe that if that is the case and people want to go through that process, any funds that it would cost to run that process should go through to a committee where the committee makes the decision, and the moneys that were going to spent in fighting the case would be placed into a trust fund for the kids when they turn 18. That way we blow a multibillion dollar industry for the legal profession straight out the window.

Ms GEORGE—How does the non-working wife with two children survive in that situation?

Mr Brayshaw—At this time, the non-working wife is very much protected through our current system, with the sole parent allowance and the facilities which are available to them, such as discounts via health care benefits and things of that nature. It is not what we all want,

especially from a government perspective, because it is a cost for the taxpayer. With the principle of mutual obligation brought in a few years ago—I am sorry, I cannot remember the minister's name—why not start educating the women who are looking after the children? This would enable them to get back into the work force and help meet the commitments of the children instead of leaving the burden to someone else—for example, the male. Society has changed dramatically: both parties now need to contribute towards the children.

Mr CAMERON THOMPSON—We have heard from various people. As we have said, it is only our first day. The idea of shared care as a starting point or whatever is, superficially, very attractive. You are an advocate of it. Realistically, though, given at least the breadwinner's commitment to the daily grind at work, how can you expect to get a shared care arrangement to work? Do you have any ideas on that? As I said, it is appealing—it appeals to me—but how could you make it work? What kind of added support would be needed?

Mr Brayshaw—Shared parenting will work with the employer taking into account flexible working hours. We have a situation currently where with a lot of employers you can manufacture your time so that, when you do have the children on that week about, you might start at 9.30 and finish at three o'clock, for example.

Ms GEORGE—If you were on an assembly line, that would not work.

Mr Brayshaw—In the week that you do not have the children, you have the flexibility of making up that time. So you have both sides of the coin. There are certain activities that a single parent who stays at home all day long could do while they were at home, whether they be administrative or whatever. There are ways and means of being able to make sure that the children's needs are met first and that the employer's needs are also met. Hopefully, in most cases people will be happy.

Ms GEORGE—I do not think that it will work in practice.

Mr Brayshaw—I do know of some cases where it is actually working, so for some it will and for some it will not.

Ms GEORGE—It will work for white-collar professional people, but for workers—

Mr Brayshaw—With the way things are going with shifts, if the average worker in the street is doing a lot of shiftwork and things like that, they are running 12-hour shifts. How this will now work is as it used to the earlier days: our parents—the grandparents of the children—can come in and assist. We have two on one side and two on the other, so that flexibility of being able to get other people to support you and assist you, and have after-care and all these sorts of things, can come into play.

Ms GEORGE—That is only if you have family support, though. There are a lot of people out there who do not have the grandparents.

Mr Brayshaw—That is why we have the child-care system in place as well.

Mr DUTTON—I think that one of the aspects of the rebuttable presumption that people do not realise is that the rebuttable aspect can be put forward by either the traditionally non-custodial or the custodial parent. So, for argument's sake, the former breadwinner of the relationship may say, 'Look, it's a good starting point, but I work 40 hours a week and for me a more flexible arrangement might be from Friday afternoon until Monday morning'—or whatever the case may be. So the rebuttable aspect is available for both parties to the arrangement. I suppose that is how some of those practicalities may be dealt with.

I wanted to touch on the issue of enforcement. We have taken some evidence so far—certainly from the people we meet in our electorates—that, despite the fact that there may be consent orders provided by the court binding on either party or on both parties, for whatever reason those consent orders are not abided by. It seems to me that, either under the current system or according to any proposal that we make, unless we are going to give some sort of teeth to the enforcement of those consent orders, we are just going around in circles. Have you thought of any ways of trying to provide some sort of enforcement of those consent orders—that, if a particular party is awarded certain conditions as part of the consent order, the other party meets their obligation under the order?

Mr Brayshaw—Most definitely. The one that comes to mind immediately is the French system. It is a bit harsh, but if a parent does not meet their duty and obligations to the children and disregards the order, they are jailed up front. We could always use the German system, which means that, if a parent does not meet their commitment to the children, they are fined. If they continue to disregard the order, custody of the children is then changed around to the other parent. So there are some pretty quick ways of fixing the problem. I think that the first one is a little bit harsh—

Mr DUTTON—That is a fair concession.

Mr Brayshaw—Yes, but then again, if we want the shared care to work and make both parents commit to the children, something of that ilk hanging over your head might make you pull your head in and think of the children first.

Mr PEARCE—Are you suggesting that, because there is no real enforcement, there is a perception that people do not stick to the guidelines? Is that what you are saying?

Mr Brayshaw—Our current system is very flexible. Obviously parents have reasons; issues confront them on a day-to-day basis and therefore withholding custody or access from the other parent can come into play. Yes, some people do it as a controlling factor or for a financial benefit, for whatever reason. There is a system within our court system to fix those problems. The problem is that to go and fight that in the Family Court the starting cost is about $5,000—that is both parties throwing in $5,000. Then you get through the court system and one parent will be reprimanded. It is not until about the eighth time that the court system will actually do something more severe. Based on minimum dollar figures, that is about $40,000 each.

CHAIR—Thank you, Mr Brayshaw, for coming in this afternoon; we appreciate your time.

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

That submission no. 191 from Mr Brayshaw be placed on the public record.

[3.37 p.m.]

WITNESS 1, (Private capacity)

CHAIR—This is now the individual section of the inquiry. I would like to acknowledge that Mr Phil Barresi, the member for Deakin, has entered the room and is in the inquiry's audience. Thank you, Mr Barresi.

Thank you very much for coming 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 comments that 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. I offer you the opportunity, if you want it, to be heard in a confidential section. If you choose to testify at this public hearing I would ask you to be mindful of the fact that you should be very careful not to identify individuals or to proceed with anything that is in the court at the moment. Do you wish to still remain in the public hearing?

Witness 1—I do.

CHAIR—If you would like to make a short statement, I will then invite members to proceed with questions.

Witness 1—I have three children. I have put in a submission to the inquiry and I am here to discuss that matter. It is very hard to speak, but I will do the best I can. My submission was basically about where I do not think the proposed change will work—or not in my case, anyway. I have three well balanced, healthy children. I was first separated from 1990 to 1993. I had two children. I was reconciled in 1993 and the final separation was in January 1998.

CHAIR—The members of the committee have your submission. We have all read it for today's hearing, so if you could add to that submission and then answer questions, that would be very helpful. I do not want you to waste time telling us something that we have already read in your submission.

Witness 1—All right. I find it very difficult, with what I have gone through, dealing with agencies—for example, the Child Support Agency. I have discussed my situation between 1990 and 1993 and then since 1998. The current system does not really work for everybody. It may work for those on the tax payroll but not for—

Mr PRICE—The self-employed?

Witness 1—The self-employed and those who are not unemployed and not self-employed and those who do not wish to submit tax returns. Early in the separation the parents really need to have the best interests of the children in mind. If you do not have that at the very beginning of the separation, it can all go wrong from there. If the mother or the father decides that their own time is more important than the children, it starts to take off from there. The children are not

something you can play with and have there when you want them to be there. I think you have to take on the responsibility. I am sorry.

CHAIR—That is all right; it is fine. It is an emotional subject and we understand that. We will ask you some questions.

Mrs IRWIN—Thank you very much for sharing part of your story with us and coming before us today; you are a very brave woman to do that. I want to talk about the child support system. On page 2 of your submission you talked about your ex-partner. You wrote:

He has not paid any child support to me (arrears in excess of $28,000), despite the fact that he owns and operates a café/restaurant that has weekly takings of $22,000.

You are aware of this because I gather from earlier parts of your submission that you worked in this restaurant.

Witness 1—I did not work in this particular one, but the previous one.

Mrs IRWIN—You say that people find loopholes and ways of getting out of paying child support. I gather his wages cannot be garnisheed?

Witness 1—No.

Mrs IRWIN—Does he put in tax returns?

Witness 1—No.

CHAIR—He probably does not earn anything.

Witness 1—He is not registered as employed or unemployed.

Mrs IRWIN—So it is in someone else's name. How would you like to see the process of collecting child support changed?

Witness 1—One system will not work for everybody. As we have heard today, everybody's situation is different. I do not know how much communication there is sometimes between Centrelink, the Child Support Agency and the tax office. Self-employed people need to be looked at. Laws for companies and that sort of thing need to be looked at. People can wind down a business and then a family will take on the lease of a business and the existing partner of that business will be back operating the new company. That is how you get this cover-up of a person who is not employed or unemployed or registered or putting in a tax return. They are never to be found. They can sell a business and then set up a new one and just keep going like that. Something needs to be in place to monitor that.

Mr PEARCE—Do you think it is true that it requires compliant lawyers and accountants to effect these schemes?

Witness 1—It does. It requires legal bodies and accounting people. It is not working at the moment. People do it every day.

Mr PRICE—I think it is fair enough to say that you can drive a horse and buggy through the scheme if you are self-employed or you are running a company, without a doubt.

Mr PEARCE—You say in your submission that your husband has not paid you any child support.

Witness 1—No.

Mr PEARCE—How have you done it?

Witness 1—I had an existing business and I was working there. Through issues that I have discussed, I was unemployed. I lost the house, lost everything. I was fortunate to have family support and I lived with them and worked. I lived with the children there. I wanted to keep the children at the school they were at and did not want to disturb them. I am managing okay now. I am working 9.30 a.m. to 3 p.m., within the children's time frames, so they can attend soccer training or whatever they need to do. I just think the system does not work.

Mr PEARCE—Congratulations on what you have done—marvellous. Have you taken legal action to get your husband to pay? Has that not been successful? Has that failed? What has happened there? Have you not been able to afford that?

Witness 1—Do you mean legal action with regard to the children, or child support?

Mr PEARCE—Child support.

Witness 1—With child support it is a matter of reporting to the agency. When someone does not have any assets in their name there is no point in throwing good money after bad.

Mr PEARCE—You talked earlier about your experience with the Child Support Agency. What has your experience been? Have they undertaken investigations? Has it gone to the investigation arm of the CSA?

Witness 1—Yes, it has. It has gone to the collections agency. At one time there was somebody who was really good. He was ringing my ex on a monthly basis but there was nothing he could do. He tapped into the TAB account and there were funds there but they did not want to do anything. I think at that time it would have been enough to cover the debt but they did not do anything. They just wanted to see what was going in and out. If they did take it out, he would not put any more in there. So they left it and by the time he was back at it there was nothing there. This is going back a while ago now. It is at that level. Every year I need to resubmit a reassessment to the Child Support Agency, otherwise it would be accruing at $260 a year, which is a ridiculous figure when somebody is earning a gross income of $22,000 a week.

Ms GEORGE—Thank you for coming along. I want you to know you are not alone. I have many constituents who come to me with similar problems, and I think this is one of several anomalies in the operation of the system that we need to look at in some detail to make

recommendations about what might work more fairly. There was one thing I did not understand in your submission. Could you clarify the meaning of this sentence:

I would take the children to the father, but once he started putting a price on contact visits I could no longer take them to him.

Could you explain what you mean by 'once he started putting a price'?

Witness 1—I used to take them to the cafe and then that stopped. When I finished from there, it was like we had made an agreement for me to take the children to a McDonald's or whatever. Then he started putting a price on it saying, 'If you bring them here then I will give you X number of dollars,' and I do not think that is fair. It is like you are trading off the children. I cannot do that.

Ms GEORGE—That is one thing we are grappling with. Do you see any way that we can separate the issues of money for child support from the issue of contact?

Witness 1—I think it comes down to a sense of responsibility, and if you accept that responsibility and want to do the right thing by your children then you will do the right thing. Most people who would have that attitude would want to be with their children anyway, so they would have the access and they would be paying. On the other hand, you have people who do not have that sense of responsibility and they feel that they should not be paying either. Somebody else can take responsibility—the grandparents or the mother or whatever.

Mr DUTTON—Thanks very much for what I think is a gutsy submission and for being with us today. My question is more related to custody. Have you had any involvement in the court process?

Witness 1—Yes, I have.

Mr DUTTON—To what extent?

Witness 1—I went through in 1998, when the normal submission was made for child arrangements. They were the normal fortnightly arrangements and I was quite happy to sign that paper—it was fine. It is very hard when you are dealing, on the one hand, with someone who has a dollar sign and on the other you have children, and it is weighing more to the dollar sign. I was happy to pass that through. Then there was very little contact for four years. Just last year there was another application to the Family Court on the father's behalf—

CHAIR—I remind you that, in the event that you have something in front of the court now, it would be wise for you not to go into particulars.

Witness 1—It is going through the court system now but we have interim orders and they are not abided by.

CHAIR—That would be all you need to say. I thank you for coming in this afternoon. We sincerely appreciate your time and the fact that you have had the courage to appear before the committee.

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

That the submission from Witness 1 be placed on the public record.

[3.55 p.m.]

WITNESS 2, (Private capacity)

CHAIR—Welcome. Thank you very much for coming in this afternoon and for having the courage to come and appear before the committee as an individual. It is most appreciated by us all. The evidence that you give at this public hearing is considered to be part of the proceedings of parliament. I therefore remind you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. I remind you that the comments you make are on the public record. You should be cautious in what you say to ensure that you do not identify individuals and that you do not refer to cases before the court. If you would prefer to be heard in a confidential session, I give you the opportunity to do so and we will go into a closed camera session to hear your evidence this afternoon. You have the option to give evidence in confidence or in public.

Witness 2—I am happy to speak now.

CHAIR—I invite you to make a five-minute broad overview and then I will invite committee members to ask you some questions.

Witness 2—I am a single mother with a five-year-old boy, and I have done the Family Court thing. It is my experience at this point in time that child custody and contact time with both parents are not handled very efficiently, not very effectively, nor truly in the child's best interest. It was my belief that the Family Court was set up as a fair and economical way of settling contact issues, and this has not been my experience at all. It has been my experience that this process has been horribly expensive and that lawyers, solicitors and barristers are the only ones to gain from this process. It is my belief that once consent orders have been finalised they become a bit of an excuse, a weapon with which to accuse both parties of breaching the orders. Once again, this incurs further expense and further court time.

It is my experience that there are many non-custodial—and, for that matter, custodial—parents who are very angry and who want some kind of revenge over the other parent. It is quite usual for the non-custodial parent to be able to afford to take his or her partner to court, and the custodial parent is advised to hire his or her own solicitor to respond to any demands whether or not they can afford it. My ex-partner and I have spent in excess of $20,000 so far in order to get consent orders in place, and now we have a situation where both of our solicitors are arguing over the interpretation of the consent orders.

As I have said, I am a single mother. I have had many part-time and full-time jobs in order to support my son and myself, only to end up using this money to pay solicitors' costs, and it looks as though we will have an ongoing legal battle. I would have much preferred to have spent this money on an educational fund for my son. It is also my opinion that the current process disempowers the custodial parent. For example, any changes I want to make to the current consent orders will require regular visits back to the Family Court to vary the consent orders and, once again, more expense.

The current standard contact time for non-custodial parents is every second weekend and half of the holidays. I have found the process of negotiating this excessively expensive, and it has only created more hostility and ill-feeling between the two parents. My concern is that, if it is presumed that children will share equal time with both parents, this process will become more bitter, more expensive and, most importantly, more unsettling for the children involved. It is my belief that children need a steady, secure environment and lots of consistency, and the system is not giving it to the children. I really do not see how the system of fifty-fifty shared care would work unless the two parents lived very close to each other and had very good communication levels with each other, and we do not have either of those luxuries.

I think this inquiry needs to address the issues of child support as well. I also have an ex-partner who is self-employed and has not paid any child support this year. I have spoken to Mr Pearce about this in the past. I find that combination—the lack of child support and the expense of the Family Court system—an incredible financial burden. It is pretty awful when you are paying thousands of dollars to solicitors and you are worrying about how you are going to buy new school shoes for your son. Another thing that I have found very difficult to deal with is correspondence from the other party's solicitors accusing me of breaching consent orders and the law and threatening me with fines and imprisonment. I find that highly intimidating.

CHAIR—We have your submission and we have read that intently for today's hearing. This is your opportunity to add any additional comments to those that are in your submission before I open the questioning.

Witness 2—It is important to look at what is happening to children. My son sees a dysfunctional relationship between his mother and his father. I would like to leave you with my hope for the future. I hope that separated parents can learn to replace the hatred, the accusations and the allegations with communication. This is what is missing from the system. The lawyers—the solicitors and the barristers—should not be speaking on our behalf. We need to get more mediation and, considering the number of people we are talking about, perhaps a bit of education so that we can get some good old-fashioned values back, starting with communication between the two parents no matter what the ill-feeling is. That is my hope.

CHAIR—Thank you. We will now move to questions.

Mr QUICK—Madam Chair, this witness obviously has a lot more than the small presentation we have heard. If she would like to include that as an additional part of her submission, I think we should welcome it.

CHAIR—Absolutely.

Witness 2—I can do that.

CHAIR—We are quite happy to take that additional information from you.

Mr QUICK—We have bulk-billing doctors. Should we introduce bulk-billing lawyers into the Family Court? Would that change things? I am serious.

Witness 2—Bulk-billing lawyers?

Mr QUICK—Yes—receiving a standard fee.

Witness 2—I would like to forget about the lawyers—the solicitors and the barristers—and take the mum and dad who are being horribly immature and doing the 'I'm not talking to you' business and sit them down in front of a mediator. That is what I would like to see.

Mr PEARCE—It is nice to see you again, and thank you for your submission. I have had the opportunity to know a bit more about your situation, but I want to go back to a point I may have raised with one of the witnesses earlier today. I am not sure whether you were here at that point. At the end of the day, unfortunately, we cannot legislate for people to be happy or civil. The area of mediation is obviously very important to you. I think it is a very important area and something that we as a government have to try to work towards and support and fund as best we can. But at the end of the day mediation will only work if the two people want it to work as well, won't it?

Witness 2—Exactly. But one of my bugbears is that the consent orders do not make the parents behave in an appropriate manner, as you say.

CHAIR—Based on your experience, if you could wind back the clock, what sort of mediation—and who would have been the best agency to provide it—would have helped you overcome what has been a dreadful experience for you? If you went to access that, where should it be? For example, should it be at a local government level, or should it be through church or welfare-based organisations? If you could wind back the clock, what would be there on the day that it happened to you?

Witness 2—There are many companies like Relationships Australia that do an excellent job. My five-year-old used to see his dad coming into our home and his dad and his mum drinking a cup of tea. We would talk about Tim's achievements, and he would love that. He does not see it happening any more and he cannot work out why. Two people are now playing a very kindergarten game of, 'I'm not talking to you,' and I think something needs to happen there. Someone needs to step in, and preferably not someone who is going to charge by six-minute intervals.

Mrs IRWIN—I have read your submission and I look forward to reading what you have just tabled as well. You made a good and valid point. We are talking about a mediator here. From some of the submissions we have received to date, from what we have taken as evidence this morning, and from what I am getting out of this inquiry so far, people are going to the court system, they are waiting quite a time for their case to be heard, and then they are referred on to a counsellor or a mediator. People are saying that more resources should be given to mediation and that it should be the first port of call before you go into the court.

Witness 2—Definitely.

Mrs IRWIN—Before you and your ex-partner hit the court system, did you have this in place? Did you get any counselling from Relationships Australia?

Witness 2—No. Relationships Australia was recommended by the first solicitors.

Mrs IRWIN—Have the two of you attended a session?

Witness 2—Not very many—not enough.

Mrs IRWIN—Not enough, but you think this is one way that it could work—if this were in place in the beginning?

Witness 2—I am not saying it is the solution, but I think it is a better starting point. We need to take the sting out of it. There is so much hatred, so much aggression and so much hostility and intimidation that it would be a good place to start to communicate and talk about how the child feels, and what the child is going through.

Mrs IRWIN—The most important part is the child. Tim is your son's name; correct?

Witness 2—Yes.

Mrs IRWIN—What sort of counselling has Tim received to date?

Witness 2—Tim is only five years old. I have him seeing the school psychologist at the moment. I am very concerned about him. He is turning into an insecure young man. For me to vary the consent orders I have to take it back to court. It is an expensive and lengthy process.

Ms George—Thank you for sharing your experience. We are trying to grapple with a system that might work outside the parameters of the highly legalistic and often acrimonious situation that currently exists. If you have any further views about the issue of mediation and what might have helped in the early stages, we would be interested if you could elaborate on them in a supplementary submission.

Witness 2—Thank you.

Mr CAMERON THOMPSON—The 50-50 shared care idea—what would your son say about that?

Witness 2—At the moment we are developing a very insecure, a very unsettled boy. I worry about the fact that he goes to Auskick in Ferntree Gully one weekend and Auskick in Greensborough every alternate weekend. I wonder how on earth he is going to have consistent schooling. Is the idea that the child stays at the same school, or does he have one week at dad's house and one week at mum's house and two different schools? I do not see how it is going to work.

Mr DUTTON—I think mediation is a particularly good idea before introducing parties to solicitors or to the court process. One of the suggestions that I think was made earlier today, and certainly in earlier evidence, is the idea of a mediation process with some teeth. So we take people out of the court process and have them go before, say, a three-person panel—one might be a mediator, one legally qualified and the other a child psychologist—which would make some sort of a determination. That is if we are concerned about the best interests of the child. The argument would be that that process would allow parents to stay in contact if there were problems with breaches of consent or interim orders, bearing in mind that circumstances obviously change as children get older and the parents' relationship differs. Do you think there is any credit to that process?

Witness 2—The answer is that I do not know.

CHAIR—Thank you very much for coming in this afternoon. The committee certainly appreciates your courage in coming before us and presenting personally as an individual.

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

That the submission from Witness 2 and the additional material provided by Witness 2 be placed on the public record.

[4.11 p.m.]

CHAIR—We now proceed with the community statement segment. I welcome everyone. I remind the public that the comments that you make will be 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.

Lynda Mamery—I am the acting coordinator of the Council of Single Mothers and their Children. I want to speak today in a personal capacity as the child of a single mother. I am married and I have two children. I am involved with CSMC because I am the child of a single mother and a lot of comment has been made today about not having heard the voices of children of single mothers. That is very difficult because when children are young they do not fully understand what is going on—nor should they understand a lot of what is going on, because it can be very difficult and damaging. I want to address one particular point. My father, who lived with us until I was five years old, was incredibly violent towards my mother but he never, ever laid a hand on us children. If there was at that time a presumption of joint custody, my mum could not have fought it because the Family Court as it stands and no doubt in the future would have had no justification to stop him having contact with us. We desperately wanted to spend time with him when we were young. He did not want to spend time with us. That was the reality. When we did spend time with him we were with my grandmother. A presumption of joint custody would have reduced his financial responsibilities, it would have reduced my mother's entitlements and it would have made it absolutely impossible for her to cope raising us children.

I could really identify with the deep sadness that Witness 1 displayed when she was talking before because my father let us down and I got a strong sense that her children's father let her and her children down. My mother was left to pick up the pieces, and she did that very well. She would not have been able to use the rebuttable thing to try to clarify exactly what the situation was because my father would have stepped in and used that as a weapon, used the financial situation as a weapon against my mother just as he did the violence pre separation. Using that financial weapon against my mother would have in turn damaged us. That is all I want to point out.

Karen—I am a single mother of three children. I also have rarely received child support in the 10 years that I have been a single mother. I have raised my children pretty much financially on my own resources and the resources of my own family. I think that that is the case for many single mothers. I have a number of points that I want to make about this issue. It seems to me that what is being suggested is changing the situation in the Family Court from the non-resident parent having to make application for residence to the resident parent having to rebut. How will this reduce conflict and act in the best interests of the child? I have not seen any information which suggests that this rebuttable joint custody will in fact act in the best interests of the child, will act to reduce violence in the home, will act to reduce violence amongst separated parents, will act to reduce any of the woes that have been articulated today. I have been doing a lot of reading on this issue and I have not seen any studies which demonstrate that joint residence is in the best interests of the children. What I have seen is that equal love and equal responsibility are in the best interests of the children. And that does not exactly mean equal time. It means putting the children's interest first.

I have not seen anything which shows how this is going to work. I have a number of questions about this. I have questions about young children and little children. Does it mean that infants will be forcibly weaned to ensure that there is equal time? What about preschoolers who want to be with mummy? Are we saying that mummies do not matter any more and that little children will have to spend weeks at a time with their fathers, even if they are not sleeping at night, even if they are screaming at night?

My youngest child was three years old when we separated and she found it very difficult to be apart from me. She was insecure because there had been a lot of conflict in the relationship, and it was not that she hated her daddy but she needed her mummy. It needs to be said that little children need their mummies. What about when a woman has left her job to be a full-time carer or has left a career to work part time while the man works full-time, which makes flexibility difficult? If we have rebuttable joint custody, we are going to have a situation where the woman will lose her child support benefits and, in some cases, perhaps even her parenting payment. There would be inequality of resources between the parents. How would that be in the best interests of the child?

What about the parent who, even when he has only got access once a fortnight, fails to pick up his children most weekends, promises to see his child and never turns up? How will we ensure that shared parenting will make that parent more responsible and more caring for his children?

CHAIR—Karen, I need to ask you to wind up. Thank you very much.

Tracy—I am involved in a case in the Family Court so I am not going to say very much but I do have a lot of experience with the Family Court—an education over the last two years now, and no evidence has been tested. That is two years and many hearings. The word ‘rebuttable’ is getting thrown around but I am very concerned about how long it will take before it can be rebuttable. In my case it would have meant that my now nearly three-year-old would have been seven months old and being breastfed. She would have had to go off at that time and live with somebody she did not even know and I would still be in the court trying to get her back. You talk about mediation: mediation is compulsory, in my experience. We were directed into mediation straightaway; we were directed to Relationships Australia, which I had already been to twice—paid for and made appointments twice prior to being directed. That did not work. Then at the court we were directed into mediation in the Family Court.

CHAIR—I think the suggestion is that it would be prior to any legal process.

Tracy—That was really only after an emergency hearing, so it was prior to any following hearings. I think I have had five hearings so far and I am awaiting a trial listing. I want to stress that no evidence has been tested; therefore, people can say what they like and they just make orders, and until it goes to trial it is not tested. So I am very concerned about how long it is going to take. We have heard people talk about domestic violence situations. Fortunately, I am not in that position where I think that my child is being sexually abused, but God help those people who have to wait two years to get something done, if they can get something done. I think mediation is already been done but in my case mediation would never have worked anyway. I think mediation only helps people who want to be mediated. I wanted to talk about the time limits in the court. I think that if something like rebuttable shared care comes in then I will not be waiting two years; I will be waiting four or five years or more.

Talking about 95 per cent of people being unhappy and not having the money to go to court: well, I'm sorry, I am going to represent myself if I have to. This is my child. I do not think it is good enough to say I cannot afford it. You just go and do it; you find out and you do it. If people think it is too much of a bother, then let's not just hand them children and say, ' If it is too hard for you, we will just make it rebuttable and you can have them anyway.' Really! These are our kids.

The Child Support Agency—isn't that a joke! My ex is self-employed. He reduces his taxes. His initial assessment was $20 a month. It is an insult to even have to get that money every month; it is ridiculous. I have been through the process of reassessment and notice of objection; I have gone to Legal Aid and the Child Support Agency to see if they would represent me. I am in the process of representing myself in the Magistrates Court to have a hearing about child support as far as that is concerned. But it is ridiculous. If people are employed, their wages are garnisheed; but self-employed people are hiding money through companies—it is absolutely absurd what goes on. Legislation has to be put into place to make these people accountable. This is a man who sees his child every week and has overnight access, but refuses to pay child support because he has to renovate his house. He tells everybody openly that he works and he puts in affidavits to the Family Court saying that he works.

I am really against rebuttable shared care. I think it is fraught with danger for the people who are in the most dangerous situations; that is the frightening thing about it. It has to be agreeable, and if it worked it would be great. But I am against it, especially for young children and children who are being breastfed. My child goes away every fortnight and has a nice time, but it has taken a long time for her to get to that point. There are times when I notice that she is disturbed by it if there is any lengthy contact. I know that if she had been forced into a situation like that at seven months old it would have been just devastating for her. I think that it would still be devastating for her now, at only three. That is all I have to say.

Katrina—I separated in the late eighties when joint custody was fashionable. It sounded reasonable. I gave it a try, mainly because I did not have the $10,000 that a solicitor asked to have an argument about custody. I was a full-time mother for five years when my children were small. The marriage broke up, my former husband said that he was going to go for custody, and I did not have the money to go to court. I did not get legal aid, because I had a car that was worth $2,000. They said, 'Sell your car to pay for a solicitor.' So we agreed to have joint custody.

Joint custody meant that I was disqualified from getting the sole parent pension, so I got a part-time job teaching. Joint custody means that the parent who cares about the children most is exploited and financially disadvantaged. Two of my children are asthmatic. Schools would ring up and say, 'Come and collect your children; they're having an attack'—one was allergic. I used to say, 'But we've got joint custody. Why don't you ring up my former husband?' They would say, 'We have, but he's busy working.' I would say, 'I have a class of children in front of me; I'm busy, too.'

His work was much more flexible than mine, but he was always let off the hook. I was always the one who went to the school, took the children, gave up work and looked after them when they were sick—one got glandular fever. I was the one who took time off work to look after the children. So, basically, I did all the parenting work—taking them to doctors, dentists, sports, their friends' activities and swimming—whereas my former husband got all the financial

advantage. He got half of what is now the family tax benefit. Of course, his career went ahead; mine was nothing for five years. I could not get a job where I had left off; I had to retrain, anyway. So, practically, the parent who cares about the children most is exploited because one parent will do the parenting work and the other parent will get the financial advantage that joint custody brings.

I do not like the term 'custody'; it comes from property law. It looks at children as property, whereas now we think that children have rights. So, after five years of joint custody, it was clear that it did not work. Children left things at each other's houses—that was very acrimonious. There were lots of problems with schools, Medicare and the department of education—government departments cannot cope with a person having two addresses, so you are going to have to change all the computer programs in the country. They just cannot cope. I said, 'They are 50 per cent of the time at my place and 50 per cent at his place.' They said, 'No; we need one address.'

There are lots of practical difficulties with kids leaving clothes and sporting clothes at different houses. It was unfair to the sports teams that the children were in if they did not have what they needed. It was unfair to the children and very disruptive. We went to court but in the end we agreed that he have custody of the male children and I have custody of the female children. We live two hours apart, so I was thinking that joint custody means I would have four children for one week, going to schools in Mornington; he would have four children for the other week, going to schools in Greensborough. How mad is that? How would schools cope with it? How would employers cope with people saying, 'I want to work one week, then I want another week off?' I was pregnant when our marriage broke down. I have three little children. Our system really values economics rather than children, so our system is not going to take into account the needs of the children.

CHAIR—Katrina, thank you.

Lindsay—I am a deserted single working father with shared parenting that has been working for six years quite successfully with school transfer Friday nights with before and after care, which a lot of mothers avail themselves of. That has given me the opportunity to have a great deal of input into the relationship with my daughter—a lot of sharing, caring, teaching, shepherding, listening, being an advocate when things go wrong at school, spending time together, doing activities together, sharing experiences, laughing together and things like that. We laughed the other day. I remember that when we were together, she liked to tickle my feet and I said one day, 'You can't do that; you need a tickle application form.' At six years old, she went and made up a tickle application form, so I had to sign that and be tickled. She remembered that and we laughed our heads off, as we sat on the couch. The relationship has gone well. I suffer financially as a result of this; all the benefits go to the mother. She was getting a special health allowance for our daughter and also any family tax goes there—whatever it is called. I don't even know, and I do not bother to argue about it because it would only cause problems, and my daughter is more important than all of that.

When I first started down this route, I went to the Dandenong Family Court, and the only instruction there about the shared parenting plan was one that said 'Child lives with mum; dad gets to visit'. That was in 1997. I did not like that, so I went on the Internet and searched around. I did a lot of work with my lawyer and a Family Court counsellor and I was able, through

negotiation and by working things through, to come up with something that has worked quite well for 6½ years. One important thing I would like to see is far more information being used that is hidden away. It is available in the court now, but the court basically shoves it aside. In the shadow of the court, a lot of people are told by lawyers before they even get there, 'It's not worth trying for—don't even bother.' A lot of this gets hidden away and you never see it rise up to the top.

The other thing is, yes, there are bad dads. There are bad mothers who neglect and abuse as well. We should not use exceptions to make bad law. There are many good dads, and we should not judge everybody on the dysfunctions of some. They will naturally rise and come to this sort of forum. That is why I am here, because of the rough experience that we had initially. That does happen. At the time of separation, there is a lot of emotion and that sort of thing, but it does pass. There is a lot of acrimony, and within about six months afterwards we had a routine and things like that. There were false allegations at the start to get me out of the property and away from the family. Once that was done and I was out, I was invited back in for a cup of tea and everything was fine from then on. There is a lot more I could say, but I will finish there.

CHAIR—Thank you, Lindsay.

Richard—I am a parent of four boys, three from my first marriage and the one from my second marriage is three weeks old. I want to apologise if I sound venomous today, but I have been distilled through the system and the system creates venom and it creates a lot of heartache and pain, so I do apologise if I come across strongly. I am a father who lives in a house 600 metres away from my children. I have flexible work arrangements. I was very involved in bringing up my children. When they were crying at nights, when they were sick, when they needed food, I was the one who got up and still worked a 12-hour day.

My children have been neglected. They have been to doctors who have said, 'I have never seen medical conditions this bad before.' This is a mother who supposedly loves her children. I am also the leader of a scout group of 35 families in this area. I do not represent them here today, but I see the remnants of the shattering process of the child support system and also the Family Court on a regular basis, because boys and girls do not have regular contact with their fathers and their mothers.

I want to make six points—I will just go through them quickly. We need an equal playing field in this country when it comes to our children. I have heard all your questions today and they are fantastic, but at the very beginning we need an equal playing field. The second point, which relates to that, is: we as fathers are sick and tired of being blackmailed in the court system with lawyers and judges. It happened to me. He said, 'If you want to see your children more, give her more money.' I had to pay so much money to see my children I could not afford to live. I was living in Sydney in a broken-down house. When it rained, the rain came through the windows because there was no glass in them. When the wind blew, it came through my bed because I had no blankets on it and the floor was broken.

Today's children will be termed the stolen generation of Australia in years to come. My three boys say to me, 'Daddy, why have I been taken away from you? You have put me in jail.' They are in an emotional jail, these children. I have three sons—eight, 11 and 13—and they cannot understand why the system has done this to them when both their parents supposedly loved each

other and were good enough at one stage to be parents. The child support payments really are a form of blackmail. I still get blackmailed by my ex-wife, who says, 'If you want to see them more, pay me more money.' She still gets a full family allowance and a single parent pension; she works and she has remarried. She is earning over $70,000 a year tax-free. What about us? Fortunately I have repartnered and fortunately my partner can help me through those months when I cannot pay child support. She has to take her salary and pay my ex-wife my child support, because of the system.

I am also the victim of unproven claims of physical abuse of my children. They have not been proven. I am a police-checked member of the scouting association; I take children away on scout camps. I am a Sunday school teacher. I have never ever physically abused a child. Yet every time some move is made to get more access or to change the access rules this is thrown in my face on a regular basis. Sadly, it does not only happen to me; it happens to many, many fathers—not just physical abuse allegations, but sexual abuse too.

I am now an Australian but I was an immigrant at one stage. Though I love this country, at one stage I hated it, because immigrants do not know the family law system. They do not know the Family Court system. It is totally foreign and strange to you when you suddenly have to go to court and you do not know how it works. I heard this theme over and over again today. People need information. When you get there it is very confronting, and if you are from a foreign culture and you cannot speak English—fortunately I am white and Caucasian; I can speak your language—it must be horribly daunting.

Lindsey said earlier on that there are good dads and there are bad dads. I have seen my children terribly neglected—emotionally, physically and socially—by their mother, but we as fathers have no voice. We cannot speak for our children. We are the outcasts of this society because we are divorced and have chosen to move away in the interests of our children. I want to say thank you very much for having this forum—it has been a wonderful experience—and thank you for your time.

CHAIR—Thank you very much, Richard.

Mark—That is a hard act to follow because he has just about said what I would like to say. I did lodge a submission. I am the president of a group called SOH, which is a child abuse victims support group. How that group came about was that I personally lodged a complaint to human services in regard to abuse of my child. I will elaborate on that, but I would like to start with this. All these statistics were put in my submission, which is open to census—they are all well known statistics.

We have in this country 635,000 single mothers, as opposed to 135,000 single fathers. Child abuse takes place in nearly 50 per cent of single-parent families. That basically tells us that it is happening more within single-parent families, of which the majority are headed by single mothers, than other families. It is very difficult for a father to come in here and shed a tear, like some mothers can, and state these claims. The realities are that the shoe is on the other foot in a lot of cases for fathers. As the gentleman who spoke just prior to me said, a foundation has to be set up. I will elaborate more on the figures. The cost of crime in this country is $32 billion a year. That figure came this year from a criminology institution. Child abuse victims are responsible for anywhere up to 44 per cent of that, so you are looking at billions of dollars that

our country could save if there were proper parenting. I believe that can be only between a father and a mother.

I think both parents should be given that opportunity first. It should be law that both parents have fifty-fifty access to the child, and then any differences could be sorted out from there. When you have 80 to 20 per cent or 70 to 30 per cent, it is not feasible and it is not working. Child protection is the responsibility of the states, and it has failed for years and it is an ongoing, continuous merry-go-round. This issue has to be taken seriously. I believe that we have to look at it and find all the best solutions we possibly can and put them in place to help us.

My personal experience is this. I lodged a complaint under child protection about the mother of my child, a 15-month-old baby. From that I found myself getting into all sorts of categories, and I found the processes of the legal fraternity and everything that was set up that was supposed to deal with this quite difficult. I felt that the whole process was inadequate. It covered up aspects of all of this. The infrastructure there is open to abuse. I, as a father, was made to feel guilty by the human services department, by the child protection services, for lodging a complaint of abuse. Perhaps the majority of abusers are fathers or men. But if we are going to take this issue seriously both the mother and the father must have an equal foothold. It is the only process that would work as far as I am concerned, because now it is not balanced and we have a drastic problem going on in our community.

CHAIR—Thank you very much.

Margaret Moder—I am a grandmother and a member of Grans Victoria, which is a support group we set up to help grandmothers who are unable to see their grandchildren because of family separation and divorce. I guess I am a witness to all the pain and the anguish that I have heard here today. Once again, I want to bring back the focus to the children and to the needs of the children. I believe children need both their parents. Of course, under the new rebuttal system, there will be incidences where that is not in the best interests of the children, but I would suggest that in the majority of cases both parents love their children and need to be part of their lives, and children need their parents in their lives.

I can see where grandparents and other family members could be a part of helping this new system to work. We could be there as a backup to both parents. As somebody pointed out, there are four grandparents in most cases. We would like to be able to see this system work. I think it would work in being more equitable in the costs involved in rearing children. I think it would reduce a lot of the costs and the need for government personnel to police infrastructures like the CSA to try and retrieve money. I think it would reduce the waiting list times for family law court hearings, because parents would then have to accept the responsibility of the care of their children. That covers all aspects of their care.

I would like children to have the continuity of a familiar environment, with family members—grandparents, uncles and aunties—and friends still there as part of their lives. This would help them overcome their anguish and trauma when their parents separate. I think we need to focus on this need. It would certainly alleviate some of the stress on the parents. If the children were less anxious and less insecure the parents may be able to address some of the conflict issues. Having other family members regularly involved in the children's lives is a very good safety

check to ensure that the children are not being abused. I would like to thank you for the opportunity of addressing you.

CHAIR—Thank you very much.

Michael—I want to address only one aspect of your terms of reference, and that is the question of the fairness of the child support formula. I speak in my private capacity. I have three children aged 10, 18 and 20. Sometimes they have been in my sole care and other times not, so I speak from quite a fair amount of experience in this regard. The questions I would like to see addressed in terms of the child support formula are as follows. Firstly, there is no accountability whatsoever for the money paid to the other parent. I regularly pay all of my child support. I pay it by direct debit. It amounts to about $860 a month, but I find that when I pick my child up from school the child is dressed in tattered clothes. That is a concern to me, so I would like to see some manner of accountability introduced into the child support formula, or at least some indication given to payees as to why the numbers are what they are and what one can reasonably expect out of the money that is paid.

Secondly, there is a huge jump from, I believe, about 13 per cent to 18 per cent as one crosses a barrier of around 110 days of care. You may have that in your heads better than I do. That is the change from sole care, or less, to substantial major split. In my case, transition across that boundary amounts to about $450 a month. So one day difference in terms of the number of nights that the child spends with me or its mother can amount to $450 a month. As a result of that transition step I have had to spend thousands of dollars arguing in court and trying to trade that one day off against something else. I would like to see the child support formula moved to a more linear scale rather than this huge step scale that currently exists as I believe that a lot of argument revolves around that.

Thirdly, I do not believe the child support formula takes into account the base cost of accommodating the child. For example, even if one only has the child for 110 days a year, one still has the enormous overhead, arguably, of providing a bedroom for that child. That is a base cost that both parents have to meet. Both parents have to meet the cost of clothing—if they are not sharing clothing—and they have to meet transport costs. So there is a base level that has to be equitable. Above that you can have a sliding scale that reflects the number of nights. I would definitely like to see a base cost built in because you have to provide a bedroom for the child or something equivalent if you are seeing the child every second weekend—or some other ratio.

My fourth and final point about the child support formula is that it does not in any way take into account the cost of supporting older children who are in tertiary study. I have two older children both of whom are in full-time tertiary study and it costs me a significant amount of money to support them and see that their needs are met. Admittedly they have other forms of income, but nonetheless they still require money. The child support formula does not take that into account in any way and I would like to see that changed. Thank you very much for the opportunity to speak.

CHAIR—Michael, thank you very much for coming in; that was very good.

Maryclare—I am here as a parent. I was a single parent who shared custody with the father of the children. I know that the level of communication we had to keep up for the 15 or so years

that we did it was huge. We lived close together; we shifted towns together. We had to relate to the schools together and we had to agree on so many issues. I think we did it well but we were so committed and it took endless conversations and communication. I am here today representing the Eastern Domestic Violence Outreach Service, and we put in a submission. There are two points that I think are really important.

I think it was Mr Price who asked what is wrong with the presumption of equal time with each parent. I would say that that is a focus on the parents' rights to have a fair share of their children rather than on the children's rights. Before separation, most children do not have equal time with their parents, and we need to keep that in mind. Someone talked earlier about how their small baby was left without its mother. We have got to look at the children's rights. Later on, maybe, the children will get to know the other parent—but don't do it to little children.

The other point that I would really like to make is that I believe the government should establish a national child protection service for the family law system to assist the courts in the investigation of safety issues where violence or abuse is alleged. I am also an immigrant. I am from New Zealand. In New Zealand, if there is alleged abuse or violence then the child must stay with the safe parent until the other parent has rebutted that. We must keep the children safe; it is so important. I think that once it has been agreed, then that national child protection safety system must continue to review it. They must continue to watch those children where there has been abuse alleged until they are sure that they are safe.

CHAIR—Thank you very much, Maryclare.

Ann—I am a grandmother. Two of my children are in divorced situations. My son does not see his children because five years after he was divorced he met somebody else, and once that happened the ex-wife pulled the plug and would not let my son see his children. She changes her phone number all the time. I have access to them occasionally. He has never seen his children on Fathers Day; it has just never happened. I write to them occasionally and I get them to come to my house. They have been doing that recently. I hope to receive a phone call from them tonight telling me that they are coming on Fathers Day—so that my son can see his children on Fathers Day. Unfortunately, my son was admitted to hospital yesterday with a bowel obstruction, so he has that to contend with as well.

I think divorce is getting out of hand. Since they have changed the laws for divorce, it is just off to divorce and off to a lawyer, without consideration for the children. Maybe something has to be done before people go into a relationship or before they go into marriage. Some churches have pre-marriage conferences. When the children come along they are the most important part of a marriage and they should be looked after. It all comes down to responsibility. People nowadays have no sense of responsibility. They just want to do whatever they want to do when they want to do it. For a marriage there should be commitment and there should be commitment in partnerships. I feel that there should be some sort of pre-nuptial agreements like there are in relation to assets. There should be pre-nuptial agreements on the care of and liability for children who are involved in marriage and partnerships. Where there is a will there is a way in terms of joint access to or custody of children. Maybe the children should be kept in a certain radius—maybe this is something that should go into a pre-nuptial agreement—if there is a separation or a divorce so that both parents have access to their children.

I believe that life for all concerned after divorce or separation should continue as normally as possible compared to the life pre divorce and separation. I also believe that the more simply any situation is organised, the smoother the situation progresses, and I think family law is not a simple thing. Children in marriage and partnerships are the emotional and financial responsibility of both parents. Both parents should have joint input into their children's lives. Both parents are responsible for their children's care, wellbeing, education, health and upbringing. Both parents have the need and emotion to give their love, affection and time to their children. Children need this love, affection, contact, discipline and time from each parent equally. If joint parenting was mandatory at divorce or separation, in most cases all these needs would be met and a huge disruption in lives, as experienced in the current family law custody orders, would hopefully be minimal. Regarding child support formula—

CHAIR—Ann, I need you to wind up. I am sorry—I have to get to the next two people.

Ann—I think the formula as it stands at the moment is unfair. In a marriage situation, a man's wage is taxed first and the rest is left for raising children. When there is a divorce, out of the man's gross wage come the child support and then the tax. It leaves very little for the man to live on.

Helen—I am another gran. With my colleague grans, we have seen our sons basically suffering from the current system whereby they are granted standard contact every second weekend. We have seen the mothers, their ex-partners, often prevent contact. In our cases, our sons are on wages or salaries and they can be garnisheed, so they do not have very much say over payment—they cannot escape it. What is not taken into account is the very favourable Family Court property settlements—usually to the mother, if there are children there. As Ann said, the payment is a proportion of gross wages and that portion goes to the mother and is tax free, as far as the mother is concerned. But the father still has to do that. He has lost a house and often he has lost the accumulated savings of 20 to 30 years work, so he has to look for rented accommodation. He has high costs, and he has other costs associated with seeing the children which he may be able to accommodate but which are also a cost.

I think there is a provision of the Child Support Agency that, if a child over the age of 18 wants to continue to tertiary education, the resident parent can apply for extension of child support. I think that is very unfair—no other group of parents are forced to pay for their child to go to university. In my family's case, he would be reasonably happy to pay that directly to the child but not to the ex-spouse.

CHAIR—Thank you, Helen.

Maurice—I am a father of three boys, am separated and have minimal contact because of obstructive behaviour from the mother. But I do not want to dwell on that point; I want to dwell on a broader scale about what I perceive is a problem. I will touch on three points. Firstly, I do support rebuttable joint custody. I think that is the starting point for an Australia-wide educative process that would require ongoing education for all citizens of this country but particularly the up and coming future generation of parents. That educative process needs to begin in schools from primary level onwards. I certainly learnt home economic at school and have subsequently become a good cook and know how to wash clothes et cetera. I think that sort of educative process needs to be integrated within our school systems in terms of what it means to be a

parent—what it means to be a mother and what it means to be a father and that those roles are different but complementary, and how fathers have to compromise for the mother's role and mother's have to compromise for the father's role. Certainly now, the most important social thinkers in the world are considering fatherlessness as the single biggest social crisis of our time. Unless we start to empower fathers to get back into the home and be involved with their children, this crisis is going to continue and we have a major problem on our hands leading to all sorts of things like increased violence rates, increased teenage pregnancies and increased incarceration rates. The verdict is out there now in the scientific literature.

The second point that I want to raise is that our research institutions in this country are not garnering from the international literature and consensus that is out there that is looking at these issues in a gender neutral way. The research that is coming out now is saying that it is no-one's fault but everyone's problem and that both men and women are equally capable of being violent and abusive to their children and to each other. I think that there are too many vested interests in this country that are picking away at research to support their particular ideology and this is not serving country or our children at all. One example I cite is that the Australian Institute of Family Studies have done more research into same-sex parents than they have on fathers. In their longitudinal study of Australian children, there is one research project to look at the involvement of fathers but they have an enhancement section at the end of their project that says: 'We would like to be able to look at the interaction between fathers and their children. However, we do not have enough money at this stage.' Our peak family research body in this country does not have enough money to look at the way fathers interact with their children and they have published more research on same-sex parents. I think that is an utter disgrace and an indictment on the way the legal system is so enmeshed with our family research body and how that research body is not independent and is not producing truly independent research that is protecting our children and putting their best interests first.

Thirdly, I would like to say that family law court appointed counsellors do not necessarily have to be specialists in family therapy or child psychology. In fact, it seems like the standard for someone to make a decision about a child's relationship with their parent is forensic psychology. In other words, the whole issue of family therapy has become criminalised and turned into a situation where compassion and the whole understanding of what a child needs have been taken out. There is no fundamental bottom line qualification required for a counsellor to make those decisions, and I think that really needs to be addressed.

CHAIR—Thank you very much. I wish to thank all the witnesses who have appeared at the public hearing, the community statement segment and the confidential segment before the committee today. I congratulate you all. It has been a great experience for the committee in order to understand the issues that we are confronted with in this inquiry.

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

That the committee authorise publication, including publication 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 5.04 p.m.