COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS

Reference: Child custody inquiry

THURSDAY, 4 SEPTEMBER 2003

ROBINA, GOLD COAST

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

INTERNET

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

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

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

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS

Thursday, 4 September 2003

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

Members in attendance: Mr Cadman, Mr Dutton, Mrs Hull, Mrs Irwin, Mr Price and Mr Quick

Terms of reference for the inquiry:

To inquire into and report on:

(a) given that the best interests of the child are the paramount consideration:

  (i) what other factors should be taken into account in deciding the respective time each parent should spend with their children post separation, in particular whether there should be a presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption could be rebutted; and

  (ii) in what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents.

(b) whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children.

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

WITNESSES

Committee met at 9.29 a.m.

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

From the outset of this inquiry, I would like to stress that the committee does not have preconceived views on any outcome that might eventuate. Accordingly, throughout the inquiry we will be seeking to hear a wide range of views on the terms of reference. While at any one public hearing we may hear more from one set of views than another—for example, more from men than from women—by the end of the inquiry we will have heard from a diverse group and thus received a balance over the range of views. So, in some venues we will hear more from women because that is the way the submissions have come in, and in some venues we will hear more from men because that is the way those submissions have come in, but over a period of time we will have a good balance right across all the issues that we need to hear.

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, then later in the inquiry we will hear from the larger organisations, such as the Family Court and the Child Support Agency, and this will be done in Canberra or via videoconferencing.

Today we will hear from five witnesses: two individuals and three locally based organisations. I remind everyone appearing as a witness today that the comments you make are on the public record. You should be cautious in what you say, to ensure that you do not identify individuals and that you do not refer to cases which have been or are now before the courts. We will have about one hour and 40 minutes for the public hearing and then we will follow with an hour of community statements of about three minutes duration each. Up to now those three-minute statements from the public have been very well received. Generally people stick to their three minutes because they are succinct in what they want the committee to hear. I will now proceed to formally call the witnesses for the public hearing.

[9.31 a.m.]

WITNESS 1, (Private capacity)

CHAIR—Welcome. I will just give you a short preamble. The evidence that you give at this public hearing is considered to be part of 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 again that comments you make are on the public record. You should be cautious in what you say, to ensure that you do not identify individuals and you do not refer to cases before the courts. Having said that, if you feel that you would prefer to be in a confidential hearing, we are quite happy to take you in confidential mode—but if you are happy to remain in the public hearing, as you are now, we are happy for you to do so.

Witness 1—I am happy here.

CHAIR—You are happy in the public hearing?

Witness 1—Yes, thank you.

CHAIR—Also, can I gently remind you again not to identify people or talk about cases currently before the court. I invite you to give a brief overview and then I will hand over to the committee so that they can pose you their questions.

Witness 1—I am a divorced father of two. I have been invited here today and I am prepared to say what I have to say. When I talk about 50-50 contact, I am talking about a shared parenting arrangement. To start off with, the whole point about 50-50 contact is that it is fair: it is fair for the father, the mother, the children and the extended family. The public—those who are not involved in divorce or have not been touched by it—do believe that the present system is fair. Only when they enter a divorce or are touched by this do they realise how unfair the present system is. The Australian ethos is based on fair play. This is what the public expect and this is what they want. I believe it is up to us to try and change the present systems to allow this to occur. The children also consider themselves as 50 per cent of their mother and of their father. This is endorsed by psychologists, and I believe a system that allows 50-50 contact will help the children believe, and be part of, this concept that they are half of their mother and their father.

Basically, 50-50 contact will also allow equal parenting opportunities. First of all, it will empower the father to give emotional support to the children. It will empower him to be more financially responsible. It will also allow him to be practically involved in the day-to-day care and upbringing of the children. The education system is continually crying out for more male influence in the system. This will also encourage him to be included and valued in and throughout the schooling life of the children. This sort of parenting will also allow a balance of religious views to be imparted to the children from both the mother and father.

The mother will also benefit from a 50-50 parenting arrangement as she will be given more time to better establish herself in the work force. She will also be allowed to share the pressures of single parenthood with the father. It will also give her time for to form new relationships—

one of their complaints is how busy they are as a single parent, and hopefully this will help address some of these issues. It will also give the opportunity for the mother to believe and accept that the father is a capable and valued child carer.

The children will also benefit from 50-50 contact. It is important to see both parents capable of support emotionally and financially; the children will see this and tend to accept it. Having both the parents also gives children the opportunity to have the benefits of equal time for role models in their lives. It also helps the children by preventing them from having to request major home swaps—for instance, later in life they may want to live with dad or go and live with mum, and this can have detrimental effects on the family. I believe that will be reduced through this system. Finally, the grandparents, brothers, sisters, extended family and friends will be given an equal opportunity to support, nurture, encourage, educate and love these children. Fifty-fifty contact will stop children being used as pawns, will greatly reduce the chance of parent alienation succeeding and will reduce the opportunity for contact to be used to gain more child support. That basically addresses (a)(i) in the terms of reference.

With respect to (a)(ii), if 50-50 contact is implemented this whole question will disappear; it will not be relevant. If 50-50 contact cannot be accommodated by the parent then the extended family, spouse and grandparents can be utilised to equalise this contact.

In regard to (b), the present child support formula is inequitable. The formula for child support, I believe, should be set at an Australian standard per child to cover the basic needs of every child. I am happy to have a means test or a high-earning father pay extra; however, I believe the father should be able to nominate where the money above the Australian standard goes. This will have many effects. First, it will allow and increase the possibility of higher private medical insurance and the opportunity for private education, higher education, special education and special medical treatment. The money will be available for the earner to use in those areas. This type of system will help stop the frustration, the animosity, the 'why work?' mentality and the 'why declare a wage?' mentality. All this will have a positive effect on the children as the money would be going to them. That is basically all I have to say.

Mr DUTTON—Thank you for your evidence. How would you see the practicality of a presumption of joint custody or joint residency working? Would we compel people to reside within a certain radius of a school, for argument's sake? How would it work practically, and how would changeover take place?

Witness 1—If it is presumed, and if it is the fact, that fathers get 50-50 custody, I believe parents will make their own necessary arrangements to be there for the children. If I know that I am going to get 50-50 contact then I can arrange my life and my work. I can work part time if I wish, or live in a place which allows that contact to occur. At the present moment I do not have that option.

Mr DUTTON—My second question is in relation to enforcement. Under the current system there is a great problem with allegations. The committee has taken evidence from non-custodial parents claiming they are denied access, even though access may be granted under a specific issues order or an interim order; and, on the other hand, some custodial parents complaining that the non-custodial parent does not live up to those obligations and will not turn up for their allotted time. So that is a problem under the current system. It seems to me there are no teeth to

the enforcement at the moment and, regardless of what system we proposed, that difficulty would still exist. How do we overcome that in regard to enforcement?

Witness 1—I do not believe that we can ever improve or sort out a situation where a parent does not want to live up to their responsibility, no matter what regime we bring in. That is purely his or her decision not to fulfil their parental obligation. However, for all the people out there who desperately want to be involved, this solves that problem, and that, I believe, is a huge step forward. The parents who will not look after their children or are not willing to do their part—unless we bring in a martial law type of thing, that is just not going to happen. I do not think any system that I am aware of will resolve that side of it.

Mr QUICK—Is the 50-50 arrangement from year one, or is it over the 16 years of childhood? Some people are suggesting the mother as the primary carer when a baby is being breastfed and the like. There are certain requirements and conditions. Do we work out a parenting plan? Some submissions have suggested that we can quantify the cost of a child at $100 a week—that is $5,200 over a year—and that we should set up a bank account with dual access and $100 a week is taken out. Do you see that as part of the 50-50 process?

Witness 1—As regards the first issue that you mentioned, about the breastfeeding child, commonsense comes into this. A father cannot have a child for a week and breastfeed. Yes, there is bottle feeding and so forth, but I think if the presumption is that we are having shared parenting here and that is what is in place then I believe commonsense will determine when and how that will occur. Only if there is a problem, if commonsense between the parties cannot prevail, do we use the legal system to help come up with an equitable decision. But if the belief in the 50-50 concept is there it will work. You will have parents who may want week on, week off. You will have parents who might agree that one has holiday time and one has school time. The option is then for the parents to decide how to get an equitable arrangement.

CHAIR—You are saying shared parenting does not necessarily mean shared residence, that with respect to a child that may be being breastfed you still have a shared parenting role, rather than a shared residence role?

Witness 1—Yes.

Mr QUICK—So we involve the grandparents on both sides in this thing?

Witness 1—Definitely. Before the divorce the grandparents were heavily involved. A lot of times, the grandparents are used very heavily. The day the divorce occurs those grandparents are cut entirely from the upbringing of that child. There should be no difference. This concept that the father must be there to look after the child or the mother must be there to look after the child is invalid because during the marriage, when the mother or the father was not there to look after the child, as per work commitments, the grandparents were used—and there is nothing wrong in using the extended family and grandparents post separation.

Mrs IRWIN—Thank you very much, Jeff, for your submission. You are a divorced father of two. How old are your children?

Witness 1—Nine and 10.

Mrs IRWIN—How often did you see your children?

Witness 1—I have them every second weekend. I am an airline pilot who spends seven months a year at home, and that was the judgment I received: every second weekend. Seven months I spend at home—a capable, able father, who is there—and I am losing all this contact.

Mrs IRWIN—I suppose that, naturally, you have gone to court? Is that correct?

Witness 1—Yes.

Mrs IRWIN—Was there a stage when you could have sat down with your ex-partner, through mediation, to try to work it out before it even got to the court system? What we are hearing from a lot of people is that they are going to court, and it is sometimes costing them $10,000 or $20,000. In a lot of the submissions that we have received from mums, dads and even grandparents, they feel that, before it even goes to the court system, compulsory mediation should be in place. Did you have mediation, and how did it work?

Witness 1—I did. Without being cynical here, the fact of the matter is that mediation is in place under the present system. There are steps. You must have a conciliation conference before you go to the next step; however, this is not actively encouraged by the legal system. A lawyer does not feed his family by having two people sitting down and sorting it out. They are in the business to make money and, to make money, they need two parties to fight against each other. Therefore, the desire to have a couple sort this out in mediation is not there, right from the top end. I believe it should be in place. It is not being encouraged, and it is not working.

Mrs IRWIN—So you say it should be compulsory to state to the women, to the men and in some cases the grandparents: 'If you go to court, this is how much money it's going to cost you. This is how much money you're going to be out of pocket. Let's sit down here. Think about the child or the children and let's go forward.' You would support compulsory mediation in that sense?

Witness 1—Yes, I do. But I believe that the 50-50 contact takes all the heat out of it straightaway. If two parties are at loggerheads, they will use whatever tools they have to fight the war. The tools that the mother has at this point in time are contact with children and money. The thing that the fathers have is denying them money, but they have no option on the contact.

CHAIR—Geoff, to be fair, I think that Ms Irwin, the member for Fowler, was indicating that this would be prior to any association with any legal process. This is not in the Family Court—it is not once you have been involved in the system and are on the merry-go-round—this is when a couple decides that they are looking to part because of a domestic violence situation or for whatever reason. Should there be a process in place, before you go to a solicitor and before you are able to get legal assistance, for compulsory mediation—for example, a tribunal—to see whether there is a capacity to work out constructively the best interests for the parents and the child?

Witness 1—I do believe so, if it can be arranged such that it has to occur prior to seeking any legal advice. What we do not want is to have a system in place and one of the parties going to

get legal advice, because the advice they will be given will be: 'Don't go there. Leave it to us; we'll sort it out.' So a lawyer cannot talk to a client until they have gone through—

CHAIR—Until you have a certificate to say you have gone through this whole process?

Witness 1—Exactly.

CHAIR—Once this process is in place and people have gone through it, and they are not able to sort out this conflict through this process, it may be that they can move on to the next process of using a solicitor. But, until they have gone through that process, they are not able to go to legal?

Witness 1—It is a start. We know it will not fix it, but it is a small step forward.

Mrs IRWIN—You have already stated how you would like to see the 50-50 arrangements, but I feel that you have not stated that fully. Are you talking about one week for your ex-partner and one week for you, or one term?

Witness 1—There are many options. In some countries it is one year and one year, or it is six months, a week or a month on. There are many different options, and it will depend upon your work commitments. You start with the preface that it is 50-50, and then you may say: 'I'm a submarine captain. I can't be week on, week off.' We know that; that is commonsense. If you are a submarine captain and you spend nine months a year away from home, you obviously cannot get 50-50 contact. But you are starting there. That is the starting point. At the moment, the minute you separate you lose your children. You go from every day to two in 14. That is what you get. We do not want to start there and have to climb up to 50-50. We want to start at 50-50 and then work commitments, jobs, capability, suitability and all that will then play into exactly how much contact there is. Some people might say, 'I have the right for 50-50, but every second weekend suits me.'

Mrs IRWIN—For that to work you would have to be close to their schools and their sporting activities, for example.

Witness 1—Bring it on. I am living here. I am staying close. I am doing everything I possibly can to be close. I am stopping promotion. I am not moving back to Sydney. I am doing everything I possibly can to be there. We want to make those decisions. We want to live close. We want to deny ourselves climbing the corporate ladder to be with our family and kids. That is what we want.

Mrs IRWIN—In your eyes, when would 50-50 not work?

Witness 1—Fifty-fifty will not work when you have a parent who is not living up to their role—who does not want the contact and says, 'I want nothing to do with the children.' You have the wife who says, 'I desperately need you to be a supporting father because I need your support.' If he will not support and fulfil his role, that is where the legal system may say, 'Listen, you are morally and legally obliged to provide some support.'

Mrs IRWIN—What about sexual abuse or assault: definitely not the 50-50?

Witness 1—Of course not.

Mrs IRWIN—How about the rights of the child? If, through the court or a mutual agreement with your ex-partner, it was decided that you were going to have 50-50 sharing, what if your son did not want to come to stay with you and said, 'Dad, I love you lots, but I still really want to stay with mum'?

Witness 1—I think then the mother would go to a child counsellor or the courts and say, 'This is the child's statement. The child does not want it'—just what we do now. It is easy to bring it down from 50-50; it is impossible to drag it back up to 50-50. If the child says he does not want to live with his dad, I can live with that. The judge will say, 'Here is all the evidence. It doesn't suit the child to live with his father.' But, at the moment, it is very hard to even get your children to want to live with you if they are spending 12 out of 14 days with the mother. Parent alienation is occurring. What chance have I ever got of having them even being given the opportunity to live with me? If they live with me for a year 50-50 and then decide they want to live with their mum, that is fine.

Mr PRICE—How much have you spent on legal fees?

Witness 1—Over $100,000. I cannot afford to go back. I have debts. I am $100,000 in debt trying to pay that off. The decision that was made for me means that I am going to miss raising my kids by the time I can afford to go back.

Mr PRICE—Was that spent on several episodes?

Witness 1—In my case, it was all on defence. There was a small part on the property settlement but my actual child contact went to trial and the majority of the money was spent in that process, as well as in the interim leading up, due to all the things that apparently had to go through before you get to a decision.

Mr PRICE—Are you saying to the committee that you could not afford to go back but statistically you would be counted as a happy party to the Family Court?

CHAIR—I think what Mr Price is saying is that you might be counted in that 95 per cent that supposedly made an amicable resolution to your issue.

Mr PRICE—But you are saying to the committee, 'I can't afford to go back.'

Witness 1—Yes. The fact that it went to trial proves that it was not amicable.

Mr PRICE—Yes, but they would say that you are a happy now.

Witness 1—Yes, it has gone to court and the judge made an educated decision. If you look at what the actual decision was, you will realise that is not the case. However, that is the perception. The statistics say, 'Here is a happy customer who has gone to court and everybody is fine.' I spent $100,000 to get every second weekend. I could have walked in off the street, put my hand up and said, 'I am the father,' and I would have got every second weekend.

CHAIR—Thank you. I think the point that Mr Price is making is that it is generally perceived that there is only five per cent of these difficult cases that go into family law. The other 95 per cent have all made happy, amicable decisions. Mr Price is saying is that you would then be considered in the 95 per cent of the happy people. The point that the committee is trying to make and listen to during these hearings is the fact that this 95 per cent are not exactly happy and amicable.

Witness 1—Absolutely.

CHAIR—They have not been able to go any further; they have lost their house and car on both sides of the equation. It may be a mum in different circumstances through domestic violence or whatever and they just have not been able to pursue it any further.

Witness 1—I absolutely agree with what you are saying.

Mr QUICK—I have one final question. If we get to this 50-50 contact and we have a parenting plan—

Witness 1—That will be a great day.

Mr QUICK—At the moment the courts have a template to determine contact arrangements—every second weekend and half the holidays. That is what you get irrespective of whether it is relevant or whether you have a go through the court system. How do we get the lawyers and the Family Court away from determining that 50-50 contact arrangement if parents want to change? For example, the wife suddenly has an opportunity to get a job or the husband is retrenched. Do you set up a tribunal?

Witness 1—Is the tribunal accountable?

Mr QUICK—Yes.

CHAIR—This is a question that you have not had time to think about. Can you take it on notice and provide the committee with a point of view as to how that might happen?

Witness 1—I will be happy to do some research and follow it up.

CHAIR—You can just think about it as an individual. If you are happy to take that on notice and provide your point of view to the committee, we would be most happy to hear it.

Witness 1—That would be fine.

CHAIR—Thank you very much. The secretariat will give you that question in writing to enable you to pursue that if you so wish. Thank you very much for appearing this morning. We certainly appreciate the individuals and the courage it takes to come before the committee.

Witness 1—Thank you for the opportunity. We realise that you have a very important role to play and we are certainly hoping that you can do everything you can to help fix this whole system.

[9.57 a.m.]

WITNESS 2, (Private capacity)

CHAIR—Thank you for coming along this morning. The evidence that you give at this public hearing is considered to be part of the proceedings of parliament. I therefore remind you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. I remind you that the comments you make are on the public record. You should be cautious in what you say to ensure that you do not identify individuals and that you do not refer to cases before the court. As I said, the hearing today is on the public record. You have the opportunity, if you so wish, to go into confidential proceedings, or you may remain in the public hearing. Do you choose to stay in a public hearing?

Witness 2—I choose to stay, yes.

CHAIR—In that case, could I just gently remind you again that you should not identify individuals, nor should you mention anything that is currently before the courts. What I will ask you to do is to state the capacity in which you appear before the committee this morning and then give a brief overview of the points outside of the submission that you might like to raise, because your submission has already been read by committee members. We will then go to questions from the committee.

Witness 2—My submission has been made as an individual and as a father of four from two marriages that broke down. From the first marriage I have a daughter, who is now 24 years of age. From the second marriage I have three sons now aged 14, 12 and 10. The submission that I have made and the arguments that I have presented really centre around a conclusion that I do not believe that this is about the father's rights or the mothers' rights or the men's rights or the women's rights or the grandparent's rights. The conclusion that I have reached, after nearly 20 years experience of being involved in this through the family law system, is that it does get down to one simple thing: that is, the children's rights. I take exception to the presumption of rights. I do not think there is any presumption to be made. This relates back to the presumption of rights of the women's vote when that was an issue. If that had been canvassed on a presumption basis, you would have had riots in the street. I think that word 'presumption' is a drafting mistake. We should now focus back on what the children's rights are.

I find it fundamental that this issue is centred around committees, individuals, parents, grandparents and so on and we are not looking at it from the children's viewpoint of what their rights are. If we place ourselves in the children's position, I think the answer is very simple. The answer is that they have a right to an equal parenting role by the father, the mother, the grandparents, the carer or whomever. I see no children at this hearing but I hope that the committee is going to take on board the children's views. Maybe that will be taken on via the research that is being done and the factual statistics that come back via that research. In my view, this committee has to take itself right back to before the seventies and get it right from the children's point of view. It is not to do with any individual—it is not to do with the mum, the dad or whomever. It is to do with the rights that have been around for a couple of thousands of years

and a lot longer. Both parents had a role to play and, from my measurement of it all, it was on an equal basis. If you, as committee, are trying to develop a road map, you will fail.

I have heard some of the questions and, if you are trying to come up with some prescriptive answers for that road map, you will fail. We failed back in the seventies when we gave the discretion to the Family Court. The intent was great—the Family Law Act was a wonderful instrument. It was a vision of good things. The discretion was left to the Family Court and they ballsed it up. They introduced things like the 80-20 rule for access, custody and property. Then it went to the 70-30 rule. Maybe the 70-30 rule applied to people like me during the eighties, because I did not have time—I was too busy. It may have been applicable then. But was it fair for the child? No, it was not. It is not fair now and it was not fair in the forties, thirties, or a couple of hundred years ago.

My point is that we have to look at what the children's rights are. The answer is, in my view—and this is what this committee has to recommend to the parliament—that we need to enshrine the rights of the children into something that they can take on via the education system, via their chitchat on the Internet, via their chitchat with their friends so that they know their rights. When they know their rights, they will—and it may take a long time—say, 'Hang on, I have a right to this.' That will solve a lot of these problems. It will not happen overnight—I am well aware of that. I do not think that any road map that you set out is going to be successful. It is going to take a long time of education. But, if we establish the fundamental, essential principles of giving the rights to the children, the road map will emerge and evolve over time. Hopefully, that time will not be too painful for a lot of people. That is the main point of my submission—children's rights have to be focused on and not the other parties. The other parties are so diverse and there are an infinite number of possibilities and combinations. I do not know of any answer that you can prescribe that will satisfy even a great majority of them. I hope you do not put yourself in that position, because, if you do, you will be wrong.

CHAIR—Thank you.

Mrs IRWIN—Thank you for your submission and also something I have got here in front of me that you were involved with last night, a Father's Day present. You stated that you have had your 14-year-old child for the week and you were assisting him doing projects and your 10-year-old son phoned last night and he has a project that has to be done by Friday and he will be spending some time with you. It sounds a little bit like my son—they usually tell you the night before. I hope they get a good mark. I am interested in how you came to this arrangement with your ex-partner. Was it via the courts or counselling mediation?

Witness 2—It was a mutual thing. The disentanglement of my second marriage was all about money and had nothing to do with the children. The money consideration was the issue from her point of view but not from my point of view. I had had previous experience with the Family Court in the mid eighties in which I was given access from 10 a.m. to 5 p.m. Saturday through Sunday, which represented 14 per cent of the time. I found that contemptible and at the time there was a lot of anger at the Family Court. I just cannot understand how 15 or 18 years on from the time when the Family Court were given the biggest wake-up call of their time, when that horrendous scenario of bombings went on in Sydney, they have never taken issue with it. If that were to occur today, we would have the American army invade us and stop that sort of nonsense. All the wake-up calls that have been given to anybody have never been taken notice of by any

political party, by any committee or by anyone in the Family Court. You people have the chance to make a very fundamental statement—not for the next few years, not as an experiment. You have to look at the principle involved here, and that principle has to be enshrined so that it will stand the test of time, forever.

Mrs IRWIN—You have suggested in your submission that the child support formula should take into account the level of care that parents have for their children. What changes would you like to see made to the child support formula?

Witness 2—In my case I am financially privileged, so it does not matter to me. That is not a major consideration. That has to be an incentive for both parties to contribute. The present system—the 70-30 or 80-20 rule—is an incentive for one side to grab the 70 per cent share. I think there has to be a contribution by both parties in proportion to their ability. In my case it is not an issue, because I can contribute anything that is necessary.

Mr DUTTON—I am just a bit confused by some of your evidence because in our terms of reference we say we are interested in a solution that finds in the best interests of the child, that that is the basis for this inquiry. You are talking about the manipulation by the Family Court of the legislation in place already, and I suppose that is why some have suggested that presumption, because we want something more prescriptive than what is in the legislation at the moment so that it cannot be manipulated by people who are running their own agenda. What are you suggesting that we do? We are not going to walk both sides of the street; we can do one or the other. I appreciate the motherhood statements in relation to acting in the best interests of the child, but can you put some meat on the bones and give me some practical understanding of what it is you are saying?

Witness 2—The Family Court, with respect, have failed in their application of the act of the seventies. There is no performance criterion that can be used that says they have been successful. They have failed and you have got to accept that. If you do not accept that, the solution that is going to come out of this will not be a good one for the future of our children. You have got to attack that legislation and ask, 'What is right for the children?' What is right for the children is an equal right of parenting for those kids by the mother, the father or whomever—an equal right to both of the parents for the children. How that is worked out and drafted I do not know—I do not have the technical expertise—but I know it was not drafted properly in the first place. There are lots of people you could put on the case to draft it—to embellish that idea—but it is the nub that you have got to get right. If you do not get that idea right, it is a bit like the American constitution where, if you do not get freedom of speech, that is it—it is finished; it is no more. You have to get something like that for our children. It cannot be long-winded and it cannot be clouded by ambiguity or whatever; it has to be simple. The rights of the child have got to be put back and enshrined in the Family Law Act.

Mr QUICK—I agree with what you are saying. A nurturing, caring family is what all children deserve and must get. But in reality, when parents split up and start hurling accusations at each other, the kids are their last concern in lots of cases. Their anger is against each other. As a school teacher working in disadvantaged schools over 20-odd years, I have seen social dislocation and developed not a hatred but a dislike of the legal profession. If we enshrine these principles in legislation and we have a contribution by both parties to the caring and nurturing of

the kids, how do we put in place sanctions to be used when one party does not do the right thing and the caring and nurturing disappears and the kids are put in some sort of jeopardy?

Witness 2—That is no different to what you have now. Those mechanisms are already in place for the 80-20 rule that is being played out at the Family Court. Somehow they have got to be improved on. Somehow they have got to be tightened up. We have to get back to educating the kids that it is their right to have equal time and equal parenting from their father, from their mother and from their grandparents. That is what we have to educate the kids about. I have seen it over 30 years. You were a teacher. When I went to school I used to get the cuts. Now my children come home and tell me, 'It's against the law to spank me and give me the cuts.' There was nothing wrong with that, but we have changed. The system has changed. We should go backwards and look at the fifties. We should look at the success of what we had in the forties and the thirties with families and learn a lesson from that, not keep this system that has unfortunately been installed by the drafting of the Family Law Act in the 1970s.

Mr QUICK—To my mind we have two problems. We have the million and a half dysfunctional families that are involved in the Family Court in some way, and we have the young people trying to form relationships who are coming through the pipeline. I can see where you are coming from—that we need some sort of change in the societal rights and responsibilities of people as they enter relationships. It is not something you can do easily and then say, 'It's all too hard; I'll just disappear and not accept my responsibility.' So we are dealing with two ends of the spectrum, and that is our difficulty as a committee—that we have those one and a half million dysfunctional families.

Mr PRICE—I take it that in your second divorce you avoided the Family Court?

Witness 2—Yes, I did because it was a fruitless, pointless, prescribed route, and Jeffrey before told you what the outcome would be. It is prescribed. It is by precedent.

Mr PRICE—You were talking about the rights of the child. In fact, there is a UN convention that confers the rights of children on parents and the support and nurturing by parents. I have forgotten the section in the Family Law Act, but it is a very positive statement about the rights of children.

Witness 2—Then it is all torpedoed by those Family Court orders.

Mr PRICE—A number of people have raised with us that we should open up the Family Court to wider public reporting and get rid of section 121 of the Family Law Act. In trying to attain the reforms that you were talking about, would you be supportive of or opposed to a public reporting of what occurs in the Family Court?

Witness 2—Most certainly. You need only to go into that temple in Brisbane to see that it is not a family court—that is a shrine of intimidation. It is a venue that is not family orientated. It is not user-friendly. It is a very frightening experience to go into those so-called hallowed chambers and people are not friendly—everybody. It is not a family court. I find it to be misnamed. I agree that they have to open it up. It has to be made accountable; it has to be open and transparent.

CHAIR—You indicated that we should start with the children and ask them. Again, you are going to get a whole host of different answers from the children because they will have had a whole host of different experiences. So it is a very difficult task and we do intend to do that. But, again, we assume that we will get a whole host of different answers from them. You assume that, if you want to sit down and organise yourself with your partner when a split becomes apparent, there is a capacity to do that. How do you propose that we should move forward if there is a significant issue of domestic violence and somebody has had to remove themselves from that place because of that? The position of then sitting down and going through this issue becomes a difficult scenario, so do you support the fact that there should be a tribunal or some process pre any ability to go forward to any solicitor or into any legal situation?

Witness 2—I think if there is a presumption of a 50-50 parenting role, there will be a need for both parties to willingly come to some arrangement. I do not think it will be 50-50. I do not think that is practical. In most cases, where men are out there working most of the time, it is an impractical thing. I can do it, Jeffrey can do it, but a lot of the fathers out there can't. They are out there busy working. They are carrying out their role as they have done for thousands of years.

CHAIR—The point that I am making there is that there may not be the ability for couples to sit down and realistically work through this issue because of a whole host of reasons—it may be violence or it may be that they just cannot communicate with one another. There has to be a process. It seems to me that we are talking about an ideal world where you say, 'Here are the children; here are their best points, they are going to give you answers that are in their best interests.' But, again, it is a very difficult scenario for them. Should the responsibility be on the children? I am really not mounting an argument. You are saying, 'Ask the children', but should it be the responsibility of a child to determine how their parents should act?

Witness 2—No, but I think the children's views are important, though. We should get those, and you are getting those via research. The pathways advisory group is giving you research on that and that is great. But we should also ask them, like you are asking the public as a whole. You should be given this diverse range of views from the children as well.

CHAIR—Absolutely.

Witness 2—I hope the opportunity is given to them. Even in your private role, you will get that via your consultations.

CHAIR—I recognise that. I was just trying to understand whether you wanted the whole process to be centred around the children. In the beginning of your presentation it was that the whole process should be centred around what the children want—ask the children. There has to be a combination of asking the parents and asking the children. But we will try to accommodate that as well, through this inquiry. Thank you for coming in. We appreciate you giving up your time, and the process you have gone through in making your submission. The committee wholeheartedly appreciates the efforts of all individuals and organisations.

[10.21 a.m.]

PRICE, Mrs Sue, Director, Men's Rights Agency

CHAIR—I welcome Mrs Sue Price from the Men's Rights Agency to today's public hearing. The evidence that you give at this public hearing is considered to be part of the proceedings of parliament. I therefore remind you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. I remind you that the comments you make are on the public record. You should be cautious in what you say to ensure that you do not identify individuals and that you do not refer to cases before the courts. I ask you to make a five-minute opening statement before I invite members to proceed with questions.

Mrs Price—Good morning. I will tell you a little about the Men's Rights Agency. My husband and I started the organisation nine years ago. We are volunteers in the organisation. We talk to about 5,000 new men each year—about 45,000 to 50,000 over that period of time. We have built a network of professional people around the country—solicitors who are sympathetic to men's issues and who see the need for fathers to be kept in families, accountants, counsellors and various people. We are able to send the people who register with us to those people. They provide pro bono time up front, which is a rather scarce commodity in this day and age. I think we have been able to keep some fathers in families and we have certainly gained some shared parenting and fairer outcomes for the whole family.

I took a slightly different approach in my submission because I uncovered something that I thought needed to be addressed. In doing some research into the 1995 family law reforms, which were the last major look at family law, I discovered that Peter Duncan had, I believe, misinterpreted two cases—one was the Gillick case and one was Marion's case here in Australia—and in doing so he had actually removed parental rights totally out of the Family Law Act. He removed the residency requirements of custody and also guardianship, and he took out the preamble that discussed parental rights. I do not quite know how that sits with our constitutional situation in Australia because parental rights are discussed, but I understand that the Constitution does not actually give us any rights under the Constitution but surely our forefathers would not have put parental rights in there if they intended it to be taken out with such ease. It is an issue that we need to look at.

You heard the previous speaker talk about how do you care for your children when you actually have no right to care for them. Your children come home from school now and say, 'Mum, you can't tell me that; Dad, you can't do that. No, you can't look in my room. You can't tell me to clean up. You can't do anything.' In fact, they are damn right: you have no rights whatsoever to do that under our current Family Law Act. It appears to me that the Family Court Chief Justice was instrumental in bringing this about. He wanted to be the sole arbiter of what happens to families and to children, and I think that is a dangerous proposition in this day and age.

To move on, obviously we are in favour of shared parenting. We see that as being the option best for children and best for families in general. We believe that mothers, fathers and children all have a right to a family life. The European court has acknowledged this with fathers who

have been denied access. When you have shared parenting—and there was some interesting discussion beforehand about whether you should ask the children—the children should not be placed in the position of having to make a decision. The children should be given the opportunity to have that relationship with both their mother and their father. I think that is really essential.

Child support is a hot topic at the moment. We believe that the formula is very badly flawed. It was based on a Wisconsin model, and it is the formula that is used in various states in America. It was based on an income of around $20,000. The basic flaw in the premise is applying a single percentage to a $20,000 income and applying the same percentage to a greater income. That means that, on $20,000, you are paying X amount; on $100,000, you are paying five times as much. Wealthier families do spend more on their children, but they do not spend five times as much. It is actually about two times as much. That is a basic flaw in the formula.

The other problem is that it seems to be that, because the father does not have contact, he is considered to be fully liable for the full payment and support of the child. That is manifestly unfair. There is absolutely no reason that we can see that we should not work off a set amount of child support based on the age of the child. Each parent contributes to that amount—let's pick an easy figure of, say, $100 per week; you would be looking at $5,200 a year for the support of the child—and that goes into a hypothetical bank account. The mother has the child for perhaps 30 weeks. She draws out $3,000 to support the child during that time; the father draws the balance for the time when the child is with him. That is the way it should operate. A government should not really be dictating to any Australians how they should spend their money. I think it is an invasion of their rights, it is an invasion of their ability and it is telling them that we do not believe they can be responsible for looking after their children. We know from research that, when parents have good contact with their children—we are talking particularly about fathers here—they tend to be more than generous.

Just to finish, I do not know whether any of you saw *A Current Affair* on Monday night. Our web site went off the air after that program. Normally we have about 4,000 hits a day; it rocketed up to 10,000 hits after seven o'clock. The following day, it was 14,000, and it is going even higher today. We received, just for your interest, about 37 e-mails immediately after the program that I have brought with me, all saying thank you for raising it: this is my problem. I thought you might be interested that, out of the 37, 17 were written by women and 20 by men. So really it should be sending to everybody a very clear message that it is not just men who are seeking changes to child support and changes to family law: it is women as well. We are just about at a 50-50 ratio.

CHAIR—Thank you very much, Mrs Price. Could I just acknowledge that the member for McPherson, Margaret May, is currently in the audience as well. Thank you for attending today, Margaret. I now call for questions.

Mr PRICE—Were those 17 women paying—

Mrs Price—Mostly paying parents, second wives and some mothers, concerned about their sons and their grandchildren, writing in.

Mr PRICE—To state the best interests of the child does not then exclude parents having rights. They are not mutually exclusive.

Mrs Price—I believe—and I have addressed this in our submission—that you cannot look at the best interests of the child in isolation, because their best interests are associated with the best interests of the family. Perhaps I can use a simple analogy. Say you had a couple who were starving—walking from one African outpost to the other—and they have a baby in their arms. They walk to one feed station, and they feed all three of the family. Then they walk to the next one, which perhaps has a politically correct UN officer there, who says: 'No; we have to look after the best interests of the child only. We only feed the child.' The food runs out at that station, so the family moves on to the next station. On the way, on the road, the mother and father starve because they have not been fed at all. They lie down and they die; the child follows afterwards. Is it looking after the best interests of the child not to look after the best interests of the parents who are looking after the child? That is the best way that I can explain it to you.

Mr PRICE—What do you think about section 121 of the Family Law Act?

Mrs Price—It should be abolished entirely. It just means that the Family Court can hide their rotten little secrets behind their closed doors.

Mrs IRWIN—In your statement you have stated to us that you feel that the child support formula is very badly flawed. In your submission you have suggested an alternative to the current child support arrangements: a scheme where each parent pays 50 per cent of the cost of raising the child, regardless of how much time the said parent spends with that child. How would you see this working if the parents were on completely different wages—say if mum was earning $30,000 a year in full-time employment and dad was on $60,000 or $70,000 a year? Do think that that is really fair?

Mrs Price—Yes. We are working on the principle of providing enough support for the child. We are not talking about providing excessive amounts for the child or keeping up with the type of living arrangements that the mother might have expected when she was living in the family. As I said, fathers have been shown to be more than generous. We should not as a community be saying to people: 'This is how you should spend your money.' As long as we are covering the issue of saying that there is enough money there to keep and maintain that child, that should be the end of the government's responsibility. You do it now with unemployed people and the children of the unemployed. You should not need to go any further than that.

Mrs IRWIN—In a number of the submissions and a few of the public hearings we have had to date it has been coming out from fathers and also from some mothers that they feel that the child support system is a bit unfair. The majority of them do support it, but they would like to see a change. They feel that it should be the net amount instead of the gross amount. I just want to know what your feelings are on that. As they are applauding, I think that the audience might have answered that. Plus, some have been saying that child support should be a tax deduction.

Mrs Price—If you are not going to be as brave as I think you need to be, then yes; those are two issues that should be the first considerations. But, from what I have said, I would like to see you go even further. I would like to see you look at what it costs to raise a child, have that be the determining factor and have that divided between the two parents. We are talking about equality

here. We are talking about equal situations. We are talking about giving both parents the opportunity to get on with their lives while still caring for the child that they have had together.

Mrs IRWIN—But you are not talking about equality where mum might be on $30,000, dad might be on $60,000 and you are saying, 'Divide it 50-50.'

Mrs Price—But is the father supposed to support the mother for the rest of her life?

Mrs IRWIN—No; it is the children.

Mr CADMAN—You mentioned in your opening remarks the concept of guardianship. Can you see that being re-entered into the Family Law Act? How should that be done?

Mrs Price—I think that parental rights need to be reinstated. I do not think that you can ask people to be responsible and have a duty to their children without giving them the right to be able to do that—to carry out that duty.

Mr CADMAN—Does that mean penalties if they do not fulfil those obligations?

Mrs Price—The penalties come into a different situation if people are charged with neglect or abuse of their children. That usually comes into a state law situation. If you do not give parents rights, you are telling the children that the parents cannot do anything, the parents have no control, they have no ability to be a parent to their children. That is a dangerous principle. We need to restore parental rights and to restore all the issues that guardianship meant. Guardianship gave a parent a right to be consulted, a right to make decisions about their child's life. We should not be handing that over to the state or, worse, to a court, which happens now.

Mr CADMAN—What if there is a dispute, say, about schooling?

Mrs Price—If you are talking about separated situations, I do not think you will have a great many disputes. It does not seem to happen in other countries. Once you get over the settling-down period of people coming to understand that both parents should be regarded as equally important in their children's lives, they start to communicate and they start to talk about what they should do and what they should plan to do for their children. If the dispute becomes such that they cannot solve it, they can try counselling and they can take it to the ultimate step of going to a court or an arbitrator.

Mr QUICK—How do you see the role of second and third marriages in this attempt to start with a blank screen and write new legislation and a new formula in the best interests of the child and the issue of rights? Also something we have not mentioned is responsibilities. We are hearing evidence from second families that are doing it really tough if there is a responsibility to pay half as the contribution to the first family and, as I said, we have second and third marriages, which are now the norm in lots of cases, not the exception to the rule.

Mrs Price—It is a little difficult. In my time, I suppose the responsibilities were regarded a little differently and perhaps people were a little more cautious before they went on to have another family if they already had a family to support. I think the prevalence now of divorce and second marriages has become so great that we cannot in any way restrict people from having

another family and moving on with their life and having more children. We have to be able to help them do that. If we restrict the amount of payments by saying, 'Okay, you've got children with another family; you support half the costs of that child,' there should be enough left over for them to move on to start with a new family and start again.

Mr DUTTON—My question is based on two pieces of evidence that we have received in previous hearings. One was that mum and dad were both good parents prior to separation but they were not good partners and hence they separated. What changes after separation that mum or dad suddenly becomes incapable of taking care of the child in a post separation situation? The second theme of evidence that we took was in relation to presumption of joint residency, that it could not work because we would expose children to the dangers of sexual or physical assault. I questioned that evidence as to the prevalence of sexual assault on children by natural fathers. My understanding was that it was very low indeed. But the person that provided evidence rebutted that and I am having some research done at the moment. Have you done any research in relation to that second issue in particular and how would you marry the two comments together when we talking about wanting to provide the basis for the child to enjoy the company of both parents post separation?

Mrs Price—I find it very difficult to understand how a perfectly decent father suddenly becomes a perfectly awful father after divorce, but I think that is due to the prevalence of false allegations that are made. Most fathers do not change overnight; they do not turn from Hyde to Jekyll once they separate. We have a huge number of false allegations made. The start is the domestic violence allegations, and that removes the father from the house. It is an easy way, much easier than waiting for the Family Court to issue a sole residency order. The allegations continue. Unfortunately, in the Family Court there is very little testing of any evidence when false allegations are made and there are certainly no penalties for perjury. That is one of the greatest problems.

In answer to your second question, yes, I have done some research and I did include that in my submission. I have known this to be the case for some time but, unfortunately, the figures have been hidden in Australia. For example, in relation to abuse and neglect charges, the Australian Institute of Health and Welfare report referred to on page 25 found that 22 per cent was physical abuse, 32 per cent was emotional abuse, 41 per cent neglect and only five per cent was sexual abuse. In Queensland there was a report that showed that, of substantiated abuse, 24 per cent occurred in two-parent families, 22 per cent in two-parent other blended families, 42 per cent in single female-parent-headed families and four per cent in single male-parent-headed families. US, Canadian and UK statistics concur with those sorts of findings.

Another surprising finding came from New South Wales Child Death Review Team research done over 3½ years. They studied 60 murders of children, 40 of which could be described as family type situations. Of those, 25 were murders committed by the mothers, six were committed by the biological father, five by the de facto boyfriend and one by a live-in boarder. If you were to read the media, you would not believe that to be true.

There has been a lot of research on sexual abuse, both overseas and now here—one piece, at least. Paul Mullen and David Fergusson have written a book about it titled, *Childhood Sexual Abusers: An Evidence-Based Perspective*. They found that less than one per cent of child sexual

abuse was committed by biological fathers. The evidence is telling us that children are actually safer with their biological father around the place.

CHAIR—Thank you. Mrs Price, could I ask—and this is just purely a question of commonsense for me—if you have a scenario where you put your $100 a month or a week in an account and you have joint access to that account, what happens if one of the partners does not put the $100 in? What happens if one of the partners is a bit skint that week and decides to draw $200 out? What happens if the running of that account becomes a little bit confused and skewed—where do you go? That is where I see the ultimate problem with respect to child support, and that is why you have an agency that tries to ensure collection in some degree. What happens and where do you go if you have misuse of your open account between two people.

Mrs Price—I understand the problem of people not being able to pay or not paying. We have that now in the current child support situation.

CHAIR—Yes, we do.

Mrs Price—Unfortunately, I think it was premised on the wrong research in the first place. They thought they were going to solve the problem if they brought in an organisation that could garnishee money. Of course, it is very hard to garnishee money from people who are just dead broke and do not have the money to pay. If they are not working, they cannot pay. In the child support payers group, 39 per cent are unemployed or low-income earners; therefore, they are not required to pay anything more than $5 a week.

Out of the Child Support Agency family clients you could say 50 per cent—Mr Anthony said the other night—were paying themselves: they were making their own arrangements. That means in actual fact that the Child Support Agency is dealing only with 10 per cent of payers. They are trying to extract enough money out of 10 per cent to justify the existence of 2,200 employees, at a considerable cost. I question whether that cost is really worth while for all the heartache that it causes and all the suicides that are caused by that.

CHAIR—How do you manage the self-employed person, male or female, who underestimates or keeps their income to a level where they do not have to pay child support at all? How do you manage that process of self employment, for both genders, to be able to ensure that they do have the capacity to pay although they are not doing so?

Mrs Price—That is if you based it on a percentage of income. If it were based on the cost of raising a child there would be absolutely no need for them to hide their income, and there would be no necessity for them to take any measures to try and reduce their income. I have to say—from all the numbers of men that we have spoken to—paying child support is the least of the problem. The problem is the amount they have to pay. They are all happy to support their children.

Mr DUTTON—I have a follow-up question. I am sure all of us have representations from constituents in our own electorates. I think you are correct in saying that the bulk of the payers have a problem with the quantum of the payment, not with the fact that they have to pay or anything else. Part of the problem there—particularly, as you say, with a percentage basis as the income goes up—is that people see the child support not as child support but as former spousal

support on top of child support in some of those cases. Is that why you argue for it being a set amount based on whatever a study may show is needed to bring up a child at a particular age? If that is the case, for those high-income earners who are payers, should the excess money go to the children in some other way, or should it not be paid at all?

Mrs Price—Let me start at the back to front area. Those payers are not the only payers in the family. Remember, the mother is also contributing. So both people are paying towards the support of their child, as it should be. On the other issues, I do not think you are going to have the problem when you take away the amount that you are asking people to pay. It causes a great deal of trouble. It certainly encourages some separations because, in fact, in some families they are better off when they have separated and are being paid child support and government benefits. For example, one of our clients who earns between $50,000 and $60,000 and has two children who live interstate with the mother, who is on full benefits, said he worked it out that she would have to earn an equivalent income to $72,000 to have the same amount of money in her pocket as she does through this system.

CHAIR—Thank you very much. We appreciate you coming in this morning, Mrs Price, and thank you for your representation.

[10.48 a.m.]

DENTON, Ms Miriam, Treasurer, KinKare

LUBACH, Ms Maree, Secretary, KinKare

POPE, Ms Danni, Chair, KinKare

CHAIR—Welcome. Thank you very much for coming in this morning. The evidence that you give at this public hearing is considered to be part of the proceedings of parliament. I therefore remind you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. I remind you that the comments you make are on the public record. You should be cautious in what you say to ensure that you do not identify individuals and that you do not refer to cases before the courts. I will ask one of you to give a brief overview and then I will proceed to ask the committee to pose their questions to you.

Ms Lubach—Thank you all for allowing us the opportunity to address you today. Our members include the relatives who care for other people's children, both part time and full time, and those who are denied access to these children. For the sake of brevity, we use the term 'grandparents' when referring to them. Most of the relatives are grandparents to these children. This is a new family group that is becoming more and more common in our society and therefore needs to be given serious consideration when new laws and policies are being drafted. We would also like to point out that, as these children are not being raised by their natural parents, they have been through traumatic circumstances and mostly are suffering because of it. The concepts we are asking you to consider are for these children so that they can live in a way that is their basic human right.

We feel that uniform laws throughout Australia are critical. Families often need to rehouse interstate for various legitimate reasons, and all family members deserve to know that their relationships with one another and their living arrangements do not depend on the state in which they reside. At present, with differing child protection laws in each state, this cannot always be guaranteed. Further, there have been cases where families have had to move interstate to be eligible for entitlements for specific therapies needed by the children. We believe the federal government has a responsibility to ensure equality for Australian children. KinKare respectfully suggests that overriding federal legislation is needed to ensure that children feel safe and secure with their alternative families. This legislation would need to encompass stability of placement and a level of financial aid that reflects their unique circumstances. We do not suggest that natural parents should be estranged, but they should need to prove that any changes made to Federal Court orders are in the best interests of the child. Currently the Family Court would be best placed to ensure the welfare of our children.

There are also many grandparents who are denied access to their grandchildren, and this is a situation that the court could address. It is a lamentable reality that some parents act as though the children are their chattels. There are cases where, after divorce and/or death of a parent, grandchildren who lived for many years with grandparents have been removed by estranged parents and then been denied access to their loved ones. Until such time as we have recognition

and legal rights for grandparents in our Family Court, there is little chance that many battling couples will see the need to genuinely work in harmony for the benefit of their children. At the time of separation, couples are working through one of the greatest difficulties of their lives and are often not thinking as clearly as they normally would.

Married couples, or those ending long-term relationships, usually go through the system. Grandparents need to be recognised by the court so that their services can be enlisted for the children's betterment. There are too many cases where parents have a reduced capacity to parent, and the effects on the children can be devastating. In particular, we refer to parents with mental disorders such as those associated with addiction. Grandparents should have the capacity to bring such situations to the attention of the court for the sake of the children.

Without specified legal status grandparents are a resource not just wasted but also verging on abused, as they are at the mercy of parents capable of emotional blackmail and are powerless to help their children. This could well be considered as an issue of discrimination. Financial assistance is available to many people in our country facing unexpected hardships not of their own doing, and it is a source of pride to most Australians for good reason. KinKare feels that the plight of our grandparents has not been duly recognised by government and that there are less deserving recipients of social security payments. Understandably, restrictions on assets and incomes apply to most benefits. In the case of grandparents who are raising grandchildren, these restrictions are often harsher in effect than those applied to other benefits. It is not unusual for grandparents to have to sell their homes because of the new parenting status. Those in retirement villages and the like often face incredible difficulties.

Citizens facing the end of their working years are expected where possible to accumulate some moneys to help support themselves in retirement. Should they try to do this in good faith and then unexpectedly need to assume the role of parent, they find their assets and income preclude them from many benefits. As grandparents, we are not asking for a free ride—just recognition and a fair go. We have seen young people deciding not to live in perfectly good homes—as teenagers are apt to do—who receive benefits while we, as taxpayers over many years, are taking on responsibilities that they shrug without due consideration. Please also understand the unimaginable situations we face—devastated by the circumstances that befall our own children, often needing to be there for both them and theirs, and, despite years of budgeting and planning, not being able to meet these needs. Thank you for considering our submission.

ACTING CHAIR (**Mrs Irwin**)—Miriam, do you want to make a statement?

Ms Denton—I think what we have said in our submission says it all. We need to get more recognition for what grandparents are doing at this time for children that would otherwise be running the streets with no-one there to look after them. And we need to make it federal—to make it Australia-wide—so it is not going from state to state and being put in the too-hard basket.

ACTING CHAIR—Danni, do you want to make a statement or go straight to questions?

Ms Pope—I concur with what has been said.

ACTING CHAIR—Okay. Thank you for the opening comments. Based on the experienced of your organisation, is the number of grandparents who are full-time carers growing? If so, how quickly are they growing?

Ms Lubach—That is very good question. It is difficult to know whether it is growing, as it appears to be, or whether people are coming forward now whereas in the past they would not take ownership of what is happening within their own families. Even now, we find grandparents really reluctant to come forward and open up as to what is happening. Very often it is because of an addiction.

ACTING CHAIR—You have stated in your submission:

Grandparents raising their grandchildren face barriers unknown to 'normal' aged parents and therefore are in greater need of government aid.

What assistance do you feel the government should be giving these grandparents who are full-time carers?

Ms Lubach—We would like a guardianship allowance to be given to them. In some states there are fostering allowances for children, through the state department of families, DOCS or whatever it might be in that particular state. However, there is no equivalent across-the-board payment right around Australia. Therefore, as I said, people are shifting from state to state to go where they can get the best for their children.

Mr PRICE—When you have care of a child but have not been awarded the residency, doesn't the child support still click over between the parents?

Ms Lubach—I am sorry, I do not understand what you mean.

Mr PRICE—If we have got a couple who have separated, child support is being paid but, at the end of the day, the grandparents have got the care of the child for four or five months, does the child support continue to be paid to that carer but you get nothing?

Ms Denton—There is usually no child support in these cases. It is usually—

Mr PRICE—The point you are making is that you are not entitled to claim child support for the care that you are offering.

Ms Denton—No, we are not.

Ms Lubach—The only reasonable amount of money that grandparents raising grandchildren get is a foster care allowance if they are raising them on child protection orders through the state. There is a family tax benefit that grandparents in other situations can claim, but it is extremely small. One grandparent I know was receiving $75 a fortnight for two children.

Mr PRICE—Have you any idea of how many grandparents are involved in cases like that?

Ms Lubach—We have tried really hard to get some statistics on this, but they are almost nonexistent in Australia. The Australian Bureau of Statistics, when they conduct their next census, are apparently going to address this problem.

ACTING CHAIR—Do you know of any grandparents that have actually gone to court to get custody of their grandchildren? If so, what are the difficulties they are facing?

Ms Lubach—Yes, there are many grandparents who have gone to court to do this. Firstly, the financial burden is huge. Most times they are not eligible for legal aid. Then, when they do go to court, very often the children are appointed a solicitor as well as the grandparents. Legal aid will only cover one of the two solicitors and, almost always, the grandparents say to cover the child's solicitor not theirs.

ACTING CHAIR—So you would like to see legal aid offered to grandparents in this particular instance?

Ms Lubach—Yes. Anyone who is going for the protection of a child really is entitled to that kind of legal aid.

ACTING CHAIR—Thank you, Maree.

Mr DUTTON—I want to seek your comments from a grandparent's perspective on one of the ways aimed at taking this process out of the Family Court and excluding lawyers from the process. If three-person tribunals, for argument's sake, were set up within a separate structure outside of the Family Court where people who were parties to the dispute were able to go back to the same tribunal and make amendments as circumstances changed, do you think that would be a practical way to operate?

Ms Lubach—Yes, definitely. I think that would be a very good situation, and we would certainly welcome it.

Mr CADMAN—How overwhelming should grandparents' rights be? Should grandparents have a right to access if both parents do not want that?

Ms Denton—No.

Ms Lubach—I do not think necessarily that it is the wishes of the parents; I think we must understand there are some parents who are not able to parent to even an average standard. If these parents still wish to be parents, but they are going out and taking drugs and are not able to physically look after the child for great periods of time, then, I am sorry, I think they lose their right to determine where the child should be.

ACTING CHAIR—Miriam, I notice that you said no. Do you want to comment on that?

Ms Denton—It is very hard for me to comment because that is a personal question, and I would be getting too deeply into it then.

ACTING CHAIR—Getting a bit emotional?

Ms Denton—Yes.

Mr CADMAN—But I do want to probe this a little, because I know of an instance where a young couple have to take their child from Brisbane to Sydney at least twice a year to give grandparents access, and neither of them wish to do that. That seems to me to be an extraordinary requirement from the Family Court.

Ms Lubach—I think we would agree with you on that. That would be an extraordinary requirement and certainly not a situation that we have heard.

Mr CADMAN—You would not espouse that sort of thing.

Ms Lubach—No.

Ms Denton—No.

Mr CADMAN—Okay, that is good.

Ms Lubach—If they are a married couple we should not interfere in their life—that is their life. There is a time to let go. It is only when there is drugs or alcohol involved that you do get involved.

Mr CADMAN—Thank you.

Mr QUICK—You state in your submission:

In the case of irretrievable breakdown of the parental family group, grandparents should have more legal stature than any non-related party. Legal Aid must therefore be granted to grandparents who are seeking the stability and security of their grandchildren ...

The lawyers would be rubbing their hands together, surely. Here are two other parties that will be part of the bunfight. We have got enough problems now with the parents, and you are going to introduce the grandparents. How do we de-legalise the system? We heard of $100,000 from one person. You mentioned people mortgaging their retirement village homes.

Ms Lubach—What I was referring to in the submission when I said that was that, at the moment, grandparents are lumped into 'significant others'. What we are saying is that, instead of being significant others—and particularly we are looking at access with this—grandparents should be specifically mentioned.

Mr QUICK—How do we hear the children's point of view in all this? We are trying to come up with a forum, but children cannot be interrogated in the nicest way by police unless they are a certain age and their parents are there. How do we get a room full of 100 children from Brisbane and the Gold Coast to come and give us evidence in this rather daunting format? How would you see it happening?

Ms Lubach—I really would not be able to answer that question. Like you, I do not feel that the children should have too much responsibility put onto them in this daunting thing. I know

how I myself am feeling at the moment, let alone a child coming in to do it. However, I do not think their opinions can be totally dismissed.

Mr QUICK—We could interview you and your partner about the children, and then we have the children, the mother and the father. We could get five different points of view on the relationship and how we solve the problem.

Ms Lubach—Are you referring to the problem in a court where the relationship is breaking down?

Mr QUICK—Yes, that is right.

Ms Lubach—I believe there are social workers there with the children who are communicating with them and relaying their opinions. One would hope that the professionals would be able to suss the situation and come up with a reasonable set of circumstances.

Mr QUICK—How do we peel the layers of the onion back to get to the problem? As an ex-teacher I saw the evidence of dysfunctionality in my classroom. It manifested itself there. Social workers at the schools also had to deal with it, and the family support workers in the community as a first point of crisis contact.

Ms Lubach—I would like to see some sort of facilities that would be free for grandparents and parents where they could go in a family atmosphere to discuss the problems. I do not mean going to a family court or even something like a tribunal. I suggest that more resources be put into places such as Lifeline for family counselling before things became out of hand.

Mr QUICK—You heard Mrs Price say that, assuming it costs $100 a week to look after the child—$100 from Mum, $100 from Dad—are you suggesting $25 or $50 from grandmother and grandfather? Do you see that as part of your involvement in the process?

Ms Lubach—It would depend on the circumstances. Firstly, if the parents are reasonable and splitting in such a way that they are not causing physical and strong emotional harm to the children then it is the parents' decision—it is their responsibility and I do not see that, as grandparents, we are any more than the benevolent people on the side. However, it is when it gets to the stage where children are physically and deeply emotionally abused that grandparents have to step in. That is our place, but not beforehand.

Mr PRICE—Has your organisation found that grandparents are funding some of the court cases of their sons or daughters?

Ms Lubach—Yes.

Mr PRICE—Can you give us a feel for the impact on the grandparents of funding the legal costs?

Ms Lubach—Obviously it is very difficult for them. Very often the sons, daughters and grandchildren are all living with the grandparents. It is really emotionally devastating, not to mention the fact that there is all this angst within the family. Having three generations in the one

household is obviously far more difficult than two generations. There is also a physical thing with the grandparents too. As most of us get older we are physically less able.

Mr PRICE—Yes, been there, done that. Finally, in asking for this legal representation of grandparents, it is a selective representation, isn't it? You are not saying across the board?

Ms Lubach—No.

Mr PRICE—You are saying that there should be something in the act that recognises that, where there is, in your words, drug abuse and neither parent is able to adequately cope with their responsibilities, there should be legal recognition of a potential role for grandparents?

Ms Lubach—That is the next line of defence. That should be the first thing to fall back on once the parents have been found unable to do it.

Mr PRICE—Is there any other change you would like to see come out of this inquiry?

Ms Pope—In my situation my little granddaughter did come to live with us for a period of time under the department. She had her own legal representative and her mother did not want her to be with us because she was very angry with me. There was a court case which we were not even told about, and the child had said to her legal representative that she loved her mummy more than anyone else in the world but if she could not live with her she wanted to live with her nanna. But it was overruled. I found it very distressing that the child was not considered. The trauma the child has suffered as a result of that is horrendous.

Mr PRICE—In what way was it overruled? I do not understand that.

Ms Pope—It was overruled—and I have to be careful what I say—

CHAIR—Please do.

Ms Pope—Yes.

Mr PRICE—Do you mean that the counsellor did not adequately take into account what the child was wanting?

Ms Pope—The child's wishes were not adhered to.

Mr PRICE—That is not unusual.

CHAIR—Thank you very much. We really do appreciate you coming in this morning. It certainly helps the committee to understand the issues that you would like to raise. We appreciate that very much.

[11.13 a.m.]

FIELD, Ms Rachel Mary, Member, Management Committee, Women's Legal Service

GODSELL, Ms Pamela, Social Worker, Women's Legal Service

LYNCH, Ms Angela, Solicitor, Women's Legal Service

CHAIR—Welcome. I would like to advise you that the evidence 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 currently before the court. I ask that you have one spokesperson to give a brief overview for five minutes and then I will proceed ask the committee to frame their questions.

Ms Lynch—We would like to thank the inquiry for inviting the Women's Legal Service to speak. Our service has been assisting women with family law matters for 19 years and we provide approximately 6,000 advices a year. Since our inception we have been actively engaged in the law reform process and have responded to all of the family law inquiries, undertaken research, and experienced and analysed the effects of changes made to the Family Law Act and the family law system on our clients. We have also developed over the years an expertise in the area of domestic violence.

Our fundamental position is that there does not need to be a change to the Family Law Act to incorporate ideas about shared care because the act already allows it as an option. Under section 60B of the Family Law Act, which is the objects clause which guides how the entire act should be interpreted, it states that the fundamental importance of the parent-child relationship is paramount and that this continues after separation unless this is inconsistent with the child's best interest. The best interest principle is also wide enough to incorporate these orders.

You may ask: when does the court actually make these equal based orders? In our experience, the court makes these orders for substantially equal time shared care when they believe it is in the best interests of the child, generally where the parties live close to each other and the court believes the parties can communicate in a child-focused way. Families of this nature are not common in the court. The court also places a lot of emphasis on stability in the care of the child, and equal time shared care does not reflect the reality of what occurs in intact families. To impose it on families after separation would mean a huge and untested shift away from the reality of existing family structures, so generally orders for equal time are not made.

Research into the issue of shared care indicates that families that currently enter into shared care arrangements do not necessarily engage with formal dispute resolution processes such as the Family Court—that is, they work things out themselves. Therefore, in the Australian community there are many instances of shared care arrangements but there may not be actual Family Court or formal court orders. It would seem these are families who are able to reach genuine agreement about issues involving their children, are able to communicate with each

other, where there is a certain level of respect between the parties and a quality of negotiating skills and where there are no issues of violence and abuse.

Unfortunately, most of the people who use the family law system do not fit this profile. There are high levels of conflict and of hostility. The legal imposition of equal time shared care on these families would increase conflict and, we predict, the need for legal intervention. Is not in the best interests of children. People would be arguing about a raft of decisions concerning children, for example what doctor to take them to and what after-school care they should go to. We envisage that orders from the court are going to be lengthy, trying to envisage every possible dispute. This only increases the possibility of disputes at a later stage over the interpretation of those orders and ultimately the parties will end up back in court seeking contravention orders.

Carol Smart and others researched the area of shared care in the United Kingdom and found that children started to take on the responsibility of ensuring fairness to their parents. The question of fairness to and for parents was paramount in interviews she conducted with the children. It was not what the children wanted but what they thought their parents would think was fair that was coming across. Smart found that for some children shared care works well, but she recorded the complex realities of the situation for others. She described children moving across psychological spaces as well as physical once. It was not easy living in two homes. We have split this up and Rachel will speak further.

CHAIR—This is really meant to be a five-minute overview. If you are going to continue on from your submission or cover the same ground as in your submission, each committee member has read your submission and has that in front of them, so I ask that you make new comments so that we can move forward into questions.

Ms Field—I was just wanting to argue strongly against the introduction of a rebuttable presumption in relation to shared parenting. We have argued that currently the situation allows for shared parenting to occur and we want to say in addition to the submission that a rebuttable presumption is a radical and extraordinary legislative provision to introduce. There are very few rebuttable presumptions that currently exist at law, and they currently exist in situations where they are based on inextricable logic and probability. We argue that shared parenting cannot yet in Australian society be presumptive because it does not reflect the reality of intact families as they exist currently. Women continue to be the primary care givers in families, and this needs to be acknowledged in post separation arrangements as well.

We also wanted to focus on the hope that, if the legislature were to introduce a more concrete concept of shared parenting, an approach adopted in the State of Washington is one that we would argue is a possible guide to that. We advocate that that is a good package to look at, because it only allows for shared parenting where specific requirements are satisfied for the appropriateness of the family and for the situation to allow for shared parenting. In particular, it says that certain contraindications must not exist for shared parenting to occur. So it is a contextualised approach to shared parenting that looks at the reality of families.

CHAIR—Thank you.

Ms Godsell—I would like to issue a word of caution in regard to the Washington state model or any other model that the inquiry may consider. Although the model has exclusions about

shared parenting which are related to domestic violence, there was a 1999 Washington state parenting act study of 10 focus groups that found that domestic violence survivors find the civil justice system especially difficult to access and utilise and often have plans they believe compromise their own and their children's safety. They also interviewed 47 professionals working with the state parenting act, and they found that the parenting act failed to adequately protect survivors of domestic violence.

Given the failure of the Washington model to adequately address issues of domestic and family violence, if aspects of that legislation were to be considered for changes to Australian legislation, not only would consideration of the whole package needs to be included but also extra consideration given to the domestic and family violence provisions.

It is now acknowledged in Australia that domestic and family violence comprise the core work of the Family Court. There have been many inquiries into the workings of the family law system, and we and many others have highlighted the safety needs of women and children affected by domestic violence. However, the responses continue to skirt around the issue and focus on solutions for the broader community, most of whom make very successful residence and contact agreements outside the Family Court. We would strongly urge this inquiry to take the issue of women and children's emotional and physical safety seriously in your deliberations and not say, 'That's domestic violence; we will treat it differently.' We have heard that in the past domestic violence will not be part of mediation and will not be part of a whole range of responses to family law where it is not appropriate—and that is good. The trouble is that resources are not put into finding what is appropriate for domestic violence. It never gets looked at seriously. Resources are never put into making system safe—into making women and children safe. Surely safety has to be of the highest priority for any family law system.

Our final comments are about those communities, particularly Indigenous communities, where the role of extended family is part of their culture. The idea of enforcing a system of shared parenting would be disastrous. We are not aware of whether you have heard from Indigenous communities. We would urge the inquiry to hear from them. In particular, we would recommend some contact with the National Network of Indigenous Women's Legal Services.

CHAIR—Thank you very much.

Mr PRICE—One can play around with statistics, but I thought you were essentially saying that the Family Court is getting involved in domestic violence cases—that is, that the five per cent are represented by domestic violence cases. I suppose I could run the argument then that 95 per cent of all separating or divorcing couples will be suited to an arrangement of joint parenting.

Ms Lynch—It is not just the five per cent that are going to trial. You are talking about the five percent that end up in a Family Court trial. The number of cases that involve domestic violence and abuse is much greater than that. They do not necessarily all go to trial in the Family Court and a court determination by a judge after a trial. They can fall out along the way. Our main client base is women who are acting for themselves in the Family Court and do not have legal aid. There are many ways people can fall out of the system and there are those who do reach some kind of agreement.

Mr PRICE—Setting aside domestic violence and abuse cases, isn't shared parenting—or 50-50—a good framework with which to start? I am not sure whether the rebuttable presumption of joint residency means 50-50 in every case, but this is the framework from which you start.

Ms Lynch—We think that the best place to start is the best interests of the child and that starting from a different point, a 50-50 shared care arrangement, will displace those principles or decrease the importance of the individual circumstances of the child who is before the court for determination. It will become a battle about whether care can or cannot be 50-50 rather than what is the best arrangement for the child who is before the court.

Mrs IRWIN—Thank you for your 52-page submission. It is very interesting reading. In the 'Summary of key points', points 11 and 12 on page 3 of that submission express your very great concerns about the rebuttable presumption of shared care. In point 11 you state that it will be 'used as a weapon by abusive parents'. In point 12 you state that it will 'influence out of court negotiations'. For the public record, can you explain the reasons why you feel this and especially why you say it will influence out of court negotiations?

Ms Field—Many negotiations occur in contexts such as mediation that are private and unaccountable and where the best interests of children cannot be assured against any objective standard. Those negotiations and mediation occur in an environment that is in the shadow of the law. People who go into mediation will often have had legal advice about what their rights are or what the law is and will argue in that context, but there is no protection or accountability measure in that environment to make sure that the best interests of the children are taken into account appropriately.

Mrs IRWIN—In point 11 you say:

> WLS is concerned that it is abusive men—exactly the wrong kind of fathers for shared care arrangements—who will seek to use the presumption if it were introduced.

Could you elaborate on that?

Ms Lynch—Our experience in working with the women in domestic violence situations is that the men are seeking continued control over their family. This shared care arrangement gives them some kind of legal ammunition to go to the court and start by saying, 'I want 50-50,' even though they may actually be an abusive parent. It provides them with a starting point that they do not even have at the moment. At the moment the court starts from the position of asking what is in the best interests of the children.

Mrs IRWIN—Which is the most important thing.

Mr CADMAN—Do you accept the statistics that one of the previous submissions provided on violence among biological fathers compared with other partners? Have you looked at that evidence about assault of children and other violence?

CHAIR—We would be happy for you to take that on notice and get back to the committee. We will provide that to you in writing.

Ms Godsell—It certainly does not sound consistent with what we have read in the past, but we do not have the figures to hand, so we would be happy to take that on notice.

Mr QUICK—How many cases are there in Queensland of shared care decisions?

Ms Lynch—I do not think there has been a statistical analysis in Queensland of people who have entered into shared care arrangements outside formal court processes.

CHAIR—I think the point is that where parents have the ability to cooperate—

Mr QUICK—We have been bombarded with excellent submissions, but we are talking about rebuttable presumption. Surely someone has some evidence somewhere? We talk about five per cent and 95 per cent—

Ms Field—There is not a way to measure, however, what people are privately agreeing to.

Mr QUICK—But someone must be keeping records somewhere in Australia, surely?

Ms Field—No, the private agreements of parties after separation are not accounted for anywhere, unless they are turned into a consent order or some other more formal sort of order. There is not any record of what parents privately agree.

Ms Godsell—You would need to do it through a census.

Mr QUICK—How would you see a less 'legal' system that allows non-custodial parents greater access and involvement in their kids' lives, if we are talking about the best interests of the children? At the moment you are arguing that if we introduce this 50-50 rebuttable presumption then we are going to open a legal bunfight, but is the bunfight going to be any worse than it is at the moment? Some people would argue there would be less of a legal bunfight and less filling of lawyers' pockets, but you are arguing the opposite.

Ms Godsell—There is certainly alternate dispute resolution that is taking place at the moment. Whether that is not advertised enough for people to know that they can go through that process beforehand, I am not aware, but certainly there are quite a few people who do go through that process—where they feel it is appropriate, where they feel they can communicate enough to go through it and where there is not an enormous power imbalance.

Mr QUICK—Someone mentioned something about it not being common in the court. Are we talking about the five per cent that actually get to court or the 95 per cent?

Ms Lynch—I would think that it would be both. I read the five per cent—

Mr QUICK—The people that you deal with—are they the five per cent?

Ms Lynch—They are both.

Mr QUICK—So what percentage of your clients are in the five per cent and what percentage are in the 95 per cent that sort it out between themselves after they have been to you for advice?

Ms Lynch—Sorry, my interpretation of what you are talking about with the five per cent is the five per cent that actually end up in—

CHAIR—The family law court?

Ms Lynch—or in the actual trial.

Mr QUICK—In the trial?

CHAIR—Those were figures that relate to trials.

Mr QUICK—Of your 6,000 cases you mentioned, how many of those come to some arrangement without having to go through paying $10,000 or $100,000?

Ms Lynch—I suppose we do not have the statistics in our service to analyse exactly that, because we do not actually run with cases all the way through to a trial anyway; we are an advice service.

Ms Field—I would also caution that in many cases, through alternative dispute resolution, an outcome is reached, but it is not necessarily an appropriate outcome, a just outcome or a fair outcome for children and also for their mothers. So there might be an outcome reached through mediation but it may not be appropriate or safe.

Mr QUICK—But surely, as a committee, if we are going to radically change the law and have a blank piece of paper and come up with a model in the best interests of the children, we should get all the statistics. Your submission is fantastic; it is about 40 pages and it is very complex, but I would be interested to know, of that 6,000—even if you took it on notice—where they sifted out and how many went up to the court. The thing that worries me is this: we talk about shared care, but there seems to be in the Family Court a template—every second weekend and half the holidays. End of story. To my mind—just speaking personally, and I have only been doing this for about five or six days—as a father of a couple of daughters, it is unfair.

CHAIR—If you would like to take that on notice, that is fine, and we will provide you with the question that Mr Quick has asked.

Mr DUTTON—I have a very quick question in relation to the breakdown of those clients—you speak of 6,000 that you saw in 2001-02. Are any of those clients grandmothers that you would represent in these matters, seeking to have some sort of access to their grandchildren or, say, women from second marriages who might believe that the child support arrangements that their new partner is paying are unjust? What sort of percentages of the 6,000 clients would they fall into?

Ms Lynch—We do see grandmothers and we do provide advice to grandmothers, but I think that would be quite a small percentage—

Mr DUTTON—Over 2001-02 how many of those grandmothers would you have represented?

Ms Lynch—We do not provide representation generally in the courts so we do not actually go to court for people. We are an advice service. We would have to take it on notice but I would think it is only a small percentage.

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

Mr DUTTON—As well as the second part of the question.

CHAIR—We will provide you with that question.

Mr PRICE—Are you satisfied that the child support scheme adequately looks after women who have repartnered with a person who has a child support liability? It seems to be an area where we get a lot of representation. In fact, the woman partner often comes before us to say how unfair it is. Has your legal centre done any work there?

Ms Godsell—We do not get many women who come into us with that particular issue. That is not to say that it is not an issue, but we do not get them coming to us.

Mr PRICE—The submission you are making on child support seems to assume that there is one relationship, whereas now that the scheme has been in for 15 years there are serial relationships that tend to cause different problems from when the scheme was first looked at. Your submission does not appear to take that into account.

CHAIR—We would be happy for you to take that on notice as well. The committee will provide you with those questions. We thank you for your representation this morning and thank you for giving up your time to come and appear before the committee. We certainly appreciate your time. Thank you.

[11.37 a.m.]

CHAIR—I welcome everybody to today's community statements segment of the program. Each person will be allowed three minutes to make a statement, so I ask you to keep your comments quite succinct and to raise the issues you are most concerned about. Again, I ask that individuals do not identify other individuals and do not identify cases currently before the court. You do not have to provide your full name for *Hansard*. However, we would appreciate it if you would just give a first name if you are concerned about providing your full name.

Col—Thank you. I am a builder. The whole argument about people going to court, and throwing into perspective how people can be amicable and resolve their problem beforehand, goes out the window as soon as you get to court. Once you get to court you have got two sides and each is pretty bitter. When we do not have shared custody, the person who takes the children can go into town or interstate and leave, and the person who is missing the children then has to fight and go to court to get some sort of access to see them again.

If you had shared custody then it could proceed to court along lines where the court could decide where the children are going to be and it could progress from there, instead of having six months pass sometimes without seeing the children. That is a problem. Another problem once a court order is made is having the person with the children complying with the order. Currently, there is no recourse to enforce an order except going back to court for a breaking of an order.

If police had some right whereby, if someone did not comply with the order, they could then make them comply that would save the court process again. At the moment, if the person with the children does not want to comply for any reason, they just stop contact. You then have to go through the process of saying, 'They are not complying; we will go back to court.' To my mind, if they do not want to comply with the court order they should then go back to court to change the court order, and the court order could then proceed to them. Up until that time they should be made to comply with the order that was given by the learned colleague.

The whole idea of case management studies under the current system, where a child representative gets appointed, is that the welfare of the children is taken into consideration, which is of upmost importance. But if they make a recommendation there is no way of enforcing that until they can appear before a court or judge and make that recommendation. A good example is a mother saying that sexual abuse has occurred, so they go before the scam team, the scam team reports and says, 'There is no sexual abuse,' the child's representative turns around and says, 'I want contact to recommence,' and the mother says, 'No—take me back to court.'

If you are going to have case management it has to have some enforcing ability where they can turn around and recommend to the court that that becomes an order. At the moment it does not become an order. The good old grandmother and the step-brothers or step-sisters have a real problem—when orders are made they are not considered. I know that opens up a can of worms if the court denies the access to the father and his son and the grandmother get to see the step-children—it is hard. It is all part of a parenting system that has to be taken into consideration. By cutting them off and saying, 'That's the end of that,' you are depriving those children of half the family.

Patricia—I have a lot of experience with these issues—this is my second marriage that is currently going through the Family Court so I will not mention any more about that. There is a saying that you don't fix what is not broken. The rebuttable presumption of 50-50 custody in children's residence after divorce actually adds to a very broken system in the Family Court that has resulted in the systematic placement of children coming out of domestic violence and child abuse back into the unsupervised custody of a violent parent. This is because the system and protocols that deal with allegations raised in the Family Court is riddled with justices, registrars, barristers, lawyers, child representatives, psychologists, psychiatrists that have little or no training, expertise or understanding about the dynamics of child abuse and domestic violence. As a consequence, many women find themselves handing children back to the violent parent because of a court order.

The time, effort and money spent on this inquiry would be better spent on fixing the Family Court and the department of family structure to better serve the best interests of the children, paramount of which should logically be their safety first and foremost. This is not a reference to decent parents—please be aware of this. My first husband was a decent parent. We had court orders but they meant nothing to me. Every time I needed a child care person I would call him first. If he wanted two weeks for a vacation in another state he got them. For his birthday there were no court orders for him to have his children—I would call him up and say, 'Have your children,' because he never made me afraid of how he treated his children.

My present ex-husband is manipulative, charming, violent and deceitful—so much so that he does not believe himself to be violent or abusive. I find myself handing my child over to an abusive parent because this court system is broken. This rebuttal presumption is going to add to a broken system. I know because I am living it. I know what a violent father looks like.

By the way, you wanted statistics. It would be good if you had a look at the first page of the *Courier Mail* today. Brown et al found the rate of false allegations of child abuse was around nine per cent in the Family Court. Nine per cent is the rate of false allegations—the core of the Family Court business right now.

Five per cent of the total children's cases in the Family Court are about domestic violence. It says:

> Brown et al study demonstrated conclusively that child abuse cases comprised the core business of the Family Court. Although they represented five per cent of the total children's cases per year they were the cases that stayed in the system.

I know. I have been in it for 1½ years so far—$70,000 worth. Thank you.

Peter—I would like to provide my support for the presumption of joint equal parenting. I am a father who has joint residency of my eight-year-old daughter. She is extremely happy with the circumstance that we live in. She likes having access to and contact with both her mother and her father. We operate on a week about basis. We have a school that is halfway between both residences. We have a communication book that provides information back and forth, and currently it is working quite well. That has not always been the case and I have also been through the Family Court system.

I have three points I want to raise. The first is in relation to the notion that 95 per cent of cases that are dealt with by consent or reach the Family Court are a reflection of what fathers really want in their parenting. I believe that is grossly wrong. A lot of fathers I know do want to have greater contact than the presumption of every other fortnight. A lot a parents, fathers specifically, will consent to orders knowing that they are not going to get anything better than that when they reach the Family Court. The other issue is the costs of going to trial. I have consented on two occasions just because of the costs of going to trial and legal representation. That is a big issue.

The second point is with respect to the child support formula. It is a ridiculous method that we have a percentage based on assessable annual income that is just taken out of net income and I do not think it really has any relevance to the standard costs of raising children. I do not see it as having any correlation to things like the basic standard units formulas or to certain research that has been done recently. I do not see where that percentage really comes into play. As far as I am aware, it was horse traded figure back in the early 1990s or whenever. Those parents who are paying parents who have an income in excess of, say, $55,000 a year are going to be paying more than the costs of providing for their children in terms of child support. That money, on top of that, will be considered as de facto spousal maintenance.

I personally believe the Child Support Agency is a disgrace to the Public Service. Their attitude towards paying parents is fundamentally wrong in terms of their position. Most paying parents are fathers—95 per cent of their clients would be fathers. They have a derogatory attitude to those people who are liable parents. I have no respect for the change of assessment team people that review cases in terms of the way they present ultra vires decisions based on pathetic evidence, lack of evidence and enforcement of those procedures through the Child Support Agency. No wonder it caused so much heartache and so much animosity between the mother and the father. By the way, my ex-wife actually sold me joint residency of our child because all she is really interested in is money.

Leo—I am a father of six children. It is a wonderful system they have put together here and it is good to see that the government has the courage to get this together. I hope it receives a bipartisan approach because the kids have been screaming out for this for a long time.

The present system has not worked—there are fathers not doing the right thing and mothers not doing the right thing. The Child Support Agency and the courts seem to be unable or unwilling to enforce anything. The children are being deprived the love of a child temporarily and about 1,800 a year are being permanently deprived. And that has reached epidemic stages. The present system has not worked because it is about possession; it is about winning. The children are considered a chattel and they are usually mentioned after who gets the house and who gets the car. The solicitors are in there—they may be acting for their client and they consider it as a win for their client, but it is certainly not a win for the children. The children are the losers. Whoever has got possession has got the power and they have got the control. They control the access, the money, the emotional blackmail, the Child Support Agency in that disgraceful Child Support Review Office.

The system was unfair to women 50 years ago, but the pendulum has swung too far. One party can take the children interstate and it is condoned by various government agencies; whereas, if the other parent did the same thing, the Federal Police would be after him and he would be charged with abduction. It is another case of a stolen generation. The Child Support Agency and

the courts preside over a situation where there is no blame. A father can give 70 per cent of his assets to his former partner, pay up to $1,200 a calendar month in child support, pay airfares from the other side of the country back here, avoid conflict for the children's sake and be classified, in writing, as having an outstanding record from the Child Support Review Office. The kid gets sent over with shoes falling to pieces and holes in their socks. And you know what? You cannot do anything about it.

The Child Support Agency is just not interested. They say it is not their department. They are a child support agency and they are not interested. You go to the court and you are described as a dysfunctional father mucking up their court. And yet I have been to a court where the other side has told lies. I asked what the situation was regarding perjury, and they said, 'You have to take a civil action.' I came back here and spoke to a solicitor and she said, 'Don't worry about it; everyone lies in the Family Court.' This is what these people are presiding over, and it is what we are supposed to look up to—that is what the industry thinks of it. There is no accountability and there cannot be, because there is no equality. We have to get a system in place where children can be seen by both parents to be equal. There has to be a mindset that they are both equal, not looking sideways trying to get tacit approval from one party before they can embrace the other party because of the power and the control that the other party has in the eyes of the children. If it were in any other sphere it would be universally condemned. Fifty-fifty must be a step in the right direction. There are going to be problems and there are going to be exceptions, but we have got to aim for the best practice.

Parents take a big responsibility in having children and they must accept the potential inconvenience of staying in a demographically and logistically acceptable situation where equal access is given—equality of contact, knowledge, input and love of both parents. If this inconveniences or restricts one parent from pursuing a new exciting lifestyle elsewhere, then so be it. It is about time that children came first.

CHAIR—Thank you, Leo.

Rajiv—Thanks for this forum. I am also dealing with the same issues that lots of people here are dealing with. One thing I find that is not really addressed completely and to its fullness is the cultural background that the children can be alienated from. I am married to an Australian lady and we have got three sons, ranging from 2½ years old to eight years old. All the time of the marriage—while we were together for seven plus years—I was told that because of the speech pathology or the results of delayed speech you do not encourage a bilingual system within the family because the children cannot pick up the language. Three kids, and they have all been alienated; so much so that today is the 249th day I have not seen my children—only because of the DVO that says I cannot contact her and the children unless she gives me permission in writing. She took it so literally and in technical way that I was charged for a breach of the DVO matter because I wrote her messages at the contact centre relating to the kids. She would write, 'If this child was having an asthma attack this morning, give him the nebuliser. So I would write back and say 'Okay, the child was all right.' Those messages have been taken to the court as a breach of the DVO order. Henceforth, I have applied to the contact centre and they have changed the policy of the contact centre, because I did not want any other father, or any other visiting parent, to be victimised only because of someone's obsessive demeanour and behaviour of abuse of the law.

So one issue is the cultural background that the kids can be alienated from. Another issue is: who has been cooperative? If there has been any mediation, at Relationships Australia or anywhere else, I think some of those sessions should be made public, subpoenaed or made accessible to the courts in any way possible, because that would really highlight which parent has been cooperative towards the best interests of the child or children. Another issue is: who has been supportive financially, regardless of the stipulations by CSA or any other legal body? Which parent has shown commitment towards school fees, swimming lessons et cetera? I was legally bound to pay only $20 a month, but I was paying around $200 because I love my three children. That is why.

CHAIR—I need to ask you to wind up soon, so could you make your final points? Thank you.

Rajiv—Sure. Since then I have found there is a big flaw in the DVO procedure, whereby there is no validation done of the claims of women or men when they reach out for DVOs because DVOs are becoming a back door to the Family Court. This is not only pathetic but it also shows the motives behind the parent who perceives and tries to establish themselves. Thank you.

CHAIR—Thank you very much, Rajiv.

Jane—I would like to thank you for giving me the opportunity to speak on this matter. Presently I am a custodial parent, but I have been non-custodial and I have been through two Family Court case property settlements with my ex-partner, who was a non-custodial parent. My sister and I were both partners of non-custodial parents. I want to bring to your attention the unfairness of the child support system, which is based on the gross wage. The actual percentages are not 22, 27 or 33 per cent; they are more like 40 per cent of the net wage. When you are the partner of a non-custodial parent and you also have children with the non-custodial parent, the second family is very disadvantaged and it is very upsetting.

I saw what my sister went through. She went through a review. They had a $600 net wage coming in and they had to pay $110 to his ex. She had two children—one was new—and the Child Support Agency in the review took the two new children into consideration but not that my brother-in-law was supporting my sister. I saw this, and when I came up here I said to my partner, 'No way are you getting a wage-earning job.' So I opened a business, made us joint partners and, with all the tax deductions, we were earning the same wage and getting the same income coming in, but we were paying $5 a week. I felt justified in doing that because I saw what the child support system was doing to other families and I felt my family should come first. I had no qualms about the fact that my partner's first family was only getting $5 a week, as she had got 75 per cent of the property settlement. I would suggest to any non-custodial parent, given the unfairness of the Child Support Agency, that they open up their own business, not become a wage earner and do the same thing.

CHAIR—Thank you, Jane.

Susan—I am a parent of four children—one older child and three younger children. I am very nervous, but I have written down some points. The first point is that, if there were no Child Support Agency, I would get no help from the children's father, so I appreciate them being there. The system may not be entirely fair for everyone. You hear so much pain and suffering, not only

from the children but from each parent involved, the mother and the father. Is there not some way that we could have some kind of mandatory counselling, something to be done where the parents can understand the needs of the children and how important it is for all parties involved to live a stable, secure life? I do not understand statistics; I do not know about them, but I do understand pain and suffering.

I would appreciate it if we could start off with children understanding their responsibility of having children themselves and how that can turn out, if we could make that mandatory in our schooling systems so we would not have to come to this position in life where there is so much fighting between parents over children who just want to be happy. I do not know if that has helped. Basically some sort of counselling with professionals involved should be mandatory, to make everyone understand that it is the rights of the children and the happiness of all parties involved.

CHAIR—Thank you, Susan.

Tegan—I am a children and young people's support worker here at a women's refuge here on the Gold Coast. I believe there are many issues surrounding the 50-50 shared parenting that we are discussing today but, in this short time, I would like to particularly look at and raise the issue of women and children who are escaping domestic violence. The current system already makes it incredibly difficult for women who take the courage to leave violent relationships. Indeed, when people ask women, 'Why did you stay in that relationship?' I am hearing more and more women say, 'Because of the Family Court system. I know my kids—they are in danger from their father; he is violent—are going to be sent back there. At least if I stay in that situation I will be able to protect them.' I am hearing that more and more in my work.

We know that in relationships where there is domestic violence the most dangerous time for a family is in the first 18 months after separation. It takes more than 18 months for women and families to get through the Family Court system. That is far too long: women and children are dying, and men are killing themselves in that process as well. So it is in our children's best interest to ensure their safety. I think that is really what we need to focus on when we are looking at this: what is best for the children. Safety—their physical safety and their emotional needs being met—is their first priority. So, when you are considering these issues, please do not make money, men's rights or even women's rights your No. 1 priority. I would ask you to consider children's safety as the No. 1 priority in what you are thinking about.

John—Three years ago I would not have expected to be standing in front of a committee like this. I was happily married. I have got two wonderful children. I believe that, if both parents have the capacity and the desire to provide for shared parenting, this will always be in the best interests of the child. Presently the system shows a distinct bias against the father in the acceptance of shared parenting. In my own case, I had agreement with my employers providing for flexible working arrangements and I have the support of my family, who always had a substantial amount of contact with our children, which would enable me to successfully provide for a shared care arrangement.

Despite this, my wife steadfastly refused to consider shared parenting of our children, which left me with no option other than the legal course. When attending our compulsory pre-hearing counselling, I presented my case for shared parenting. However, the counsellor did not present

me with much belief in the system, with the comment that, whilst the courts were looking at things a little bit differently from the old two days a fortnight, shared parenting was unlikely except in the case of agreement from both parties. I had the same opinion expressed to me by a number of legal people; however, I did not expect to hear it from the impartial, court appointed mediator. After accruing a substantial legal bill—which I am still paying off—I now have my children for five days and four nights per fortnight and half of the school holidays which, by child support calculations, is just short of what is considered shared parenting for maintenance purposes.

Surely the system should be that shared parenting, with the children having the opportunity to spend equal time with both parents, should be the court's starting point, with consideration then given to change from there and not the current two days a fortnight or less for the father and then negotiating from that point. Of course, flowing on from the child's contact issues is the financial settlement, with the mother's need to provide for the children leading on to the need for a bigger share of the financial assets, regardless of what each party had previously contributed.

I collect my children on a Thursday morning before school, and they are collected from my home by their mother on the following Monday evening after dinner. It would be far less disruptive for the children if I could collect them on the Wednesday afternoon and deliver them to school on the following Tuesday morning. However, this would give me six nights per fortnight, which once again my wife will not accept. When speaking to people in the context of our children just discussed, I constantly get the response, 'You get a lot of time with your children,' which only further underlines the current thinking in Australian society today that our system is heavily biased towards the mother and the accepted two days per fortnight. We constantly hear in the media the need for children to have a father figure, and yet our system currently is denying fathers the opportunity to be a father to their children.

Can we please get away from the stereotype of the father deserting his wife and family to run off with his secretary and not wanting to provide for his children? Instead, let us look at the actual statistics, which indicate that in most cases it is the wife leaving and removing the children from the family environment. I am sure that we are not all wife-bashers. Maybe if there was the knowledge that there was such a thing as someone or something at fault in divorce, and that the actual circumstances would be considered when settlements were being made, there would be a rethink, with both parties working harder to provide a better family environment—as in a joint father and mother—for the children.

Individual A—I thank the committee for allowing me to take this opportunity to speak. I am not sure whether I should give my name, because I am going to give my profession. Is that okay?

CHAIR—Absolutely; you do not have to give your name.

Individual A—I am a divorced father who sees his children 160 nights a year. I am told how lucky I am to do that. I still have to pay 18 per cent of my gross income, which is a lot of money. I am a family GP. I see a lot of people in this situation. I see the grandparents, I see the parents and I see the children. I think that the courts at the moment are very biased. I implore the committee to really alter the status quo. I think that the situation at the moment is basically that my situation is seen as a default, which I think is very sad for a lot of children and men. I agree with the questioning of the man before: it really is a default.

I think that the present system does not encourage equal responsibility and, in particular, financial responsibility. The present child support system can be easily manipulated by the payee. It is very biased against the payer. I see a lot of men who pay their child support, plus school fees and all the bills, and then are told that the money is for the mother and she can spend it as she likes. In my practice I see children who share-parent. The parents have made an agreement before the court. Those children usually do very well. I do not have exact figures on that. I see a lot of children whose fathers have been alienated. They do very poorly—boys and girls. I also see a lot of men being blackmailed. I see a lot of women saying, 'If you don't do this, I'm going to take the kids. I want to get my 60-40'—or 70-30 or whatever. I see a lot of men it has happened to who are devastated. I would see probably 10 men a week in serious depressed trouble over this situation. I would really ask the committee to consider that. I know that men's rights groups bring up different data, but that is my personal experience.

I grieve for my children when I have to say goodbye to them. I feel for the fathers who have to say goodbye to their children on a fortnightly basis; it must be very difficult. I also see how my children grieve when they do not see me. I feel very sorry for my children when they go to their mother at times. I think it is important for the committee not to get caught up in the exceptions. I know that a lot of people here have a skewed view. What I see is probably—I do not know an exact percentage—90-plus per cent of average, normal families. I have seen a lot of these families for 15 years. I have seen them as single people, I have seen them have their children and I have seen the fathers bring the kids in to me at a young age. I have seen the mothers walk out, take the 60-40 or 70-30, meet the new boyfriend, et cetera. In my experience, the domestic violence issue is actually higher with the new boyfriend.

CHAIR—Could I ask you if you have any points you really wish to make before I have to wind you up?

Individual A—I think role modelling is also important and role modelling for children is especially important. The present system discourages good role modelling. I ask you to look very carefully and make a big effort to change the system because we may not get another opportunity.

CHAIR—Thank you.

George—Good morning. I would like to acknowledge the Hon. Margaret May, who is a great advocate for parents like us. Last Tuesday was the 39th time in 3½ years that I have been in the Family Court. In that time we have had a five-day trial, we have been in several magistrate's courts and the Federal Court as well. Next Wednesday will be the 40th time in court and I am about to prepare for my next trial. If you want to improve anything to do with family law, get rid of the solicitors and the child representatives and replace them with a polygraph. The child representatives that I have had in my nearly four-year case did not acknowledge me. I did not look the part, being shaven-headed and black, and tattoos and earrings certainly do not go well when you are talking to a child representative, especially when you are allegedly a drug addict, an alcoholic, a violent man and suicidal. None of those ever happened.

What I can tell you about the 39th hearing that I have just had is that it has done its full circle. Apart from the first two hearings when I had solicitors, I have represented myself after losing my job and the rest of it. I went to uni and studied a bit of family law and thought, 'Right!'

Although it has taken me 39 court appearances in the nearly four years, it has come about that one of the registrars before me last week stated that he could not rule on the order that I had asked about. I had asked that the Family Court commence perjury proceedings against my ex. I had substantial evidence from the Federal Police, state police, family services and the West Logan contact house that the second child rep on our case had decided to withhold from me and the courts before our trial two years ago. These documents have surfaced in the last 12 months and I have won the last two court hearings—one where my ex-wife's solicitor tried to have me declared vexatious and the next one where they tried to have phone contact dismissed—because of what the documents have proved.

I have been asked to virtually stick around in the family law court because I am about to see a change. I hope a lot of you parents out there do not have to wait 39 or 40 times and two trials like me. What I do say to you is that, because you know the matter better than anyone else and you are a parent and you love your children, stuff the solicitor and do it yourself. I started a family support group on the coast here called 'Family 24/7'. We have parents who are denied legal aid and cannot afford solicitors. So, if you get stuck, give us a hoi.

CHAIR—Thank you, George.

Individual B—Good morning. I am in the Family Court, so I will try to limit what I tell you today with regard to my case. What I can tell you as succinctly as possible is that I was very similar to this gentleman here: a full-time dad and a full-time employed father. I gave the luxury to my ex-wife of being a stay-at-home mother as well and I spent a considerable amount of time with my one daughter of five years old and my two other stepchildren from my wife's previous marriage, in fostering their care through private school.

Upon separation, I had unobstructed access to all the children, including my daughter, and overnight contact. At the time of re-partnering, I was accused of very serious allegations which have now been disproved. But what was allowed by the system was the very fact that there was no safety net. I call it the safety net of this 50-50 shared custody because partners, should they be vexatious, vindictive and malicious, can use DVOs, false allegations of abuse and aspects of the law to truly hurt not only the father but also the children in ways that I am not sure are salvageable. I came here today to tell you that we can no longer allow the women to be the gatekeepers and hold the key to access and custody in having a relationship or whether you do not have a relationship with your children because that is not working. In my particular case, my feet were torn out from under me. I cannot go into detail. I do request that I am able to make my submission in confidence, because I think it will be highly informative for the panel as well as the parliamentary hearing that is going forward.

I am a victim of the fact that there is not an equitable custody arrangement that allows the father to be a continuing, important and integral component to raising their children. I question you today, and I will leave it at this in trying to be as succinct as possible. In the hierarchy, we as fathers are probably looked at by society as being the most important component or integral cog in the family in terms of our significance, our ability to provide for and lead our children. But once that bond—that is, the marriage—is no longer in tact, we are taken out of that entirely. Our decision making is completely stripped because of the family law and because of the ability of our exes to use, or should I say abuse, the components that the solicitors allow and encourage. I

tell you that I take my role as father extremely seriously. My ability to father has been taken from me. Now I am a fortnightly father.

Megan—Good afternoon to the committee and to the people present. My name is Megan. I am a sole parent and also a community worker. I want to make some quick points. First of all, I want to emphasise that 50-50 shared care is available now to people if it is an amicable situation. A lot of people are using it now. Secondly, I personally have friends who are sole dads. They are wonderful and are getting on well. I am also a member of the National Council of Single Mothers and their Children. I really need the government to look at the merit and means test for legal aid because, as people talked about here about getting to court, it is not available. Unless you have something that is really specific like issues of abuse, there is no way that you can get legal aid to get to the Family Court; there is no way that you can get help for domestic violence matters in the Family Court.

I was actually involved with the Family Court for three years. I did start doing shared custody with my ex-partner. I had a very big history of domestic violence with him. There are lots of flaws in family law. We did have a child representative. I can say the child representative was good for my son in some ways, but as for me having a right of way access to her, no way—she did not agree with me on lots of things. So she was certainly not biased to me. I did get custody after three years in the Family Court. I must say that, through the next seven years—I have been separated for nearly 10 years now—during contact and visitation, it was absolute hell for me and hell for my child. When we had shared custody, you have a child who is having half a week with one parent and half a week with another. He was witnessing horrible things—especially with domestic violence. There is no back-up so that you can go back to the court. I was going to the police. My child was missing school and seeing horrific things.

What I am trying to say now is that 10 years on I do not have contact with my ex. It is only in writing because that is the only way that I can survive. That is the only way that my child can have a good upbringing. He has a wonderful relationship with his dad. His dad now lives on the coast and sees him more than the family law court's orders say, but that is because after seven years the violence stopped. You have to think of the mum. You have to think of the context of what the child is living in. Now the violence has stopped. I was always amicable with him, but I needed some backup systems.

We talk about money, folks. My ex-husband claims the time my child spends with him—that is, every second weekend. I am a sole parent on welfare. I also work two part-time jobs. In the last financial year, I paid him $680 out of my family allowance. I have a debt with Centrelink. I have to pay that back to them because he claimed for it. He pays me $130 a year. I pay him to look after my son on his weekend access visits. How is that fair? I get no help from him whatsoever with school fees or anything like that. My son will come home with a $100 or $200 new Playstation; yet I am paying him money to look after my son on those access visits. I get only $130 a year because he is a person on welfare as well.

That is basically what I wanted to say. Please look at it as individual cases. Please look at it in the context of what it is. The family law system has heaps of flaws—terrible flaws. I hear stories about it all the time. But thank God somebody was there to make a decision for us, because we could not continue with having half a week here and half a week there. It was just too much. Get some resources, get some supports. I am a community worker. A men's hostel has just been

closed down. There are 20 beds. The government has to get serious here. You talk about a fair go in Australia. It should be a fair go for people on welfare, for the people who do not have money. I lost my house. My husband was in it for nine months but would not pay the mortgage. I lost my house; I lost my $85,000 redundancy. I have been on the pension for nine years but I have also worked part time. That is my point. Look at the systems but get the supports happening.

Individual C—Good afternoon, committee and ladies and gentlemen. As we have heard in all the stories that have been presented up here just in the last hour or so, there is right and wrong on both sides. There really must be an individual approach to looking at what is going on in particular cases. A blanket rule of a rebuttable presumption of joint custody does not take into account those individual cases. I am going to tell you about my own experience in my family when I was young. I went to my father for contact every second weekend and for half of the holidays. I had an experience that I would say a lot of children probably have—that is, the time I spent with my father was not quality time. It was simply that I was just around. It really did not matter to him whether or not I was there. He just wanted to have the contact to be seen to be doing the right thing—that is, having contact with his child. That was with my sister as well.

My father usually had us for contact every second weekend. He was a real estate agent, and it is very difficult for real estate agents to try and find the time to coordinate their family life in any case because they have such topsy-turvy work hours. I would often sit in the car for three hours waiting for my father while he was at a real estate appointment. I could go on and on with numerous examples, but the fact is that, no matter what happened to me, I still thought the sun shone out of my dad's rear end. I loved him so much, and it was not until my early twenties that I started to see the reality of the value he placed on our relationship. That was very minimal value.

In that process I was subjected to a new partner who did not want my father to have anything to do with my sister or me. She was hell-bent on making sure that she broke up the relationship between my father and my sister and me. Just as Jane—the young lady who spoke here before—said, she would do anything she could to make sure that no monetary gains were made by the other party in any way, shape or form, including basic child support. So my mother did not receive child support throughout the whole time she was raising us.

My present situation is that I was divorced about seven years ago. My mother had given my sister and me $20,000 each to start our families. That was our inheritance money. My husband and I bought a home with that. We bought a block of land and built a home. Three years after the breakdown of the relationship and the separation, I got back the $20,000 that I had put into the home, which could clearly be seen to have come from my side of the family, less the $3,000 that I paid in court costs and legal fees. I ended up getting back only $17,000 of the $20,000, after three years.

Again, that might not be everyone's experience but, as I started out by saying, please take into consideration the fact that there is good and bad on both sides and that one person's experience—one person's example—might not show what it is like for everybody else. Individual cases are just so different, and the children therefore need to be considered individually as well.

Individual D—I feel that there is absolutely nothing that can be done to force parents to communicate for the welfare of their children. I ask that this committee expend some energy and thought on how preventative teaching programs for parenting could be placed into schools right now so that children can learn from when they are very young about accountability and responsibility and how to love and care for children when they have children, to prevent them from becoming the adults in conflict that we are today. I cannot make my husband see my children. You cannot make your wife give you the children. I do not know how to do that. We cannot make the other adult do things but maybe we can teach them at eight years old. All I am asking is that some consideration be given to putting preventative programs into the curricula at year 1.

Anthony Halpin—I represent an organisation called Welcome Australia. My heart is still pounding intensely and I find it very difficult to speak after hearing about so much pain today. Welcome Australia is a non-profit organisation dedicated to uplifting the lives of children, families, small businesses and communities. We have a number of programs, which are all free to the community. We have both males and females working with us and attending our programs. We have had many who have been separated and on heavy medication, basically at the end of the line and not knowing which way to go, who are now happily living in a family situation again. Both mothers and fathers have told me personally that they never realised they could experience as much happiness as they have after attending our program. Our main program is called 'Life Matters'. It is a 10-week program which is free. We will be putting it on the Net in the very near future as well for all parents in Australia to enjoy. We have a letter which we send out—

CHAIR—Do you want to comment specifically on this inquiry?

Anthony Halpin—Yes, we actually made a submission to the inquiry on shared parenting. We have a letter which we send out to parents who are in dispute situations which helps them as well. I would like to read a bit of that and talk about one or two other little issues.

CHAIR—I am a bit concerned that you are not actually commenting on the issues in front of us. It is more like a sales pitch for your service.

Anthony Halpin—Perhaps there needs to be an antidote, as the lady who spoke last mentioned. There is so much pain out there—and who is doing what? We have mechanisms in place to deal with the aftermath, to put on the bandaids, but we deal with the source and I think that is what needs to be dealt with. For example, violence is not rooted in gender, yet we have such a gender war going on. Violence is rooted in the turbulent history of the individual. Welcome Australia is about to launch a national polling booth web site called vote.org.au. One of the issues we are dealing with there is violence and low morality saturating the psyche of children and young adults. If you look at the programs that young boys are watching today and PlayStation games they are playing, you will see that their psyche is filled with nothing but violence. Just about every second program on television is either sleaze or violence, and we wonder why we have a dysfunctional society. These are the root causes of what we are talking about here today. Violence is rooted in the history of—

CHAIR—Could you come to the point of the inquiry. You have about one minute left.

Anthony Halpin—We support shared parenting because children have a subtle attachment to both parents and, regardless of what has happened to the parents themselves, the children still have a natural birthright and parents should dig deep into their hearts for the compassion to go beyond their personal pains to touch that. I conclude with a little poem written by a child, to give you an idea of what is really happening here. It says:

Dear Mummy, dear Daddy, I need you both.

You are my love, you are my life; please don't tear me apart.

When you argue, I am sad; when you fight, I cry.

I love you both so much—won't you try?

Think of the good times, not of the bad.

We belong together—yes, you, Mum and Dad.

I know we are poor, but that's okay.

We can make it together, if we pray.

Please, please remember the times we walked down the street.

You both held my hands as I skipped with my feet.

I love you, I love you, I love you so much.

Please, please understand and stay together as God has planned.

CHAIR—Thank you. We have come to the conclusion of our hearing. I thank all of the witnesses who have appeared before the committee today, both in the public hearing and in the community statements segment. I also congratulate each and every one of you on the way in which you have presented yourselves this morning. The committee require a cross-section of views and we have certainly been getting that. I also congratulate the audience. It is wonderful for the committee to have you be so participatory in the process that will hopefully enable us to come to some final recommendations. We really appreciate the way in which you have carried yourselves this morning—the audience, the participants and the people in the community statements segment.

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

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

Committee adjourned at 12.33 p.m.