COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS

Reference: Child custody inquiry

THURSDAY, 4 SEPTEMBER 2003

KEPERRA, BRISBANE

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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 3.08 p.m.

CHAIR—Welcome to this seventh public hearing of the House of Representatives Family and Community Affairs Committee inquiry into child custody arrangements in the event of family separation. This inquiry addresses a very important issue which touches the lives of all Australians. To date, the committee has received over 1,500 submissions—a record for an inquiry by this committee and amongst the highest ever for a House of Representatives committee. We are certainly grateful for the community response to date, as this is one important way in which the community can express its views. From the outset of this inquiry I would like to stress that the committee does not have preconceived views on any outcome. Accordingly, throughout the inquiry we will be seeking to hear a wide range of views on the terms of reference. While at any one public hearing we may hear more from one set of views than from another set—for example, more from men than from women—by the end of the inquiry we will have heard from a diverse group and thus have received a balance over the range of views.

The public hearings the committee is undertaking are focussed on regional locations rather than just capital cities. At these regional hearings the focus will be on hearing individuals and organisations. Later in the inquiry we will hear from larger organisations, such as the Family Law Court and the Child Support Agency. That will be done in Canberra or via videoconferencing. Today we will hear from four sets of witnesses, including individuals appearing in a private capacity and three locally based organisations. I remind witnesses appearing today that your comments will be made on the public record and you should be cautious in what you say to ensure that you do not identify individuals or refer to cases which have been, or are now, before the courts. Following this, we will have around an hour for a community forum in which the general public and audience can rise and make three-minute statements.

[3.11 p.m.]

WITNESS 1, (Private capacity)

WITNESS 2, (Private capacity)

CHAIR—Welcome. I 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 contempt of the parliament. The comments you make are on the public record and you should be cautious about what you say to ensure that you do not identify individuals or refer to cases before the courts. Having said that, I offer you the opportunity, if you so wish, to move in camera. Alternatively, we can stay as a public hearing.

Witness 1—Staying in public is fine.

CHAIR—Thank you. I gently remind you again that you should not identify individuals, nor should you speak in detail of anything that is currently before the courts. Would you like to make a brief opening statement before I invite members to proceed with their questions?

Witness 1—Yes. In our submission to this committee we argue that a presumption that children should spend an equal amount of time with both parents is a simplistic solution to a complex problem. We further argue that the present conditions for child support arrangements are in need of an overhaul to ensure fairness for all involved. We also believe that the extended family provides a necessary haven for children of separated families. These are some of the issues we would like to discuss with you today.

We believe that shared care is a desirable outcome that does not necessarily meet the needs of all families or children but is something families should be encouraged to work towards. Shared care arrangements could be detrimental to families in crisis if they are imposed upon them when they are not ready. We applaud those parents who can set aside their differences for the sake of their children and make important decisions together. We believe that the majority of parents who separate come to agreed care arrangements without the assistance of the Family Court. For those cases where parents cannot agree after separation on the care of their children, the Family Court makes the decision for them. We believe that this should continue. The Family Court makes these decisions based on the individual circumstances of each family and in the best interests of the children.

The most important ingredient for shared custody arrangements is good communication. If a parent cannot pick up the phone and call their former partner to discuss contact arrangements, how are they going to be able to make a joint decision about their children? Parents who cannot sit in the same room as their partner to have a rational conversation for a short period are not realistically going to be able to share the care of and responsibility for their children. We believe that these are the cases that present in the Family Court today. In our experience, shared care can only work when the parents involved can work face to face and talk to each other without conflict. There are many aspects of children's welfare that require decisions on a regular basis:

children's health, homework, extra curricula activities, one-off changes to contact arrangements et cetera. If two parents cannot communicate on any level, how are they going to be able to make decisions such as these jointly?

Unresolved conflict, in our opinion, remains the biggest impediment to shared care arrangements. Until the system can work with families to investigate the underlying reasons for conflict and work through these issues, families will not be able to move on. When these underlying issues remain unattended to, they seem to negatively impact on other issues, which exacerbates the conflict further. This soon clouds the parents' judgment on all issues, and this is when children are most at risk. Unfortunately, unless families enter court at this time, there is nowhere for them to turn and there are no agencies that will step in to control conflicts and deflate the anger and resentments that have built up over time. With the fifty-fifty contact arrangements that the current government is proposing, the opportunities to fuel this conflict are increased, which puts the children in the middle more often. Is this what we really want for our children? Until there is the use of our resources to resolve underlying conflict in families, children are not safe and will continue to be at risk.

Other issues of particular concern to us are domestic violence, abuse and alleged abuse. In our experience, these issues are not given strong enough credence and attention by the courts and other associated agencies such as family services, juvenile aid bureaus and other state and federal agencies, particularly the Queensland police and the Australian Federal Police. There are no agencies that can or will intervene when difficulties arise, unless these matters have court proceedings pending. Essentially, we are looking for a strong commitment from the government to the Pathways report *Out of the maze*. The government's response took two years, shows no strong commitment and, in our view, is essentially a policy statement outlining some of the things that are currently happening.

The Pathways report had 28 recommendations and not all of these have been addressed in the government's response. Things that we would like to see include better coordination and integration between all agencies—not just Commonwealth agencies, but state and territory agencies as well. We would like to see more responsive compliance and regulatory controls of both Family Court orders and Child Support Agency decisions. We would like to see more resources allocated to the Child Support Agency so that it can effectively monitor and revise existing policies. We would also like to see more funding for counselling, anger management and parenting courses, and a requirement that these be mandatory. We would like to see a reduction in waiting times for the Family Court. We would like to see more active intervention for families who re-present at the Family Court and other agencies and more resources for case managers to assist and monitor families most at risk of domestic violence and abuse. Children in separated families do not have a choice; their parents do. The children are the ones who are caught up in this. In our experience, it is the needs of those families that re-present and continue to have conflict that are not being addressed at the moment.

ACTING CHAIR (Mrs Irwin)—Kelly, do you want to add anything to what Ross has just stated?

Witness 2—No, not necessarily. We had a statement and we will stick with that.

Mr PRICE—I was interested in your comments about linking good communications with shared parenting. Wouldn't it be far better to ensure that there are good communications in the family before the marriage breaks down? What is the probability of establishing good communications after a relationship has broken down when they were absent in the relationship beforehand? I would have thought that would be considerably more difficult.

Witness 2—It is considerably more difficult after the marriage breaks down; that it is a very distressing time for families when I guess we do not really have control of our emotions. People have a lot of emotions and, when they are angry, they do not always control them in the way they would like to.

Mr PRICE—In terms of fairness for the Child Support Agency there are always three players: the person making the payment, the person receiving the payment and the government. As you are aware, the government claws back a lot of Centrelink benefits via the operation of the child support scheme. If the government were to change the scheme and make it fairer, what would be a reasonable cost for the government? Should we be looking to spend $50 million, $100 million or $150 million to make it fairer?

Witness 1—I do not think that is something we can answer without the resources of the federal government behind us to make appropriate funding decisions. What we see is the impact of—

Mr PRICE—Would you agree that the absence of the government spending money is causing a lot of heartache to a lot of people?

Witness 1—Yes.

ACTING CHAIR—I would like to follow on from what Mr Price said regarding the Child Support Agency. As everyone in the room knows, this is our seventh public hearing, and to date we have heard that some people feel the Child Support Agency is unfair and that child support should not be calculated on the net amount but on the gross amount. Some people have also stated that it should be a taxable item for their tax returns. I notice in your submission that you are relatives of parents who are experiencing family separation and that the husband in question does not pay child support but is in a financial position to do so. Can you explain that for the public record?

Witness 1—Essentially—and I do not think this is a unique position—people do not have to lodge tax returns each year. If you rely on a three-year old tax assessment of a lesser amount, then you pay your child support based on that assessment. For up to three years, and possibly longer, where increased earning capacity comes on-stream for one of parents, the Child Support Agency does not seem to be in a position to follow up on those instances where it cannot get a tax return and cannot find out where the person is working. It does not seem to have the capacity to follow these things through.

Witness 2—Also there do not seem to be any enforcement policies. This particular person does not pay child support, but there seems to be no way of making sure that he does.

ACTING CHAIR—You state in your submission that the father has been able to hide his income by setting up a contracting company. We have heard of other cases where companies, homes or cars are put in the new partner's name. That is something that governments will have to address.

Mr CADMAN—In your submission you make the statement that you would find it abhorrent if the non-custodial parent took a greater interest and spent more time with the child.

Witness 2—No, that is not right.

Mr CADMAN—Your submission says:

We find comments by the Minister for Children and Youth Affairs that he is considering reducing the amount of child support paid by non-custodial parents if they spend more time with their children abhorrent.

Witness 1—We are talking there about linking payments to spending time with your children.

Mr CADMAN—Isn't that what happens now?

Witness 1—No, I do not believe so. Obviously there is a structured arrangement for payment for the care of children. That is my understanding.

Mr CADMAN—Yes, there is.

Witness 1—But that payment is for the care of the children.

Mr CADMAN—So, if one person takes more care than the other and that balance changes, you do not think the payment should change?

Witness 1—Not from the way that it was described publicly by the Minister for Children and Youth Affairs, Minister Anthony. In his statements publicly, he said that they want to encourage more fathers—and he specifically mentioned fathers—to spend more time with their children and that if they need to reduce the amount of money they pay in child support to encourage that then that is what they will do. I cannot quote him, but that is essentially what I got from his statements.

Witness 2—We believe that both parents should have a vital role in bringing up their children. It is not the time issue that we have a problem with; it is paying parents to encourage them to spend time with their—

Mr CADMAN—So how should payment be worked out then? Let me test what you have in mind. The person who makes the most provides the most—is that the simple rule of thumb? Is there some other model you have in mind? Some people talk about the actual cost of raising a child and look at getting a firm figure, rather than taking a proportion of income.

Witness 1—No. It is a proportion of someone's income up to a certain point, I imagine. The cost of raising a child is dependent on the choices that parents make, particularly in things like education, sporting activities, holidays, things like that. As parents, we do whatever we can for

our children. The fact that it costs money or it does not comes into our family budget. For parents who separate, in our experiences often one parent says, 'I pay too much,' and the other parent says, 'I don't get enough.' There is a lot of that on the public record already. Clearly, in our view the Child Support Agency and the child support system are not meeting the goals originally intended.

Mr CADMAN—Okay.

Mr DUTTON—I want to take you back to some of your opening remarks where you were talking about a level of animosity, I suppose, between the former partners—the mother and father. You were talking about a situation where the relationship had broken down to a stage where they were unable to communicate effectively and therefore would not be able to communicate in regard to, say, a parenting plan. How should that preclude, though, one or the other having an influence or desiring a role in the upbringing of that child?

I am saying, say, a father was the non-custodial parent and, prior to the separation, he had been a good dad, mum had been a good mum but together mum and dad were not good partners, if I can put it that way. What changes in a post-separation situation? Why, even though there is that lack of communication there, is it that one partner or the other suddenly becomes a bad parent? I say that because of the situation of lots of constituents that we see, where they might only see their children every second weekend and half of the school holidays. What changes there?

Witness 1—What we also said in our submission was that, because of the nature of separation and its impact on children, a starting point can be the structure of the family at the time of separation. For example, one parent may have been an at-home carer—a full-time carer—for children. If we use examples, a mother may stay home and looks after the kids and the father may go out to work. I do not mean that is the way it should be; that is just an example. After separation, in order to maintain stability in the child's life shouldn't that be the starting point?

While their parents are in conflict, children need routine. They need to know what is going on in their lives. That is the starting point. I do not think the court makes its decisions on the amount of time that a non-custodial parent spends with their children on whether someone is a good parent or not. I do not think it is about that.

If the parents are in conflict, the children feel it. If you have shared care arrangements, the amount of communication required by two parents after separation is immense. Children need to know where their lives are going. The parents need to be able to communicate about when the kids will have changeover. What if one child needs a sleepover on a Saturday night but they are with their mum and they are supposed to go to their dad? How would that be communicated if the parents are in conflict and will not talk to each other?

Mr DUTTON—We could thrash this out all day but, unfortunately, we only have time for one or two questions. I want to ask you about one other piece of evidence that you provided in relation to enforcement. I think it is one of the big issues in this whole debate as well. If there are specific issues orders or interim orders which have been provided by the Family Court and they provide for X amount of care per week and one party or the other is not living up to those obligations—either dad has taken the decision that he does not want to have the kids every

second weekend or does not turn up at the arranged time or, and this is more commonly the complaint that we have, for some reason the children are not available on that day to the non-custodial parent—there is no enforcement at the moment that has got any real teeth and there is no deterrent to people carrying on in such a stupid fashion.

Witness 2—We would agree with that totally.

Mr DUTTON—What I am asking you is: regardless of whether it is under the current system or something that we propose from here on in, how is enforcement going to be addressed? Do we have some sort of punitive measure, some sort of penalty, in place? How do we address that, because we are not going to resolve the issue either way if we do not?

Witness 1—The Family Court already have consequences for failure to comply with their orders. They are listed on the back of every set of Family Court orders that are handed down. The problem is enforcing that. At the moment, if you want to lodge a contravention order with the Family Court for breach of orders it goes to the Federal Magistrates Service and it takes six months to get a hearing. The Australian Federal Police and the Queensland police will not act. Something needs to be done: in our view, in that case, something along the lines of mediation, case managers for families in this position—

Witness 2—Mandatory mediation.

Witness 1—yes, that they have to go to—where someone can intervene and say, 'You are doing the wrong thing; you must do the right thing,' and try to mediate in that situation.

Witness 2—Six months down the track is far too long for families and for children. It needs to happen immediately.

Mr DUTTON—Thank you. I am going over my quota, but can I ask one more question, seeing as we are in the Dickson electorate? One of the suggestions that has been made is that we should take this whole matter out of the Family Court, that we should exclude lawyers from the process and that we should have people speaking to each other through mediation. One of the suggestions, as I say, that has been made is that we set up a tribunal where we have, say, a three-person panel that people deal with—it might be a child psychologist, somebody who is a trained mediator and somebody who might have a legal background. The two parties go in, see that tribunal and the decision that is made by the tribunal stays at that. There is no going back to Family Court for all sorts of enforcement issues, for argument's sake, and the contact would remain with that three-person panel. If there was conflict on an ongoing basis or, indeed, changes of circumstances as the children got older and that sort of thing, it could be dealt with by a tribunal and excluded from the court process altogether. Is that something that you could see as workable?

Witness 2—Yes, that is something we would hope could happen. The Family Court is clogged up; it takes so long to get things through the court. A tribunal could hear more cases a week. Currently two contravention cases a week get heard in Queensland. That is appalling. We would certainly recommend any measures that can get these cases through, resolve the conflict quickly and send families off to other places—such as counselling, mediation, parenting courses, anger management counselling. All these measures need to happen, and they need to happen fast. It

will take the pressure of the Family Court. We have many community organisations that can provide this service; let us use them. But it needs to be mandatory; otherwise, people will not access it.

Mr QUICK—Should custodial parents be held accountable for the child support payments made for their children?

Witness 1—In what way? Do you mean that they would have to report on how they spend their money?

Mr QUICK—We heard evidence today that a partner uses child support for the house repayments. We also saw evidence earlier today where children come along with clothes that are obviously hand-me-downs and the money is not going to the kids.

Witness 2—If you have to account for everything you spend, cent by cent, I think that is unrealistic.

Mr QUICK—Should there be some accountability, though? We are talking about thousands of dollars a month. You could spend it downstairs here, and nothing goes to the kids.

Witness 1—Yes, you could, and parents make those decisions about what is best for their children.

Mr QUICK—But surely that is not in the best interests of the children.

Witness 1—No, it is not. I would think a better system, rather than accounting for every cent—which is unrealistic—would be to look at the children's welfare: how is the child developing as a young adult; how are they developing as a child?

Mr QUICK—But who is making that assessment? You already mentioned that the Family Court is so far behind—

Witness 1—I honestly do not have that answer.

Mr QUICK—and they have got 50,000 divorces every year, ad nauseam.

Witness 2—We would like to see more negotiation of child support payments. We certainly believe that both parents should have a right to negotiate to some point about financial arrangements, but what we think it boils down to is this: two parents have children, and that is a lifelong commitment; it is not something that lasts for two years and then one parent leaves the home and they are not accountable anymore. Those parents have a responsibility for the life of that child. Hopefully, they reach adulthood and they support themselves, but essentially we are responsible for them, and I do not think that either parent should be able to get out of that.

Mr QUICK—My second question is part statement and part question about parental responsibility. Doesn't it seem strange that our family system is stuffed, when parents must find tens of thousands of dollars to fight each other to supposedly show their love for children they conceived and introduced into the world?

Witness 2—Definitely.

Witness 1—Yes.

Mr QUICK—So this committee has a blank sheet of paper.

Witness 1—However, the Family Court is probably the only court in Australia that does provide support for people to represent themselves. It is not easy—

Mr QUICK—At a huge cost, though. We have heard evidence, in the seven days we have been here, of people spending $100,000. They have to borrow that money and yet, in their relationship, they cannot find the money; and quite often money seems to be the cause of a lot of angst.

Witness 2—There does not seem to be any other way to resolve things. You cannot go to any agency in your community and get help if one partner is not willing to come to the table. For 95 per cent of divorcing couples, they can do it on their own—and that is great; we congratulate them. But for those five per cent who cannot, they are not going to access community organisations for help unless they are forced to.

Mr QUICK—I would like to suggest that that 95 per cent is a false figure, because some people—

CHAIR—Could I ask you to come to a question, rather than a statement?

Mr QUICK—Would you agree with me that that 95 per cent is not a true figure?

Witness 2—Possibly not.

Mr QUICK—I would guesstimate, having taken some evidence over the last seven days, that probably 30 per cent of people are happy with the shared care arrangements they have got; the other 65 per cent do not want to put themselves in debt and jeopardise their second or third relationship to the extent that—

CHAIR—Thank you, Mr Quick. Would you like to make a comment? And that will be the last comment.

Witness 1—Sixty per cent of people may agree to—

Witness 2—It is not numbers; it is about the families who cannot do it on their own.

Mr QUICK—It is about money, surely.

CHAIR—Mr Quick, could I just ask whether the witnesses wish to want to make a final comment.

Witness 1—The last thing I would like to say, which I do not think I have covered yet—and it has been mentioned here today—is that a lot of talk about divorce is about the number of divorces and how much it costs. In my view, divorce is not the problem in our society; the problem is conflict between parents. The government's response to the pathways report clearly states, in the first paragraph, that conflict with parents is a problem, whether they are together or not. We need to resolve that.

CHAIR—Thank you. We really do appreciate your coming here this afternoon. As individuals, it takes a lot of courage to come forward and speak in the public arena, and we do appreciate the time and the effort you have taken putting in a submission and also coming forward this afternoon. Thank you very much.

[3.40 p.m.]

BUSHNELL, Ms Dianne Margaret, Coordinator, Family Support Program, Pine Rivers Neighbourhood Centre

DORE, Ms Sandra, Coordinator, Pine Rivers Neighbourhood Centre

CHAIR—Welcome. I would advise you that the evidence that you give at this public hearing is considered to be part of the proceedings of parliament. I therefore remind you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. I also remind you that comments you make are on the public record. You should be cautious in what you say to ensure that you do not identify individuals and you do not refer to cases that are currently before the courts. I ask if we could have a single five-minute overview. Then I will proceed to ask the committee to pose their questions.

Ms Dore—I apologise for David McKinnon not being able to be with us today. He is unwell.

CHAIR—That is fine.

Ms Dore—Our primary concern is with the children. We are not here to argue any points siding with parents of either gender. We believe the best interests of the child are of paramount consideration, in line with the current Family Law Act. Introducing a presumption of joint residency into the Family Law Act would be a complex matter, both legally and—more importantly—for the families involved. We notice already the effects on children of them going between households, and we are concerned that the presumption of joint residency may not in fact be in the best interests of children. We believe a presumption that joint residency orders are in the best interests of children will force many children into damaging situations.

The fact that the presumption is rebuttable will not help resolve these problems. The cost of court action, the delays in the court lists—which will undoubtedly increase—and the complexity of evidence required to rebut the presumption will be impossible for a large number of parents to manage. Consequently, many children will remain in inappropriate and potentially physically and emotionally damaging residential arrangements because of their parents being unable to change that situation.

We are also concerned that this issue is treating children as property. To be divided between each parent according to an arbitrary formula is in effect directed towards what is in the parents' best interests and appears to be motivated by various lobby groups, lobby groups who have particular grievances regarding the operation of the family law system in general. We make no comment on the validity of those particular grievances other than to say that the government must not lose sight of the primary guiding principle of family law, the best interests of the child, when addressing them.

The Family Court web site has a book available for downloading. It is intended to help guide separating couples through the Family Court process. Chapter 5 is entitled 'What about the

children?' It encourages parents to try and agree on arrangements for the children. The introduction contains the following comment:

... you could agree that the children live some of the time with one parent and some with the other.

Throughout this chapter the issues of minimising conflict, resolving arrangements without the court's involvement, ensuring that the arrangements made are appropriate for that particular family's circumstances and the overall welfare of the children are stressed.

From this it is clear that the court's public policy does support and encourage the concept of joint residency in the appropriate circumstances. This is further supported by the Family Law Act as previously drafted, and no amendment is necessary. We support the view that joint residency can be the most appropriate arrangement for some families. In these circumstances, the children do benefit from these arrangements. But these arrangements will successfully occur only when the parents' post-separation contact or communication is amicable.

It is worth noting that four per cent of all the registrations with the CSA involve joint residency arrangements. We believe that it is safe to assume that these arrangements have been arrived at by consent and have not been imposed by a court. We acknowledge there are many problems with our existing systems but question that a change in the act will lessen these problems, as opposed to working within the existing act but with more support in the form of mediation, more counselling, more out-of-court negotiated outcomes, more community based support services, more careful involvement of children in relation to what they would like. We feel each family brings its unique circumstances and situations, and these need to be considered for each family.

We do not disagree with the concept of joint residency; it can clearly work for a small number of families Our concern is that this does not represent the majority of cases. Many of the Pine Rivers Neighbourhood Centre clients either from the Petrie Legal Service or the family support program do not fit the model of families that could function in a joint residency arrangement. Family law problems accounted for almost 50 per cent of all matters considered by the Petrie Legal Service. Of these, the majority involved residency and contact matters. This is already an area of particular difficulty for many of our clients, and we are concerned that the changes to the law will only increase the number and the complexity of these problems. The families that are currently with the family support program number 34 and, of these, 15 families have violence as an issue. A presumption of joint residency would potentially spell disaster for the children involved in these families.

In closing, we would like to thank you for the opportunity to speak to you today, but we do want to speak on behalf of our clients. We feel that the consultation process does not necessarily engage those who will experience the most impact of any changes. We would dearly love to see more social researchers working with community to divulge the issues and bring them to you.

Mr DUTTON—I want to take you to a separate issue, that of grandparents. We have taken some very emotional and, I think, sad evidence from one lady the other day who had not seen her grandson in four years. She has done nothing wrong; it is just that her son and his wife separated. How do we accommodate grandparents, who are some of the real victims in this whole process? How do they get access?

Ms Dore—It is just one of the heartbreaks of families breaking down. I am afraid I do not have the answer to that for you. There are many complexities, and grandparents are ones who feel the enormity of the ripple effect when a family breaks down. I do not have any solutions.

Ms Bushnell—They could be brought into the mediation. There could be more mediation facilities available for parents, more counselling facilities and more bringing of all parties together. They could be encouraged to be involved in that.

Ms Dore—Family conferencing would be along those lines. There are many people, besides the two parents, involved in a family.

Mr DUTTON—You might have heard us speak before about taking this issue out of the Family Court and putting it into a forced mediation scenario, where we gave mediators teeth to make decisions that would be binding, say, for a 12-month period and judicially reviewable under extreme circumstances but with a deterrent from going into the Family Court system. Is that something that you would warm to, or do you see problems there?

Ms Dore—I see problems with any big-stick approach. When we talk of giving people teeth, I see more mediation, more assistance in negotiating and more education for parents to help them understand the distress that this causes children as all being of assistance. Certainly, I can see great benefit in the concept of having a group of people assist with that mediation, but I think that to have true outcomes that people will agree to or come to some agreement on you need to have a willingness from the parties involved.

Mr DUTTON—I understand that that is an admirable outcome and objective to have, but the reality in these situations is that you have two people who do not like each other. You can go round in circles all day long with mediation, but unless there is somebody independent in these situations who can say, 'Well, we're acting in the best interests of the child and we believe that these are the outcomes—1, 2, 3 and 4. Here is your parenting plan; go away and adopt it,' isn't the reality that these people, in some circumstances, will never come to an agreement?

Ms Dore—I guess in some circumstances that may be the case. More directive approaches may need to be taken in some circumstances. But I would like to see more energy and effort put in before it gets to that stage.

Mrs IRWIN—On page 2 of your submission, there is the heading 'Our clients and joint residency'. Before I read from your submission, how old were the children that you were seeing?

Ms Bushnell—From nought to early teens.

Mrs IRWIN—Nought to what—13?

Ms Bushnell—Early teens.

Mrs IRWIN—In your submission under 'Our clients and joint residency', you have stated:

We work with families, and in particular children, in crisis situations. Their parent's separations are not amicable. A presumption of joint residency would drive these families further into crisis, and place families who are currently "managing" into the "at risk" category.

For the public record, can you state what your grave concerns are about joint residency and the reasons for these comments?

Ms Bushnell—The children that we are seeing presently are going from household to household, and they are experiencing some difficulties because of this. We see those things as likely to become worse, rather than better, with joint residency. I will give you some examples. Children are having to choose between parents. They have safety and security issues, as they fear the loss of both parents and wonder where they will be left in all of that. There is disruption to schooling and leisure activities. They are tired from going between households, so they have time off school. With two households, there are two different sets of rules, boundaries and limits. Greater financial resources are needed, and there is instability as to who pays for what. A greater number of cases are going to court.

Children are seeking counselling—we see that in our counselling service at the neighbourhood centre—as they may feel that they are to blame for their parents' break-up. That leads to a burden of guilt and low self-esteem, as well as fear, and some of those things can last a lifetime. There is increased conflict between the parents, affecting the children. There are different levels of parenting ability and commitment. Children are in greater poverty in two households. There is increased dependence on Centrelink payments due to the breakdown of employment through having to care for the children. Physical, emotional and sexual violence and intimidation are occurring. Children may not see parents through the parents' choice; parents do let children down. We expect that all these things will increase with joint residency.

Mr CADMAN—So the answer is to institutionalise the kids?

Ms Dore—I do not think that is the answer.

Mr CADMAN—You seem to be arguing—

Mrs IRWIN—Chair, I think I have got the floor here to ask my questions, and I am afraid I do not agree with Mr Cadman.

Mr CADMAN—I just wanted to draw the witness out a bit more.

CHAIR—Julia, could you pose your question and then I will go to Mr Cadman.

Mrs IRWIN—I want to follow up on one thing that you said, Ms Dore. As the chair has told everybody here today, we have received over 1,500 submissions from organisations and from individuals. This is our seventh public hearing. We have heard the voices of the mums, the dads, the grandparents, the aunts, the uncles and the friends of families. Can you suggest any way—and I think this is very important—that this committee can hear the voices of the children?

Ms Dore—Our neighbourhood centre, for example, does work with children in a number of ways. There is a grief and loss program that works with children. Most of the issues that the

children bring up are around separation and family breakdown. There are many community organisations that work with groups of children in various ways. By being creative, there are non-threatening ways and methods of gathering feedback from those children. I think greater connection to some of the services that are working at a grassroots level could possibly fill the gap in information.

Mr CADMAN—I am sorry if I have misunderstood you, but your argument seems to say that the less contact kids have with their parents the better they are going to be. You seem to be saying that kids need counselling, financial resources are a problem and there are two separate rules. You seem to be mounting an argument that all their contact should be with one parent or there should be no contact with parents. Could you explain that a little more.

Ms Bushnell—What I am saying is that they are experiencing the conflict between their parents as things are placed now and that, with a joint residency presumption, the conflict will be increased and they will experience even more stress.

Mr CADMAN—So they should go entirely with one parent and have limited access with the other?

Ms Bushnell—No, I am not saying that.

Mr CADMAN—Could you tell me what you think would be the most desirable situation?

Ms Bushnell—What is most desirable is what is in the best interests of the children.

Ms Dore—In each case.

Mr CADMAN—Are you saying that split contact is not a problem, provided it is properly managed? Is joint residency also not a problem, provided it is well managed—or are you opposed to that?

Ms Bushnell—In the Family Law Act at the moment joint residency is an ideal; it is an option. But having a presumption of joint residency within the act would only create more conflict in situations where there is already quite a great deal of conflict.

Mr PRICE—You talk about joint residency as having a template that can be only 50-50. Why can't 50-50 be the starting point? For example, if my wife and I split up, 60-40 or 70-30 might be what we want, but the starting point is 50-50. Your submission seems to be based on a presumption that every result must be 50-50 and then you have to sort of rebut that to get any change. I suppose some of the committee members feel that we are talking about 50-50 as the starting point.

Ms Bushnell—Already in the Family Law Act the ideal is to have—

Mr PRICE—Fair enough. Let me ask you about the Family Law Act and the UN Convention on the Rights of the Child. Where in the UN Convention on the Rights of the Child or in the Family Law Act is there an objective statement which says that in a majority of cases contact between the parents should be 80-20? The UN charter does not discriminate against parents.

Ms Bushnell—We are not suggesting discriminating against parents. We are suggesting that it should be resolved in the best interests of the children.

Mr PRICE—The UN convention does not discriminate against parents. The objective statement there seems quite ideal in the Family Law Act and you would think that there would be a hell of a lot more 50-50. But in fact what the objective statement in the Family Law Act is resulting in is a majority of decisions that are in fact 80-20.

Ms Dore—So is it about the way we are implementing it? What are we doing to put that act into practice that needs to be looked at?

Mr PRICE—I do not have a difficulty with the objectives; it is the outcomes. I do not have a difficulty with starting from 50-50 and then working out what is in the best interests of the children. That often means what is manageable by the parents. Your submission is correct when you say it will not suit a lot of parents ideally, but a lot of parents would benefit from a starting point of 50-50.

CHAIR—You know you do not need to make comment on that if you do not want to, Ms Dore.

Mr PRICE—I have last one last question. In your conclusion you say that it has not been widely promoted in the community and people should be given a voice, and I appreciate that. I am grateful that you are here today as well. Did you actually have any discussions at all with the clients, or has the information that you are providing been distilled through your work with clients?

Ms Dore—No, we actually had focus groups with our clients to talk about this issue in particular. Many of the comments that are in that submission are directly from the clients themselves. We have not had a filtering process at all. It is that kind of process that we would encourage more.

CHAIR—I want to ask you a question about the presumption of 50-50 shared care. You seem to be of the opinion that it is not going to work because somebody is going to force somebody else to have 50 per cent care of the child that they may not be able to have. The point that Mr Price was making is that we are saying it is the place to start from, but you say it is going to result in more conflict. My question is: if people legitimately believed that the odds were not stacked against them—for various reasons the perception certainly is that the odds are stacked against people in the family law courts—and they knew they did not have to go through the huge cost and the trauma of going there, don't you think that would take some of the angst, anger and aggression out of the whole debate? You are saying it would create more conflict. I am asking the question: couldn't the reverse be correct in that it could have a result of less conflict because you do not have that family law court threat hanging over you, along with the cost, the angst, the aggro, the preparation of cases and so on. If you had the presumption, 'At least they are going to start from 50 per cent and then it is whatever we can come to an agreement on and I, as the primary breadwinner, might not be able to have it 50 per cent but I could probably looked at reorganising my schedule'—and I am talking about men and women—'into a 70-30 or 60-40,' don't you think that would take some of the aggression out of it? Couldn't it have the reverse effect to what you are saying? You are stating it is going to create more conflict; do you concede

that there may be less conflict if there is not that really strong family law hanging over their heads?

Ms Dore—I guess it is trusting in the processes. In an ideal world, there is the potential for that to be very much the case. But it is the processes. I am unaware of what processes we will need to engage in to move from the 50-50 arrangement.

Mr CADMAN—You raised some of the concerns in your submission, and those dot points on page 2 are worth noting. They are very good.

CHAIR—Thank you very much. We appreciate you coming in this afternoon. It benefits the committee to have your point of view and to have the points of view of the people in your focus groups put to the committee.

[4.04 p.m.]

BENNETT, Ms Sandra Lorelle, Coordinator of Counselling, Men's Information and Support Association

SWANN, Mr John, Administration Officer, Men's Information and Support Association

CHAIR—Good afternoon. I welcome representatives from the Men's Information and Support Association to today's hearing. The evidence that you give at this public hearing is considered to be part of the proceedings of the 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 would 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 or refer to cases that are currently before the courts. Could one of you give a five-minute overview of what you would like to add over and above what is in your submission, and then the committee will proceed with questions.

Ms Bennett—We put in our submission to add to the submission by Family Services Australia, being one of their member organisations. We totally agree with the recommendations that they put forward which are in the best interests of the children. However, we do not agree with their overall argument against equal time for parents. From our perspective, we are here to represent the separated fathers that we are counselling every day, five days a week, and we are here to put forward the words that we are hearing from them. I would like to elaborate on a few of the points in our submission using Barry Maley's paper, 'Reforming divorce law', from the Centre for Independent Studies:

A conscientious husband and father, not guilty of misconduct, may find himself struggling to gain regular access to his children, to have them stay with him on occasions and be frustrated by an ex-wife who is uncooperative for self-serving reasons or for revenge. … The embittered mother may put difficulties in the way of visits and overnight stays by the children and the father accordingly loses regular contact with his children.

Maley writes that the system is seen by fathers as 'responsible for denying them, and their children, the contact and continuing intimacy that both once enjoyed'. In the case of a woman leaving the family for another man, Maley writes:

Is it fair and reasonable that the victimised father should be expected to maintain his 'guilty' ex-wife and his now-separated children, to continue to pay—

in some cases—

the mortgage charges, to leave the family home and to pay rent for a separate residence for himself? If this were to be the case, the father would be doubly victimised. His marriage and its expectations have been destroyed, he has largely lost his children, lost his home and a large part of his income.

The hardest part of this situation for him to accept is the loss of contact with his children when in his mind he has done nothing. These are all points from Barry Maley's paper, which is a very

good paper. I am not sure whether you have seen it. At present, if a father wishes to have more time with his children than the mother will agree to, he often has to go through the courts. Many fathers do not go ahead with these proceedings because they either do not have the money or do not want to put their children through that process. Some of them are still in love with the partners who left them and do not want to put their partners through the process.

I will put some questions forward here. MISA is coming from the presumption of equal time with each parent. It is just a basis to work from—a fifty-fifty arrangement. That is where you would start; you would negotiate from that point. That is what we are in favour of and what the men that we see are in favour of. Would this presumption of equal time with each parents encourage a situation where both parties would look more closely at taking steps to rectify the problems—that is, before they separate? If this presumption became, after a time, an accepted social norm, people would already have that in their minds and come from that presumption when they were organising their future lives. Would most parties try harder in their relationship and try counselling or other avenues to resolve the issues if they knew that that was the general presumption out there in the community?

If both parties are under the assumption that the children are going to spend equal time with each parent, they would be more likely to organise their future lives with this assumption in mind. Equal time may also create family environments with less violence, less crime, less suicide, less depression in fathers, less delinquent behaviour and fewer mental and physical health problems. It is very important that young boys have a father's input. In my experience mothers can tend to be, as we all know, the primary parent. Maybe not just mothers; we are talking about the primary parent here. The children can have them around their little finger. Often the other parent is the one that can come in and add to the discipline or the boundaries that need to be kept in line for the children in the family.

I feel that equal time will also enable a father to parent more effectively. I hear fathers saying that what is happening, especially with teenage children, is that if they do not want to go to their dad's on a certain weekend the dad has to maybe offer bribes and presents for the child to come. Men actually avoid disciplining their child on every second weekend—I am not saying all men, but some fathers. They avoid doing the disciplining they would normally do, which the child in many cases might require. They will not do it because they are frightened that the child will not come back on the next weekend. A teenager will maybe punish their dad: 'If you say I can't do this or I can't do that, I'm not going to come back next weekend.' Dads cannot parent effectively, and therefore some children are not growing up with effective boundaries around them.

According to Professor J. Macdonald of the Men's Health Information and Resource Centre, separated fathers are six times more likely to commit suicide than married men. Not only are the best interests of the child paramount but we also, as a community, have a duty of care to all parties involved. Fathers that are not depressed or suicidal are likely to parent more effectively than a father who is worrying about not seeing his children, about trying to get access to them or about having to go through court to do that. Approximately 20 per cent of children under 15 are living in one-parent families, according to the Australian Bureau of Statistics. In most cases, we feel it would be in the best interests of the child if they had a father to interact with rather than to not have one at all. Many of the men who come to counselling are coming for a number of reasons, such as maintenance of the marriage. They come willingly. They may have an anger problem and realise they have an anger problem. They are willingly there to do something about that. They do not want to lose their family or their partner. They come with their partners for

counselling as well. They are also there after break-up situations for depression and attempted suicide.

One of the big points we make to fathers is how important they are to their children. Often, when they come to us they are under the perception that they are no longer important to their children; hence the feelings of, 'I can't live without them' or 'I'm not important to them.' These are average dads, who have been working five days a week, who take their children to sports on the weekends and who interact with their children after school or after work. They are not people with mental health problems. These fathers are depressed and suicidal. It is not conducive to good parenting if he gets them every second weekend, and the primary reason for the depression is that he sees he has lost his children—he sees that they have been taken away from him and he can no longer interact with them at the level he did before.

Mr CADMAN—I notice that in section 3.2 in your submission you list the circumstances in which a presumption of equal time could be rebutted. How did you derive those? Is that just a bit of commonsense you have worked out yourself, or have you discussed this with some of the people who come to you?

Ms Bennett—I have discussed this with psychiatric nurses, clients and other counsellors, and some of it is my own commonsense. It comes from speaking to a wide variety of people.

Mr CADMAN—Point 7 is of interest to me. It goes over the page to point 8. Point 7 says that if domestic violence:

... has only been directed toward the partner equal access should not necessarily be denied to the other partner.

I take it you are concerned only if there has been violence directed towards the children. Is that right?

Ms Bennett—If violence were directed towards the children, you would not have equal share time.

Mr CADMAN—That would bar somebody from equal share time?

Ms Bennett—For instance, a father may have hit his wife for the first time, and she has put a DVO on him and left. Obviously, they would have been arguing or whatever before that, but something has happened where he has finally hit her. He gets a DVO put on him, and she has it put in the order that he is not allowed to see the children. He has been a good dad. The argument is between him and her. He has never done anything to the children. It is not in the best interests of the children to deny him access to them or to deny the children access to their father because he has hit the wife. That can happen in DVOs. Do you understand what I am getting at?

Mr CADMAN—I understand. I think it is a very complex area.

Ms Bennett—A study done by the Mater Hospital here in Brisbane found that parental conflict creates most of the problems in children and is detrimental to children. Out of this whole system, we should be trying to make an arrangement which is going to cause less conflict between the parents.

Mr CADMAN—Can you get hold of that study or identify the title of it?

Ms Bennett—I can get that to you.

CHAIR—Please take that on notice and get it to us.

Ms Bennett—I only thought of it today. I have that in my office.

Mr CADMAN—It could be helpful to us.

Ms Bennett—It is not the fact that children live in and go to and from different places; it is all about the relationship between the two parents and how conflictual it is. Can you imagine a mother saying to her children, 'You're going over to daddy's this weekend. Aren't you lucky? You have two families—you have two mums'? That does not happen. There are different rules at different houses. Children can adapt to that. Children have different rules at school from those at home. I have been through all this stuff. I have rules at my house, and the children have different rules at their father's house. I explain to my children, 'That's fine. Accept your dad's rules. That's at his house, and these are the rules at my house.'

Children accept that. When they are in lower grades in school, they cannot go into the upper-grade playground. They accept, by age: 'This is where I stay. I'm not allowed there. They're the rules there; these are the rules here.' Children accept rules. It goes to how you put all this to the children, and it goes to whether the parents are in conflict and putting each other down. The more conducive you can make the whole system, and the less conflict there is, the better you are going to serve the interests of the children.

Mrs IRWIN—In your submission, you have listed 11 reasons why men will not go to court to obtain shared care. I gather that you have asked the men within your association about this?

Ms Bennett—Yes.

Mrs IRWIN—I am going to read out three of those 11 reasons, so people in the audience know what I am getting at in the question I am going to follow on with. The reasons are:

1. "I don't have enough money for the legal fees."

2. "Legal aid will not represent me because they are already representing my partner."

… … …

6. "I would love to have the children for an equal amount of time but I work full-time and do not know how I could do it."

Can you suggest ways that governments—and I am talking here about federal, state and territory governments—could assist these fathers to overcome their concerns? Like maternity leave, we are having a big debate on paternity leave at the moment.

Ms Bennett—There could be court support for fathers when they go to court. In a domestic violence situation, it is generally the aggrieved party that gets court support, and not the father;

so the women tend to get the court support. The fathers we deal with are uneducated. Many of the men do not know anything about the court process. It is all overwhelming to them; they do not know what to do. Court support is one thing—that is, if they had some support and were directed in the options that they have.

The other thing is equal representation. We hear back that, once the lady has gone to Legal Aid, the man cannot get legal aid—though I have heard that in some situations they can. I thought legal aid was there for people who cannot afford legal costs. So if they both do not have the money, why isn't the man getting legal aid as well? So he has to go and represent himself in court. If this fellow is depressed, he is just not going to get there—it is too overwhelming. In the end, he just gives up, and that is not in the interests of him seeing his children and his children seeing him.

Mrs IRWIN—Do you get many complaints from dads regarding the Child Support Agency?

Ms Bennett—Some; we get more regarding the Family Court system. Most dads do not have any problem paying for supporting their children; most of them willingly do it—in our experience, it is an odd-few that might not—and they want to do it. In my opinion, if equal shared care comes in, there will have to be a difference in the payment system. If it is a traditional situation and the woman has been a mum for, say, 10 years or so, she has lost her earning capacity, if she had one. In that case, the father has had 10 years or so to build his career, so when the separation comes he has a good income. When the mother is not with the father, she has no way of earning an income. So, if they have equal shared care, when the children are with their mum they are going to be disadvantaged, because the mother cannot give them as much as the father can, because he has the income. So there would have to be some compensation until she obtains some kind of income. If the father is on $60,000, $40,000 or $30,000 a year and the mother is on a pension, that is not going to be in the best interest of the children either. These days, children need computers, for example, and a single mum generally cannot afford a computer. That issue has to be looked at. If this shared arrangement comes in, that is going to be very unfair.

Mr DUTTON—Following on with the child support argument, I see a lot of blokes or non-custodial parents. Earlier this week, I saw a lady who is a non-custodial parent. What you say is right. Most people come to me and say: 'Look, I don't mind paying. I accept my responsibilities and I'm happy to pay a certain amount each month.' This inquiry was set up with its main focus being that our recommendations should be framed on having the best interests of children at heart. The other thing many people in those circumstances say to me is, 'We don't mind paying, but it leaves us short for the children of the new relationship.' Their argument is that they are not acting in the best interests of the children of the second relationship. From the figures, in Australia at the moment I think there are a million children who live apart from one of their natural parents. Obviously, millions of people are affected by that. What is the answer there? Do you have a view on the percentage in which child support operates?

Ms Bennett—I do not have a view on the percentage, without having studied it a lot further than I have.

CHAIR—If you want to respond at a later date, you could take it on notice.

Ms Bennett—I would prefer to respond at a later date. I would rather look into that a lot further.

CHAIR—If you cannot, that is fine.

Ms Bennett—I would like an opportunity to respond at a later date.

Mr DUTTON—You may have heard me asking before about enforcement and how we provide enforcement so that both parties abide by the contact orders or the specific issues orders. Do you see a way through that?

Ms Bennett—I am very much in favour of the tribunal idea. I had not heard of that before. I think that would be really good. I agree with everyone else here, that it is all about prevention and counselling. I think there should be mandated courses after separation. If it ends up in the courts, people should be going to mandated courses and counselling, and the mediation process.

Mr CADMAN—What if somebody refuses to pay?

Ms Bennett—Isn't it already gleaned from a man's wages and he has no choice?

Mr DUTTON—I am talking more about the contact side—if there is contact provided for—

Ms Bennett—And it does not happen.

Mr DUTTON—and it does not happen—if the child is sick continually or does not want to see the non-custodial parent, or whatever the case may be.

Ms Bennett—I understand there are enforcement things in place now, which do not necessarily work too well. In my opinion, we should be getting the parties together as much as possible and, to do that, maybe sending them to courses and counselling first, separately, so you can get them to the point where they may be able to come together. Somebody mentioned before, trying to bring them together when people cannot stand even looking at each other—you are not going to be able to do that without having some preparation for them ahead of time. That is why, at the moment, we have the process, in mediation, where one can be in one room and one can be in another. There is also the situation where, because some women are very afraid of the men—particularly in domestic violence situations—that may not be a good idea. There are individual things we all have to look at and listen to here.

CHAIR—There is a perception out there that five per cent of the most difficult cases get dealt with in the family law courts so that we are dealing with a minority. The perception is that 95 per cent seem to make some sort of amicable decision. We question that figure of 95 per cent being amicable, and I ask you about it. You deal with disaffected men or whatever it is that you are dealing with there. Would you suggest that that 95 per cent figure sounds like the correct figure for amicable resolution?

Ms Bennett—I would quite categorically say that it is not the correct figure. I do not have any research or evidence other than anecdotal evidence and the fact that, if you really look at the way the system is set up, you will see that it is set up to produce those figures. If men are not going to

court for all the reasons I listed, it is obviously going to show that they are not going for shared access. They would like to go for shared access but there are a lot of things stopping them from doing that—not just money but also the fact that they do not want to put their children through these lengthy court processes. I predict that if you changed this presumption and you had a tribunal you would see a difference in that 95 per cent figure, because it is the system that is bringing about that figure.

CHAIR—If a child had the capacity to have its own representation—perhaps in a tribunal—pre any legal action or any legal advice or family law court advice, do you think that that might bring about a result different from what we currently see emanating from the family law court process?

Ms Bennett—Children already have their own representation.

CHAIR—That is in a family law court process; I am talking about pre any family law court process and pre any move toward any legal process. If before you were allowed to go to a solicitor a child had its own representation in discussions on its needs and identifications, do you think the outcome would be different from the current one?

Ms Bennett—I think it would be very beneficial. That would be a step in the right direction, yes.

CHAIR—Thank you very much.

Mr Swann—I think we should be looking at educating parents before they become parents. In the last couple of years at school they should be taught about relationships—how relationships can work, how they cannot work and, when they do not work, the way things should be done. If you start back then you will start to correct some of the basic problems that end up putting people in a situation they thought they would never be in.

CHAIR—That is a very good point. Thank you very much indeed. We appreciate your coming forward this afternoon and the time you took to put in your submission.

[4.33 p.m.]

WITNESS 3, (Private capacity)

CHAIR—Welcome. I remind 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 contempt of the parliament. I also remind you that the comments you make are on the public record and you should be cautious in what you say to ensure that you do not identify individuals or refer to cases before the courts. I invite you to make a five-minute statement and I will then give the committee the opportunity to pose some questions to you.

Witness 3—I have been asked by this committee to provide it with an overview of an alternative dispute resolution process called collaborative law. Collaborative law is a non-court-based dispute resolution model which is practised mainly by family lawyers in the United States and Canada. To my knowledge, it is not presently offered in Australia. Whilst I am happy to provide this overview, I do so with this caveat: I do not practise collaborative law and I do not hold myself out to be an expert in collaborative law. I am, however, part of a group of Queensland family lawyers who, over the past year, have met informally to learn more about the process, and the benefits it may have for family law clients and their children.

In early 2004, we are hoping to bring to Australia from the United States a collaborative lawyer to provide some process training. Collaborative law, like mediation, was developed by family lawyers looking for alternative non-adversarial approaches for assisting separating couples to resolve the normal issues which arise on a relationship breakdown. Collaborative law is one of a number of procedural alternatives or disciplines which have emerged in the past 15 years. The common denominator for these processes which differs from the traditional practice of family law is that they seek to resolve legal matters in a way that is psychologically optimal for the people involved.

The traditional view of lawyers has been one of advocates in an adversarial setting. Historically, the focus of a litigation lawyer, by training at law school and in practice, was the court as the primary forum for dispute resolution and the threat of litigation as the primary negotiation lever. Over the past 20 years, research has emerged of the destructive effects on families of high conflict on marriage breakdown. This conflict can be exacerbated when couples facing the normal issues arising on separation and family restructure are placed in the highly polarised positions of court-based dispute resolution and/or are required to resolve their conflict within an adversarial matrix or blaming process.

The essential difference between the collaborative law process and the way lawyers traditionally practise is that, in collaborative law, the focus is on the settlement process, not the court process, or the threat or expectation of the court process. Lawyers, clients and any agreed jointly-retained experts, such as valuers, psychologists and accountants, agree to work together exclusively towards settlement. If there is no settlement and the parties choose to litigate, then the lawyers and experts withdraw and are thereafter disqualified from participating further on behalf of the parties. It is this disqualification provision in the collaborative law process that is a fundamental structural change to the traditional practice of law. The lawyer still remains a strong

advocate of the client's interests but becomes an exclusive negotiator/problem-solver, not a litigator.

A common complaint in family law disputes that the matter is being dragged to court by the lawyers to increase their billable hours is met with the response that the lawyer is disqualified from going to court. If there is no settlement, the lawyer must withdraw and cannot continue as a consequential litigator. The parties, lawyers and any experts, make commitments which are detailed in a signed, written agreement. Those commitments include: full disclosure of relevant information; the acceptance by the parties of the highest fiduciary duties towards each other; acceptance of settlement as the goal and respectful participatory process as the means; the four-way settlement meeting as the principal means by which negotiations and communications take place; joint retention of neutral experts who advise both parties; commitment to meeting the legitimate goals of each party, if possible; avoidance of even the threat of litigation; and disqualification of all lawyers and experts from participation in any legal proceedings outside the collaborative law process.

The stated advantages of the process are speed, cost, better settlements, and less stress for clients, children and lawyers. The perceived disadvantages include a lack of scrutiny and accountability; an increase in costs associated with the four-way meeting process; and the engagement, where necessary, of a range of experts, which costs are thrown away if there is no settlement and alternative representation has to be found. There are also some concerns about ethical issues.

Until recently there was no research to evaluate the practice of collaborative law or evaluations as to which client group would be best suited to this process. Two projects, one recently completed and the other to be completed in 2004, may assist. In Canada, a three-year project is being conducted to examine and evaluate the potential impact of the collaborative law process. The head of the project, Dr Julie McFarlane, noted in a preliminary report earlier this year that, whilst there were some practice issues that needed to be addressed, collaborative law was clearly meeting client needs that could not be addressed in traditional litigation or negotiations between lawyers.

The results of a US study of collaborative lawyers and clients conducted this year by William Schwab, a law graduate at Harvard University, appears to support stated benefits in terms of speed, costs and high client satisfaction. Of the cases handled by the sample group, the settlement rate was 87.4 per cent and, of the 63 lawyers reporting on their last case, 92.1 per cent reached settlement. These figures compare well with evaluations in the United States, for example, which have revealed that 60 to 70 per cent of mediated disputes result in agreements. Of further interest was this result: 76 per cent of the clients in the sample group ranked the impact upon children or co-parenting relationship with spouse as the primary motive for choosing the process.

In conclusion, collaborative law is one of a number of alternative dispute resolution processes that attempt to provide more humane and effective forums for the resolution of issues arising on matrimonial breakdown. However, even its most ardent supporters do not advance it as some quick fix, one size fits all solution to family conflict. They contend that the disqualification rule and focus on settlement, together with the other features that I have mentioned, provide the lawyer and the client with powerful and creative tools to assist couples with the issues they need to resolve on separation.

Mr DUTTON—Thank you very much for that evidence. I know that you have come to us at short notice so I appreciate your efforts this afternoon. It is a very interesting concept that would appeal to some people because the basis of us being here, and some of the evidence we have taken so far, is that many of us would like to see the process out of the courts and in a non-adversarial area. What sorts of savings do you think there would be to clients? You probably do not have the figures as part of a study, but your experience in the industry is obviously extensive. How much money would people save by going through this process as opposed to having to go to trial?

Witness 3—It is difficult for me to answer that question. I should have brought Mr Schwab's study with me but unfortunately I didn't. At this stage the study has not been published. From memory, that study seems to indicate that the average cost to the parties in the collaborative law process—and it may well be each party, I am not sure—was about $US8,000 and that was significantly less than an interim hearing would cost in a court in the United States. I have no reason to disbelieve that the costs would be less than for a litigation process, which is the most expensive of the dispute resolution processes available to separating couples who cannot resolve their conflict or differences.

Mr DUTTON—Thank you. I will give you a second scenario—we have taken evidence on this as well—where there is a vindictive partner and that partner plays it out through the courts as long as possible. Some people have given evidence that they have spent over $100,000 in legal costs. What would stop somebody of that nature milking their former partner through this process, throwing it out and then pursuing them into the Family Court as well?

Witness 3—The short answer to that is that nothing would stop the sort of person who was minded to do that. This process would be contraindicated for somebody like that.

Mr DUTTON—So if we were looking at something of this description would we as legislators be able to put something in place to provide a deterrence for people going to the Family Court once they had been through that process so that they would need to apply for leave to go to the Family Court?

Witness 3—I am sorry, I do not understand the question. If you put in place what sort of arrangement?

Mr DUTTON—If we put in place some sort of deterrent to prevent those sorts of people from going to the Family Court—if we made it difficult for them to go to it—and, off the top of my head, if we said, 'We think this process is enough for the situation to be resolved; if you want to go beyond that, you need to have some serious and justifiable reasons to take it to the Family Court trial process,' then they would need to make an application for leave to appear in the Family Court.

Witness 3—I am not sure whether this process would assist somebody who was of the mind to do that, simply because, as I understand it, one of the fundamental tenets of or principles underlying the process is a commitment by everybody involved—that includes the parties—to respectful dialogue and to adhere to the highest fiduciary obligations. It is a commitment to the actual process. If the process were made mandatory, for example, and one of the parties were not committed, it would probably be a waste of time and money, in my view.

Mr DUTTON—What led you to look at this system? What is wrong with the current system, in your view as a practising family lawyer?

Witness 3—I have practised family law for over 20 years. I have been interested in alternative dispute resolution processes since 1988, when I first heard about mediation, and I travelled to the United States at that time and undertook some training in that process because I thought that it would have some benefits for my clients. I think the adversarial process is flawed in terms of the resolution of the majority of issues that separating couples in Australia will face. The Family Court, or any court, is a place of last resort, not first resort. I think that the key for most families is to look at the various interventions that are available to them—there are a number of them, not just collaborative law; there is med-arb, mediation and arbitration—and decide which intervention best suits them and their needs and the goals that they are trying to achieve for themselves and their family unit.

I became frustrated with the adversarial process because, as a consequence of what I had seen, I did not believe that it was the most appropriate process to assist separating families to work through those issues. It is of some interest that processes such as mediation and collaborative law have come about as a consequence of family lawyers being frustrated with the adversarial system.

CHAIR—I will hand over to committee members for one short, sharp question each. I might seek to engage you in a further discussion at some other time, if you are available.

Witness 3—Yes.

Mrs IRWIN—I do not know whether I have done the wrong thing. I read the copy of the *American Journal of Family Law* which you sent to the secretariat and I jotted down one or two questions that I wanted to ask you. Then I saw the handbook for clients and two or three of those questions were in there. Peter has just taken my thunder with his last question, so I have one sharp, quick question. Do you see any disadvantages in collaborative law?

Witness 3—In terms of what I have read, some writers have noticed disadvantages and I mentioned a few of them. People who involve themselves in this process may spend money and, as a consequence, not reach agreement. If they have to go to court, they will have to get new lawyers, and there is a cost downside to that. There is also a downside for clients who make a connection with their lawyer. There is an emotional investment in the process for clients and they have to move on elsewhere, so that is a disadvantage that has to be weighed alongside the advantages. There are also some ethical concerns, none of which I consider could not be worked through.

Mr CADMAN—In your 20 years of experience, is property or custody the major area of conflict?

Witness 3—Most of my work is in the property area. My firm, however, is one of the largest family law practices in Australia. I can say that anecdotally most of the conflict arises in the area of residential arrangements to do with children.

Mr CADMAN—Would you do a bit of work on that to get a few statistics from your firm for us, please?

Witness 3—Yes, if we keep statistics.

CHAIR—Thank you. We will speak to you about that at a later stage.

Mr PRICE—I do not understand who, under collaborative law, leads the discussion. It seems to me that just the two parties are there with their lawyers. What is the percentage success rate in the United States experience? In other words, how many then do not go on and take the matters before a court?

Witness 3—I can probably get back to you on that with those statistics from Mr Schwab's research, which I do not have with me unfortunately.

CHAIR—Please take that on notice. Thank you.

Mr PRICE—How is the meeting led?

Witness 3—As I said, I have never been involved in a collaborative law process. My understanding is that agendas are set before the four-way meeting.

Mr PRICE—Then you stick to the agenda?

Witness 3—It is done collaboratively.

CHAIR—Thank you very much for appearing before us this afternoon. The secretariat will provide you with that question on notice in writing so that you are able to respond to that.

Witness 3—Thank you very much for asking me.

[4.54 p.m.]

CHAIR—Welcome. I remind you that comments you make here are on the public record, so you should be cautious in what you say to ensure that you do not identify individuals and you do not refer to cases before the court.

John—My name is John. I am here today because I feel that my role as a father has been trivialised and nebulised by the current laws and the family courts. I feel that both boys and girls need a father in their lives. From birth to the age of two, I was denied contact with my daughter by her mother. After paying to go to the family courts, they said I could have contact for four hours a week under supervision of the mother, because she was bonded with her mother. How she was supposed to bond with me if I had not seen her, I am not sure.

For two years, I had contact with my daughter on the driveway in fine weather and in a rubbish bin enclosure when it rained. When I asked for a cuddle from my daughter she said, 'Mummy said no.' This happened because the courts gave the power to a mean woman. After paying some more money, I was allowed contact every second weekend and for half the school holidays. I found, though, that I had very little money left after the legal costs I had incurred and the child support I had to pay. I never got to see my daughter in a school uniform or to check on her homework.

After my parents helped me out with some more legal costs and a four-day trial, I was allowed to see her one day a week in the afternoon for two hours. Her mother was not happy with this, so she kept constantly bagging me to the child. She told my daughter that if she did not like going to see her father she did not have to go and that she did not like my place, she did not like the food and so forth. The child was apprehensive at changeover but, as soon as she got away from her mother, she was very happy and enjoyed the time greatly.

When the mother refused to let her come over again, I spent more money and won a contravention order from the family courts. This enraged her mother, who hounded the child until the child threatened suicide. This was what the mother wanted. The mother took her to the child, youth and mental hospital and told them that it was because the child did not want to go to her dad's. The doctors went along for the ride, the family courts went along for the ride and so did the so-called child's rep. At this stage, I see my daughter one day a fortnight. She still enjoys coming but is very frightened at the changeover because she knows it annoys her mum when she does come.

I see the answers as being relatively simple. I have heard the comments today. To me, none of this would happen if we had equal contact from the word go. I would have had proper bonding with the child. I would have been able to see her on regular occasions and been able to check on her homework, and she would be doing better at school, I am sure. Further, we would not then need the Child Support Agency in most cases. If parents equally looked after the child—that is, for 50 per cent of the time—there would be no need for the transfer of money from men to women. I also see the Child Support Agency as a disincentive to the work force and a killer of men through suicide. One other point that I would like to raise, and a point that was raised here, concerns the vindictive parent. We need swift and heavy penalties for any parent hindering

contact or the relationship of the other party. It is nearly too late for my daughter but it is not too late for the rest of them.

CHAIR—Thank you, John.

Theodora—My name is Theodora. I am a survivor of domestic violence and I am here representing such a group. My constituents are at one end of the spectrum that you are listening to and are not likely to come to any agreement unless others sincerely and consistently help come to that point. I would go along with the comments that Susan made about the collaborative law and point out to you that the president of the Family Law Council of Australia, Patrick Parkinson, has mooted in the past a model which is followed in the Scottish courts, where all children's matters are heard by a panel. That panel includes grandparents, parents and anyone who has a stake in the future of those children of the marriage. I think that is the model.

While ever we keep looking for ways to fix the act, we are not looking at ways to fix the process. All the stories that you hear are ones of process. For every single story, such as the poor man who has just given you his story, there is a poor woman who can give you the same kind of story, and I do not want to sit in judgment on either of those. All I can tell you is that, from my experience—and I am a parent and a grandparent and I have seen a fair bit of family conflict in my way through life—the children say that there is no solution to shared residency. It makes gypsies of them. They have to pack their bags at set times. It fragments their lives and friendships. It makes for fleeting moments of happiness and long terms of unhappiness. Co-parenting has the potential to abuse the children in favour of their parents' equal rights. So we are looking at equal rights for the parents, but I would have thought that we are looking at rights for the child as well.

One of my responsibilities is to go to court with my members who are unrepresented in court, so I have family law court support experience. I find the adversarial system the worst system you could reflect on in terms of family law. I would urge everybody here to take equal responsibility for our children—not rights, but equal responsibility for our children. They are not the parents' children; they are yours and mine, because that is the next generation coming through the works. Unlike Sandra Bennett, who says that the violence is often directed between the adult partners, I urge you to consider that no child should be witness to such an act or live in such fear. It is not good for them. It leads to long-term relationship problems in their adult lives, suicide and dysfunctional families for the next generation, so let us fix up the process, please.

CHAIR—Thank you very much, Theodora.

Steve—I am in a fortunate position; I am a happy father who actually got custody of his daughter. But there are a few points I would like to raise about the family law court system. I believe I gained my judgment more by good luck than good management. Basically, I fought the court system for three years and it cost an awful lot of money. Child representatives were appointed and medical evidence was available to them, which was not presented in court. I was not allowed access to this evidence because it was medical. It was only because I had a very good barrister at the full hearing that we actually got a fair result for our child.

One of the points I would like to make to the committee is that there will always be a percentage of people who are able to negotiate and come to acceptable arrangements, there will

always be a portion of people who can go through mediation, but there will also be a minority who will have intractable disputes where someone will have to take a decision. In my own case, over a three-year period, the evidence that was presented to the judge at the full hearing was based on a total of five hours of assessment by the various authorities. Personally, I take longer than five hours to decide whether somebody is going to be a friend, and yet my child's future was decided on five hours of consultation over a three-year period. I would say to the committee that, for a judge or a tribunal to make a decision, more effort has to be put into background information before the case is heard.

Secondly, because of some of the stuff that went on during the family law court hearings, I have spent the last three years asking questions of the Family Court of Australia—supervisors at the registry in Brisbane, the registrar of the Brisbane registry, the Chief Magistrate of the Family Court of Australia—Mr Darryl Williams, the Attorney-General, and Mr John Howard, our Prime Minister. My only response so far has been—and these are not questions of judicial matters; these are administrative matters—from Mr Williams's office, where reference was made that the chief magistrate reported to God. I would just like to point out to the committee that, after having spent many hours and writing over a hundred communications, I have received only two responses: one from the Prime Minister's office saying 'unable to assist' and the other from Mr Williams's office referring me to the chief executive officer, who has not responded.

CHAIR—Thank you, Steve.

Jennifer 1—My name is Jennifer and I am a working mother with a three-year-old son. My husband refuses to work and indeed has not worked for the past 2½ years. Indeed, he has no intention of doing so. My son was conceived after five years on the IVF program. My husband never really believed that the IVF would work and took part merely to placate me. I was forced back to work because my husband lost his job and as I have no other way of supporting my son and myself. If I had thrown myself on the mercy of the social welfare system, my position in the family law court would have been entirely different. Working parents, whether they are mothers or fathers, are extremely disadvantaged under the current Family Law Act. Under a strict application of the law, the binding precedent which is the Cilento principle says that the principal carer gets the child. If you apply this rule, my husband would be given residency of my son and I would get to see him every second weekend. In other words, the court sees me as being my son's father.

No mother can establish a relationship with her child, particularly with one as young as my son, every second weekend. This would not allow me to be a mother to him, to play with him, to bath him or to have any sort of meaningful input into his life. Fortunately my family has been able to provide me with significant financial support to fight this, first in the magistrate's court and then in the family law court, and we have managed to gain an interim order for shared care. We successfully challenged the principal carer argument as my son attended day care for three days per week and we were able to demonstrate to the court that I cared for my son when I was not at work. So the fact that my son attended day care and I was able to afford excellent legal counsel were the two factors that turned the decision towards shared care.

My husband is working hard to undermine the shared care decision and the next round in the family law court is expected to cost me in excess of $20,000. My husband is prepared to bankrupt our family in his quest to gain full residency of my son. Shared care is not about

domestic violence and it is not about who pays. Shared care is about putting the child first and is an attempt to make the best out of a bad situation. Shared care is caring about children and encouraging adults to make good choices and compromises for the sake of their child. Clearly arguments that 95 per cent of family law matters are settled through mediation and only five per cent go to trial do not reflect what is happening in the community. Mediation only achieves a fair and equitable result when you have a level playing field, and presently this does not exist under the Family Law Act.

While it is clear that shared care will not work in every case, it is the best starting point to negotiate a fair and equitable outcome for children. Currently family law court mediators do not even consider shared care as an option. Family Court solicitors and mediators merely apply the law which is (1) is there any domestic violence involved; and (2) who is the primary carer? Children need balance and ready access to both parents. While I recognise that my husband was an extremely poor choice as a father for my son, he is the only father that my son has and the little boy needs him the same as he needs me. I am begging the committee to please change the act. Thank you very much for listening to me.

CHAIR—Thank you, Jennifer.

Barb—I work as a children's support worker at a refuge for women and children escaping domestic violence. I am also the full-time parent of a nine-year-old boy. When I was a child, our family also experienced domestic violence from my father. I am against the rebuttal presumption of fifty-fifty contact post-separation. My concerns are largely about violence. At present, I believe that there is very little understanding of domestic violence and the impact that it has on women and children. Through my work I have had contact with lots of women who have been before the Family Court, a lot of them unrepresented. Anecdotally it seems that solicitors, magistrates and the experts who are put before the court do not understand how violence affects women's and children's behaviour or how children disclose sexual abuse. I believe that terms such as 'conflict' minimise violence.

I want to refer to a point that Sandra Bennett raised about fathers hitting only the mother and not being violent to the children. That illustrates my point that there is little understanding of the impact of domestic violence. Domestic violence damages the relationship between a mother and child. It takes away from her ability to focus on the child's needs. Domestic violence creates an atmosphere of fear for children. I believe that it also provides poor role modelling for children in terms of what a father and mother are supposed to be like and how boys and girls grow up. I would like to finish by posing a question: if men want to spend more time with their children, why don't they do so before separation?

Jennifer 2—I want to expand a bit more on the domestic violence theme. It is not recognised very much anymore in Australia, especially by mainstream media. I emphasise that it does exist. The events in Woodridge yesterday seriously highlighted that. There are women and children who flee domestic violence who would be at serious risk in having to prove in front of a court that they were not unfit parents. From personal experience, domestic violence can be instrumental in a condition of depression. Contrary to what Sandra Bennett has said, depression and suicidal tendencies are mental illnesses that need treatment.

There has been some name-calling—even here today—which I find very difficult. I was brought up in a domestic violence situation and continued it with my partners. When it came to having two small children and a violent atmosphere around them, I decided that it was not acceptable—I did not want that for my children—so I took them and I fled. The Family Court saw fit to continue access by the father. Reports of continuing violence to the families department and the police were addressed. Fortunately, the father stopped the physical violence but the psychological and emotional violence continued.

I am a very tired, worn-out woman from all the years of the hassle of trying to do the best for my children. I would have two very violent, off-the-rails children if rebuttable presumption were the case. I fled with $15 in my pocket. I had no assets and no family support. I could not have proved, given the state of depression I was already in from the domestic violence, that I was a fit mother. I went to a refuge. I had to go to temporary rental accommodation before we got to our housing commission house, where we have been for seven years. It would have been impossible for me to prove that I was a fit mother. But anyone who meets my children says what happy, well-adjusted children they are.

My children were disowned by their father for 2½ years altogether. He has recently come back onto the scene and I am terrified. I am terrified that if this legislation goes through he will say that, since my daughter has been with me for so many years now, it is his turn and he should have her. I would like you to consider, if you do put in this legislation, putting in some sort of safeguards to protect children who have been affected by domestic violence from situations where the father might come along just for the sake of further control of the mother.

Gerry—I am a counsellor and a father. I work mainly with fathers experiencing relationship difficulties and also with those going through separation and divorce. From my experience, that collective experience indicates that fathers' loss of contact with the children or a significant reduction in contact and/or an interruption of contact with the children is the primary concern for the majority of fathers. Therefore, I feel that the presumption of shared parenting from the outset of any separation has great merit, provided that there are no other concerns for the safety and wellbeing of the children, or of either parent, grandparents or significant others. If there are concerns, they need to be investigated expediently and in an ethical and professional manner and with total accountability. I would like to quote briefly from an article by Bettina Arndt in the *Age* on 29 August this year, because I think she articulates the issues very well. She says:

Parents should be encouraged to start a different conversation—without ever going near the court—a conversation that might sometimes lead to shared custody or at least children maintaining close relationships with not only their fathers but other key people such as grandparents.

Instead of writing laws trying to change the way the court handles these issues, it may be better to introduce statutory orders, as has been done in some American states, requiring that separating parents ensure that contact occurs from the start of separation, with the prescribed amount varying with the age of the child.

Such "early intervention strategies" should also include mandatory mediation on parenting issues for all separating parents. To get in early, this could be set up through Centrelink and the Child Support Agency, the two organisations in contact with most parents very soon after separation.

I hear numerous stories of tactics used to frustrate, interfere with and deny contact with children. In some cases, other practitioners in the field are implicated in these tactics of denying contact. It is time that the federal and state governments set up some very clear codes of conduct for practitioners working in the field of families experiencing separation and divorce. Those practitioners found to have a history of causing harm to children and families should face sanctions and, if the harm is serious, they should face prosecution and be removed from any involvement with children and families. This field requires people who are ethical and professional and who genuinely care about helping achieve good outcomes for children and families.

I note that consent orders have been mentioned. Sometimes consent orders are forced on clients of the court by solicitors; they are not necessarily mutually agreed to. Another point is that the ACTU has come forward with some good suggestions and proposals in the work environment to help families manage their work and family obligations.

Rod—I have already made a submission, so I will be fairly brief. I would like to talk about some of the things that the other people are not speaking about. My separation and divorce did not go through the courts. It was certainly not amicable but our kids were already young adults, so we did not have quite those problems—I still had one daughter at school. I was older, and there was a fight over superannuation. My ex insisted that she needed some money as part of her share of the property, which of course was reasonable, and the mortgage had to be paid out. When it was paid out, I thought it was a 100 per cent transfer. It went directly from my superannuation into hers. I could not even access my super until that went. Seven months later—the day before Christmas Eve—the Child Support Agency rang to say they were withholding my tax refund. When I queried why, they said it was because I had underestimated my income.

I should tell you that at that stage I was out of work and I had gone broke, literally, because of the child support payments—because the whole thing had become protracted. I pointed out that, if they checked the figures, it was actually less than I had estimated. It was not until the person on the other end of the phone said, 'No, it was over $100,000 more than you estimated,' that I realised. I said, 'But that is the ETP,' but she said, 'It does not matter; it is in the income. You owe $6,375 in child support.'

Mr PRICE—Because of the superannuation.

CHAIR—No questions from the committee, Mr Price.

Rod—Yes, it was the superannuation. They had calculated 18 per cent on that and that was to be child support. So they were withholding my tax return cheque. I said that I would fight that. I said, 'No-one can get more than 100 per cent of anything.' The response to that was that I could have a review. I said, 'No, I will not even do a review,' to which she replied, 'In that case, we'll have you thrown in jail. You will be put in the cell with Bruno and we guarantee that within one week you'll want to get out and you'll be happy to pay it.' Apart from the information about Bruno, whoever Bruno was—

CHAIR—You have got about 30 seconds left.

Rod—That is the way that they are operating. The reason I went broke was that I was maintaining the mortgage, the insurance, the rates and the power. This was seven years ago, and I know that you can now get a percentage of that. I figure that if the other person is living in the house at that stage then you should not have to meet more than half of the mortgage—nor should you have to meet more than half of any of those other payments. Clearly more money was going out than was coming in to me.

CHAIR—Thank you. You need to finish up now. As you say, you have put in a submission and we appreciate you coming along this afternoon.

Graham—My name is Graham. I do a lot of work with single parents, both custodial and non-custodial parents, and I also sit on the child support advisory board in Brisbane. I was very pleased to hear the comment made earlier about education. I believe that educating young people at school on marriage is very important. I also believe—and I have spoken to a lot of single parents—that mediation is a very important factor. The amount of money that is going down the drain through legal fees and Family Court fees is having a detrimental effect on children's futures. In a lot of marriage break-ups people are going to the wall in terms of bankruptcy and so forth. That is, consequently, putting those children's financial survival in later life at risk.

I think a mediation program should be put in place by mediators outside the legal field or Family Court whereby the mediator could have the papers stamped by the Family Court and put in very severe penalties in the event of a breach of that. We have seen non-custodial parents get on a plane and go to Adelaide to find that the custodial parent has moved house. We have seen people drive from Toowoomba to Noosa to find, when they get there, that they cannot get access to their children. We have even see non-custodial parents get on a plane and fly to Cairns and find that they cannot get access to their children. I believe that mediation should start within 30 days of a marriage break-up and be finalised within 60 days. I believe the end result—from the point of view of child support agencies, Centrelink and the Family Court—would be a huge saving in finances for the parents. I believe there would be a benefit for the whole community.

Deidre—I am the coordinator of Windana Women's Shelter. I have worked in the area of domestic violence for approximately 15 years, and I would like to talk about some of the issues. I hold some really grave concerns around the system of shared care that has been proposed in the Family Court—not as a system overall, because I believe it is possible. I know of cases where it can occur; it occurs with my own grandson, and I believe that that works and is in his own best interests. My concern is that the Family Court, like all the other legal systems that apply in our country that affect children—and children are the issue—including child protection and police, is dramatically failing children who are subjected to domestic violence. These children are subjected to abuse and are forced into situations where they are witnessing domestic violence continually or being subjected to different forms of violence.

My concern is that violence—while we work from the premise that it may be noted in the court as existing—is never investigated within the Family Court system. While the Family Court may acknowledge that domestic violence occurs, unless it is proven—meaning unless a person has been charged criminally—it is not necessarily taken into account. That is a very clear message from the Family Court and one that I have seen demonstrated over and over again. From my years of experience I could talk about numerous cases where children were sexually abused and there was intervention by the department of families but the partner was still given

unsupervised access to those children. My concern is that, when the mothers of children who have been subjected to long-term violence in their homes try to flee, they are brought back to the court and forced to give the partner access. This is just another way of continuing the violence occurring between the partners, and that is not taken into account.

In other countries—New Zealand is one, in fact—they work from the premise of the safety of the child. In Australia we talk about things being in the best interests of the child and we talk about the rights of both parents to have access. I very much believe in a family unit that gives a child the best possible outcomes in their upbringing. I do not believe that children being torn between two homes is necessarily going to be in their best interests developmentally. From everything I have ever learnt about the developmental stages of children, living in two separate homes is not in the best interests of any child, especially younger children.

My point is that before we introduce a new system of shared care in Australia we have to make the safety of children paramount. One in four families in this country is living with domestic violence. Until the safety of the child becomes the paramount issue over the right of any parent to see their children—and that is any parent—then, in an already flawed system that is not working, I have grave concerns for our children.

CHAIR—Thank you.

Rachael—I work in a domestic violence refuge. I think that notions, concepts or processes such as shared care or collaborative law are delightful ones if the people who are engaged in those processes are rational individuals with a combined goal of ensuring that their children are safe and well cared for in a great environment and if those people are capable of some sort of respectful intercourse or interaction to ensure that happens. Where I work, we are not involved with those sorts of families. I think that there needs to be some other way of doing things, although I am not sure what that is.

The most important point I want to make is that we work with families where the women may have a domestic violence order already in place or where notifications have already been made to the Department of Family and Community Services, but they are often disregarded in the Family Court. We have found that decisions are made that do not take into account any of that information. While I understand that the Family Court may see such things as domestic violence orders as vexatious or as the woman being difficult or trying to get things going her way, I cannot see how that would not cause someone to stop and say, 'What's going on in this family? Things obviously aren't as they should be because they have been to court and they're accusing each other of bashing each other up and tearing each other's property apart.' While the shared care thing may very well work in lots of situations, I would ask that you consider that for families not capable of engaging in that process for whatever reason—and that may not be their perception, but it is certainly ours—there be some other way of doing it that ensures the kids are safe, happy and well. Thank you very much.

CHAIR—Thank you, Rachael.

Jennifer 3—My name is Jennifer. I want to talk from the perspective of a single parent from a mixed cultural situation. My daughter's father left Australia and went to a Middle Eastern country; no maintenance was paid once he had left the country. The situation for a lot of people

who are in a similar situation to mine is that the children are of mixed culture; the children are torn between two cultures. In the situation I am referring to, the culture is Islamic. Not only are those children not provided for with payments of maintenance but also, where there is the option for the children to go and spend time with the other parent in their country of origin, a lot of issues arise about the safety of the children. The fact of parents living in different countries will also affect the sharing of living situations for children. There should be some concern for what happens to those children. Will they be safe if they leave Australia and go to other countries where there is no diplomatic protection for them and no guarantee that those children will be returned safely to Australia?

CHAIR—Thank you, Jennifer.

Rob—My name is Rob. I have already put in a submission to this inquiry and I am going to quote from my son's latest school report. Can I mention his name or not?

CHAIR—You can, but I would prefer that you do not.

Rob—His school report says:

The child is a pleasant, cooperative student, who often finds it difficult meeting his commitment in these subjects. He demonstrates a good understanding of language. However, his skills in writing, in particular, have suffered as a result of an inconsistent approach to his homework tasks.

In the USA there are over 30 states that have a presumption of or a preference for joint custody. I would like to table a document about that. It shows you that it works. The presumption of shared parenting works in 30 states, plus the District of Columbia. If it works there and it works in European countries, why on earth can't it work here? Thank you.

CHAIR—Thank you, Rob. Thank you very much, ladies and gentlemen. I would like to thank all of the witnesses who have appeared before the committee this afternoon. I would also like to thank all of those who made community statements. I thank the members of the audience in general for the way in which they have conducted themselves today. It has been a great pleasure for us to be here. It makes it much easier for us to determine some sensible outcomes when there is such a great audience. We appreciate the way in which you have conducted yourselves this afternoon.

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

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 this day.

Committee adjourned at 5.35 p.m.