



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

**HOUSE OF
REPRESENTATIVES**

STANDING COMMITTEE ON FAMILY AND COMMUNITY
AFFAIRS

Reference: Child custody inquiry

FRIDAY, 5 SEPTEMBER 2003

CAIRNS

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

INTERNET

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

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

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

HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS

Friday, 5 September 2003

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

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

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

ADAMSON, Mr Simon Peter, Spokesperson, Fathering After Separation.....	30
AKEE, Mrs Josephine Patricia, Indigenous (Torres Strait Islander) Family Consultant, Family Court of Australia	40
DOVEY, Mr Derek, Participant, Fathering After Separation.....	30
FAHEY, Mr Tony, Treasurer, Men Again Inc.....	21
JAMES, Mr Edwin Warren, Participant, Fathering After Separation.....	30
JERRETT, Mr Richard Ian, Chairman, Men Again Inc.	21
PEARSON, Mr Richard Michael Aaron, Participant, Fathering After Separation	30
STUBBS, Ms Judith Anne, Registry Manager Townsville, Family Court of Australia	40
WITNESS 1, (Private capacity)	2
WITNESS 2, (Private capacity)	10
WITNESS 3, (Private capacity)	10
WITNESS 4, (Private capacity)	16

Committee met at 9.23 a.m.

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

From the outset, I stress that the committee does not have any preconceived views on an outcome for this inquiry. Accordingly, throughout the inquiry we will be seeking to hear a wide range of views on the terms of reference while at any one public hearing we may hear more from one set of views than from another set—for example, more from men than from women, as it appears in Cairns today for this hearing. By the end of the inquiry we will have heard from a diverse group and thus will have received a balance of views right across a range of issues.

The public hearings the committee is undertaking are focused on regional locations rather than capital cities. At these regional hearings, the focus will be on hearing from individuals and locally based organisations. Later in the inquiry we will hear from the larger organisations, such as the Family Law Court and the Child Support Agency in Canberra, or via videoconferencing. Today we will hear from six witnesses: three individuals and three locally based organisations.

I remind everyone who is appearing today as a witness that the comments you make are on the public record. You should be cautious in what you say to ensure that you do not identify individuals and that you do not refer to cases which have been or are now before the courts. We have set aside about two hours for the public hearing. That will followed by about an hour for community statements, each of about three minutes duration, so members of the general public who have not been selected for the hearings this morning, or anybody else, can stand and make a statement about the concerns they have in reference to the current inquiry.

[9.25 a.m.]

WITNESS 1, (Private capacity)

CHAIR—Welcome. The evidence that you give today at this public hearing is considered to be part of the proceedings of parliament. Therefore, I remind you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. I remind you that the comments that you make are on the public record. You should be cautious in what you say to ensure that you do not identify individuals and that you do not refer to cases before the courts. Having said that, if you would like to and would feel more comfortable doing so, you could move into a confidential segment. Alternatively, you can stay in the public hearing as you are now.

Witness 1—I am quite happy with the public hearing.

CHAIR—I remind you that you should not be identifying individuals or anything that is currently before the courts. Would you like to provide a brief overview for about five minutes? Then I will proceed to asking the committee to form their questions.

Witness 1—I am a professional, as you know. I have been living in Cairns for 20 years. I have two children, who were born in Cairns, aged 10½ and nine. I have been divorced for six years. Currently my children live with their mother in Melbourne, and have done so for the last 2½ years. Upon separation, I believe that there should be automatic joint custody, no matter what the reason for the separation is or was. Obviously, this can change with time, depending on things such as work commitments, whether people wish to move out of the state, remarry et cetera. I believe that the children's interests should come first. At separation, children need both their parents.

In my situation I worked the hours and made the money by mutual agreement and my ex-wife stayed home. When it came to the separation and the court proceedings, I was told that I had no chance of even going for custody of the children because she spent most of the time with the children. Therefore, she was most likely going to get the children. That is what happened in my case.

If we have joint custody, I believe that this will certainly ease the pain of children upon separation. It certainly will ease the pain of the parents and grandparents. Hopefully, it might even make people try to work their marriage out a little bit better before they do separate. I believe that it will decrease any suicidal risks or suicidal thoughts that pop into people's heads upon separation. Grandparents play a big part in the children's lives before separation so I believe they should play a great part post separation, and that is on both sides of the family. As my background is ethnic, we are very family orientated and the grandparents put in a lot of time with my children. Apart from being quite devastated myself, my parents were quite devastated as well.

This is all under the proviso that both parents are 'fit' parents, whichever way you want to see that, and also that the children will not come to any harm with either parent or with the

grandparents. Once again, I believe this should be enforceable and penalised if it does not happen, because it will stop a lot of the game playing that happens after divorce or separation.

With regard to the child support formula, I do believe child support should be paid. That is the first thing. I certainly believe that it is strongly biased against the breadwinner. The breadwinner tends to lose the children and to lose quite a bit of money in the process as well. Currently, from what I can understand, it is based on gross personal earnings. There is a percentage based upon how many children you have. It is tax free for the person who is receiving the child support, and this allows them to work full time or extra hours on top of that. It is taxed for the person who is providing the child support. At this stage, I understand, the cap or the ceiling on how much you earn is quite high. In my case—I have the two children—it is 27 per cent gross, which is CPI linked every year. Whether or not you make more money, it does not matter; it just gets CPI linked. At the same time, I am paying full private health insurance for the children, and that certainly amounts to quite a few dollars per week. I pay the tax on top of that, so you can virtually double what I pay out for the children now.

With all that taken into account, after I pay my own expenses—and I have had a bit of a mishap or failure in a business that I had, which incurred extra debts—at the end of the week it makes it quite hard to get on with life. It certainly makes it very hard to try to make a living for retirement. I am not getting any younger at this stage. I am finding that, being a professional person, I am working harder and much longer than I used to. I am much certainly more stressed just having to pay debts and keep up with child support at this stage. My lifestyle has become much less than it used to be. It is a catch-22: you have more debts—child support being one of those debts, of course—you are working harder, you are earning more money to pay those debts and, in turn, you find you are paying a lot more child support. On top of that, you are getting the higher debt. It is very difficult to get ahead in life at this stage, especially if you are planning for retirement.

To vary child support, which I am currently trying to do, I find that there is a massive amount of paperwork. There is a massive audit by my accountant for my affairs. The accountancy fees and solicitor's fees are very high. I would not even have a clue how much reduction I am going to get at the end of it. From what I am told, it could only be a very mild reduction for the amount of expenses I am paying.

Part of the court orders was that certain things are paid—for instance, airfares for my children. If that does not happen then the only course of action I have is to go back to court, which costs more money. From what I understand from my solicitors, she gets a slap on the wrist, goes back out and does not have to do it again, whereas if I do not pay my child support I am hit with an interest rate which gets put onto my next bill and which gets secured if I do not pay it. Although it is not totally enforceable there is still something in place for child support if it is not paid.

These are my proposals. I believe that the percentage rate per child should probably be lower than it is and that the cap or the gross earnings for personal income at the level that the percentage is charged should be much lower than it currently is. It would be nice to think that it would be totally claimable, but I cannot see that happening. Certainly, child support should be at least part claimable for tax purposes. I believe that the tax should be paid by both parties, not just the person who is paying for the child support, and both parties should have some claimable component.

I believe there should be penalties on both sides. There should be penalties not only if you do not pay but also if you do not abide by what is told to you, especially regarding things like expenses that are proposed in the court orders. I believe there should be more of a say in where the money is spent because, at this stage, I certainly have no idea where the money for my children goes, except for the obvious such as schooling et cetera. I do not see my children wearing the most expensive clothes or going to the most expensive school down there, and I certainly pay quite a bit of child support. It would be nice at least to say, 'I would like some of that money to go towards some sort of a trust fund for the children—that is, an ongoing payment.' It would be nice to know that there is some money being put aside for them.

The other thing I am quite touchy about is that my children live in Melbourne and, because I see them every school holidays, that means I take time off work, and that means no income. When I go back to work, I find that I am working much harder to try to catch up on that income. The children are with me for two weeks, most times, and at the Christmas break it is for three to four weeks. Because my parents live in Brisbane, I fly the children to Brisbane. I pay a lot of their airfares to Cairns and Brisbane. While they are with me, they cost money for food, clothing, expenses for going out and things like that. That ends up costing a lot of money, yet I am still paying full child support for that month. I feel that this should be varied in some way, depending on how long you have the children for on holidays or breaks.

Mr CADMAN—You bring up a real conundrum for us. To what extent should your wife's current partner—I take it she is with somebody—

Witness 1—It is not an amicable—

Mr CADMAN—You talk about a very large income—larger than your income—so I assume you are talking about her own income plus somebody else's.

Witness 1—She gets the income I give her per week, which is tax free—it is not taxable for her. She and I do not speak very much but, from what I understand from speaking to the children, she works part time on top of that. As far as I am aware, she does not have a live-in partner. But we do not communicate any of that; that is just what the children tell me. At the end of the week, with what I have left to live on after paying my own expenses—and I am not talking about an extravagant lifestyle—I find it very hard to make ends meet at the moment. I am a professional who earns supposedly big money and is supposed to be wealthy, but I find that is definitely not the case.

Mr CADMAN—I guess it does not apply in your circumstances, but what we are struggling to understand is how the financial responsibilities are broken up between the partners when a separation occurs. If other children of a new relationship are involved, to what extent does the financial responsibility shift to other parties who are not the biological parents?

Witness 1—That does not apply in my case, so I have not really put a lot of thought into it. I can only go by what is happening with me at this stage.

Mr CADMAN—Your problem is with the tax-free limit, which, I think, is about \$36,000.

Witness 1—Do you mean the ceiling?

Mr PRICE—The income we are talking about is disregarded; it does not apply.

Mr CADMAN—For your wife's income.

Witness 1—What is your point?

Mr CADMAN—Are you saying that it is too high, that your contribution is too high because it is tax-free income in the hands of your wife, or what?

Witness 1—I feel that it is quite high for what I am paying, bearing in mind that I get no tax credits on that. She certainly does not pay tax on that. She has the capacity to work either part time or full time. The children can go to carers for the day while she is working a full day, so she has the capacity to earn extra income on top of what I am giving her. The income I am giving her is roughly equivalent to an average person's income per week. She has the capacity maybe not to double that but certainly to earn substantially more than she is getting now. I know that she is, because she is doing at least some part-time work.

Mr CADMAN—Thank you. That has clarified that.

Mrs IRWIN—Are you a medical doctor?

Witness 1—Yes, I am a medical doctor.

Mrs IRWIN—I need to ask this question before I can follow on with my second question. You have stated in your submission that you have returned to court when there have been breaches of your contact orders. Does that mean that when your wife was living in Cairns you went back to court for breaches of those orders?

Witness 1—I did not actually go back to court but back to the solicitors, to find out what could be done. Court orders were put in place that I was supposed to see them at certain times while they were living in Cairns. Although it might not have been my day to have the children, on special occasions, like my birthday, I would turn up and would not be allowed to have them. I am not saying that happens now. Most of this happens in the early stages of separation. There is still a lot of animosity now, but back then there was even more. Back then, a lot of games were being played between the parents. I found that, on my birthday, although it was not a day on which I was supposed to have the children, when I asked to have them the answer was no. Even now when they are supposed to be flown to Cairns at her expense it does not happen. The basic story I get is that, if I want to see the kids, I have to pay their airfares. These are the sorts of things that happen.

Mrs IRWIN—Did you agree with your wife taking the children to Victoria?

Witness 1—I agreed because she was supposedly going to get married. It turned out that within two months of her moving down that particular person was not there anymore.

Mrs IRWIN—You do know that you did have an avenue open to you? It has happened in other cases.

Witness 1—At the time she was getting married and they wanted to move down to Melbourne. I really did not want them to go but it is a bit hard to stop someone who is supposedly getting married from going. All of us can be quite nasty at times but I do not think I am quite that nasty.

Mrs IRWIN—Hence my next question is in regard to the comments that you have made about child support. You state that you support child support but you feel that the formula is unfair. Some people that have come before us in previous public hearings have stated that they feel that fairness would require that instead of gross it be paid from net. I think you have already stated that. Would you agree with that?

Witness 1—That would be ideal. But given the way it is now, there are a lot of people out there finding ways of avoiding personal gross income, to minimise it. In my case I cannot. Most of my stuff is Medicare and it is above board and that is it. You pay what you get, and that is it. You always think about it. I am not just thinking about myself. A lot of men do it, and that is why they do it—I am sure of it—because they can vary it so it looks as though they have no income. That would be ideal but you are still going to get people who will abuse the system.

Mrs IRWIN—You also suggested—and you said that it might be hard for governments to implement this—a tax deduction. So if you were paying it on the gross amount you should be able to claim it as a tax deduction.

Witness 1—A full tax deduction is certainly unreasonable but some sort of part tax deduction would be great. It would certainly help a fair bit.

Mrs IRWIN—You have also stated that if you do not pay child support there should be a penalty. But let us look at the other side of the equation. If the person who has the child, be it mum or dad, breaches an order, should their payments be stopped until you can actually see your children?

Witness 1—That sounds like a great idea. I think they should be penalised in some way. I have not actually sat down and thought what the penalty should be but that is certainly one option.

Mr PRICE—I got the impression that the payment of airfares for the children to come up to Brisbane was part of a court order.

Witness 1—Yes, it was part of a court order.

Mr PRICE—You asked for a lower cap on the income in the child support formula. What would you recommend that the committee look at?

Witness 1—I might be wrong as to what the cap is now but I think the cap is about \$105,000 at this stage. At one stage it was down from what I was told. I do not know if this is true or not but it was down around the low nineties or high eighties at one stage many years ago.

Mr PRICE—It increases as a function of average weekly earnings. That is the key determinant.

Witness 1—I certainly have not thought about what it should be, but it would be nice if it were lower. I am not hitting that cap at this stage but it would be nice to think that the cap could be lower.

Mr PRICE—What about the percentages?

Witness 1—To what they should be varied down to?

Mr PRICE—That is what you were suggesting.

Witness 1—Once again, what I would like and what would be fair would be too different things. Because I am the one paying the money, I would like it as low as possible.

Mr PRICE—Okay. Let me ask you a different question. Fixing up child support is not rocket science. There are always three people involved: the two parents and the government. If you want to change the formula, two of the three will benefit and one will suffer. How much do you think the government should spend on reforming the Child Support Agency? Would you say \$100 million or \$150 million—to get some fairness in?

Witness 1—That is difficult to gauge because I do not know how much you have spent on other issues, so it is a bit hard to compare. The more spent on it, the better, I think.

Mr PRICE—Let me put it to you this way. I thought the scheme that existed prior to the child support scheme was a disgrace, but there is no doubt that when the scheme was introduced the greatest priority was the government clawing back what was then social security, now Centrelink, benefits. If you ease off on those—but it obviously means the government has to invest money in reform—you can change it. You can change it on clawback, you can change the impact on the formula and you can lower the cap. But it will cost the Commonwealth money.

Witness 1—It will cost money, but there is a lot of money being lost now because of people who are not up front about what they are earning. There is certainly money being lost there anyway. I am sure that people will not have to resort to such drastic measures to hide their income so they do not pay so much child support.

Mr PRICE—You are paying child support, plus you are paying health insurance; did I understand that correctly?

Witness 1—Yes. I am paying full health insurance for the children.

Mr PRICE—So you have got quite a whack to pay. If you mind me asking, you do not have to answer, but how much do you estimate that you have spent on lawyers to date?

Witness 1—To date?

Mr PRICE—Yes.

Witness 1—It would be up around \$100,000.

Mr PRICE—Thank you.

CHAIR—That goes to my question, because I wanted to get an understanding of the costs that you incurred through solicitors and the courts. You have now indicated that those costs would be well above \$100,000.

Witness 1—And a large slice of that initially was not even going for child custody. Child custody was part of that.

CHAIR—Would you support a third element in the system—a different structure? As you know, there the Family Court and the Child Support Agency deal with the child support for your children, and there is nothing in between. If you wanted to sit down to mediation within a strict structure, it is not really available, although you can get assistance from non-government organisations to go through mediation to try to resolve differences. Would you support a compulsory structure that said you had to go through this process before you were able to go through any legal process? It might be a tribunal panel, consisting of maybe somebody with a legal background, a psychologist and a child specialist or whatever. You would go through a series of issues about how you were going to deal with the situation as a family apart, as opposed to being together and intact, and what sort of arrangements you could come to for the shared parenting role—maybe fifty-fifty access. But I am talking about fifty-fifty access as a starting point, not a strict ‘You’re going to have fifty-fifty access.’ Do you consider that there is a need for a structure like that?

Witness 1—Absolutely.

CHAIR—So, even though you are in conflict with your partner, as I have noted from your submission and as you have indicated this morning, if there had been a structure in place that gave you the opportunity to try to sort it out—you always have the family law structure afterwards if it is just impossible to sort out—do you think it would have assisted you?

Witness 1—Definitely. I still think that we should have joint custody immediately, though, providing the circumstances are right. I think joint custody should be the first option anyway.

CHAIR—So, if such a thing were available, do you consider that a component of that process should involve the grandparents and other people who have a very significant role in a child’s life, whether they are an aunt, an uncle or something?

Witness 1—Definitely. You find that those people usually have a huge impact on the children upon separation.

CHAIR—So they should be part of the process of trying to resolve what is going to happen in the future; there should be a collective of not just the parents and the children but also of people surrounding it in an individual sense?

Witness 1—I think they should have an input, but I do not think that they should have a total say in what happens—I think that should be between the parents.

CHAIR—Do you believe that if your children had been able to have a separate representation aside from that of you or your former wife that would have been beneficial to a child—to have had their own individual separate person to talk to and make decisions, recognising that they can get that in a family law court? This is pre any legal avenue.

Witness 1—This is an independent person, is it?

CHAIR—Yes.

Witness 1—I think that is a good idea, but I think it depends on the age of the child. It was six years ago that it happened. My children are now 10½ and nine years old, so one of them was quite young. But I think that is a very good idea.

CHAIR—You have raised a very important issue there. At what age do you think your children would have been able to be represented?

Witness 1—Children at any age, especially the younger they are, will tell you they love both their parents. So you can talk to a child and get them to say whatever you want to them to say. There is no age limit that I can put on it, but certainly a very young child will tell you what they think. They will tell you that they love their mummy and they love their daddy—and they love their aunts and uncles. So it is difficult.

CHAIR—Thank you. We appreciate you coming before the committee this morning. It takes a lot of courage to come forward into a public hearing and air your private concerns and your private life. We do appreciate it, because it will assist the committee in hopefully coming to some very favourable outcomes from this inquiry. Thank you for your attendance.

Witness 1—Thank you very much.

[9.53 a.m.]

WITNESS 2, (Private capacity)

WITNESS 3, (Private capacity)

CHAIR—Welcome to today’s public hearing. I indicate to you that the evidence that you give at this public hearing is considered to be part of the proceedings of parliament. I therefore remind you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. I remind you that comments you make are on the public record. You should be cautious in what you say to ensure that you do not identify individuals and do not refer to cases before the courts. Having said that, you have the option to go into camera if you so wish, otherwise you can stay in the public hearing as you currently are.

Witness 2—The public hearing is quite all right.

CHAIR—Then I gently remind you again to refrain from identifying individuals or mentioning any cases before the courts. I ask you to give a brief five-minute overview, then I will proceed to ask the committee to formally ask you questions.

Witness 2—We are here today to represent ourselves, naturally, on behalf of grandparents. My wife would like to read a statement, then I will take over a little later.

Witness 3—We put in a submission as grandparents. We have a grandson who is 3½ years old. We love him dearly and he loves us, but we are not allowed by the mother to see him, speak to him on the phone or have any contact with him whatsoever. Up until eight months ago we played a very big role in this little boy’s life, even up to the point where the mother left him in our care for five days while she went on a trip to Bali. Then one day the mother decided she had had enough of the lifestyle she was living in Cairns and took our grandson away. We have a solicitor’s letter detailing the reasons why she left Cairns. We believe they were not very valid reasons, but they were enough for her to tear this little boy away from his father and grandparents. We believe that our grandson is suffering under these circumstances, whereby has was suddenly taken away from a comfortable and stable environment and all the things that are familiar to him. He was taken away from his father—our son. It has taken our son six months to access some rights through the legal system to enable him to see his son. But these rights do not make any allowances for us, as grandparents, to see our grandson. It is quite the contrary. If the mother knew that we were seeing our grandson at the times that his father had access, she would undoubtedly put greater restrictions on the father’s access.

The tragic part about this situation is that we do not know why she has this negative attitude towards us, as in the past we have only supported, assisted and helped in any respect that she has put on us, as in the upbringing of our grandson. As grandparents, we only want to have access to our grandson to play a part in his upbringing, without causing any trauma or agitation to his mother.

CHAIR—We have your submission in front of us, and that is obviously going to be a statement. It would be helpful if you wanted to add anything over and above what is currently in your submission, because we are all very familiar with it. In order to give you the time to make some additional points, I need to tell you that.

Witness 2—I will take over. When our son has custody of his son, we fly to Brisbane and spend some time with him so that we can at least maintain contact with our grandson. At the same time, we are very careful that his ex-partner does not find out that we are there, in case she makes it harder for our son to access him.

CHAIR—Can you expand on that?

Witness 2—On the various occasions that our son has access to his son, he can see him six times a year for seven days. When his seven days come about to go and visit his son in Brisbane, we fly down as well. But we are not allowed to go out to pick up our grandson with our son. We are saying that if the mother found out that we were in Brisbane at the same time our son was there, because he takes our grandson away from her and goes and lives with our daughter, mainly, while he is in Brisbane, we feel quite sure that she would make it very uncomfortable and make it harder for our son to get access. And we really do not know why.

CHAIR—As I said, would you like to add any further pertinent points over and above your submission that you would like us to recognise?

Witness 2—As grandparents—and I am talking about grandparents everywhere; I am sure there are other people in our situation—we think it is important that we play a major role in the upbringing of grandchildren. We think that we can contribute to his upbringing. We have a different lifestyle to the one he is living now, and we can contribute to his upbringing, training and what the child learns through life. Having another family there to care for him and love him is very important to the child. At the moment he is living with his mother. I do not know whether he is living with her parents, but he is down on the Gold Coast and he is living in an environment that is totally different to ours. And we would like him to experience our lifestyle and be with us. We are not saying that we want him to come and live with us, but we would at least like to have access to him—open access, rather than having to be sneaky about it. It gets to the extent where if we are with our son and our grandson in a car and we know for a fact that his mother is ringing him we have got to be quiet and not make a noise or anything like that because it puts our son on edge—he really thinks that if the mother knows that we are there she will give him a lot of grief over it.

Mr PRICE—Pardon my ignorance in asking, but what is the airfare from Cairns to Brisbane? What does that cost?

Witness 3—It can range from \$300 to \$500, \$700 or \$800 depending on the time that you are flying, such as school holidays. There are a lot of things which influence airfares.

Mr PRICE—How would you like recognition to be given to grandparents?

Witness 2—We would like to go Brisbane. In my business I fly to Brisbane quite often; I am down there for a week at a time. When I am there, I would like just to go out and visit him at his

house or arrange to meet him in a public place where I could see him, but that is not on. When we have holidays of our own, regardless of whether our son is there or not, we would like to get access to our grandson and take him on a picnic or to a fun park or something like that. We would like to have access to him so that he recognises that we are there and that we love him and that we are another part of his family and part of his life.

Mrs IRWIN—Am I right in saying that you stated that your son goes from Cairns to Brisbane six times a year and can spend seven nights?

Witness 3—That is correct.

Witness 2—That is right. I do not want to get petty, but he is down there at the moment. He was invited here today as well, but he took the opportunity to see his son rather than come here, and you can all understand that.

Mr PRICE—You cannot blame him for that.

Witness 2—Having said that, the arrangements this time were that he had him for seven days. He is in the armed forces—that is all I will say—and his leave came through such that it allowed him to leave on Saturday and come back the following Sunday. He asked his ex-partner whether he could take our grandson for the extra day, as he was going down Saturday morning. If he had picked him up Saturday morning he would have had to have him back on Sunday morning. So our son asked his ex-partner if he could have him the extra day to take in Father's Day and bring him back late on Sunday afternoon, and she said: 'No, you can't have him. If you want him on Father's Day you will have to pick him up on Sunday and take him back on Sunday.'

Mrs IRWIN—How did the court make this decision? The reason I am asking this is that I have noticed that your grandson was born in Cairns.

Witness 3—That is correct.

Mrs IRWIN—The mother lived in Cairns for some time prior to moving back to Brisbane.

Witness 3—That is correct.

Mrs IRWIN—Did your son go back to court or seek a solicitor's advice to state that he did not want her to move from Cairns to Brisbane, because he needed to be close to his son? Or was this a court decision?

Witness 3—This was the second time that she had left, and on both occasions he got an injunction from a solicitor to stop her from leaving Cairns until some custody agreements could be sorted out, but she left anyway regardless of what the letter said. On the second occasion that she left our grandson was older. When she was presented with the injunction she just left almost immediately, and it has taken our son up to six months, through the legal system, to gain any sort of consent orders that she would sign.

Mrs IRWIN—Are you aware that the Family Court currently allows grandparents and others, even aunts or uncles, to apply for contact orders?

Witness 2—No, we are not aware of that.

Mrs IRWIN—You are entitled to do that, so that is something you may consider. I think you were stating in your opening statement or the comments that you made that you go down there to see your grandson and you feel like you are sneaking around and you are concerned that if the mother found out you were doing this she would not allow the child to actually go to the father or even to see you. You have got a right under the Family Court.

Witness 2—I am not saying she would not allow it, but she would probably make it more difficult for him.

Mrs IRWIN—You have got a right. Have you been involved in any organisations? What I am hearing from some of the grandparents particularly that have come before us is that there are not many groups out there that will help grandparents.

Witness 2—To start with, we were not aware that there were groups to help grandparents.

Mr PRICE—There are quite a few.

Witness 2—In fact, on several occasions we have asked this question. We have not been to court, but we have asked the solicitors that my son has been using, and they have never given us any indication that there was a group that could help grandparents or of whether or not we had any rights whatsoever. In the past, we have always been told that the child has rights to visit the grandparents and be with them, but we have also been told that children under four years old cannot leave their mothers under any circumstances.

Mrs IRWIN—That is not correct.

Witness 2—They cannot travel on their own or leave the mother unless she agrees.

Mrs IRWIN—My last question might be a bit personal, so you do not have to answer it if you do not want to. I suppose that solicitors have cost your son a lot of money. A lot of the parents that have come before this inquiry have assisted with the costs. In one particular case, it cost a grandmother \$50,000 and she has lost her family home. Have you assisted your son?

Witness 2—We certainly have.

Witness 3—Yes.

Witness 2—He has his own income and supports his son. There has never been a problem there. In fact, the child's welfare comes straight out of his wages and into his ex-partner's bank account.

Mrs IRWIN—How much has it cost so far for solicitors and court costs?

Witness 3—It has cost \$8,000 so far.

Witness 2—That was over a period of six months to get to where he is now. We have not done anything for ourselves. We wanted to make sure he was settled and that some arrangements were put in place that gave him access. We are very reluctant to do anything more, because we do not want to upset anything for him.

Mrs IRWIN—Thank you. It is quite obvious that you love your grandson dearly, and I hope that you will be able to spend more time with him.

Mr CADMAN—I think you may have answered this question. What rights do grandparents have, compared to those of the parents? You have said you would not want to damage your son's access, but it seems to me, from what you have said, that you would push to the maximum to get access. I am trying to weigh up in my mind how you regard the rights of grandparents, compared to the rights of parents. Do you regard them as equal?

Witness 3—No. Parents have more rights than grandparents, and so they should have. Grandparents are there to provide support.

Mr CADMAN—If your son and his partner said they did not wish you to have contact with your grandson, would that make a difference?

Witness 3—Yes.

Witness 2—Yes, most certainly. We do not have anything against his ex-partner. We always had a good relationship, right up until the time she left; we do not know why she is like this. We have our own ideas about why she may be doing this. It is probably just to make our son's life a little bit harder. She cannot get to him, so this is one way of getting to him if she wants to punish him—for what, I do not know. That is what we think the reason is, but we do not know what her real reasons are.

If she said we could have access to him—any access, either on our own or in her company—we could feel free about it, and not sneaky or underhanded. We could see him out in the open. We could go and see him when I go to Brisbane on business or when we go there on holidays, and we could take him, as I mentioned before, to a fun park or a zoo or something like that. That is all we are asking. You mentioned that there are organisations for grandparents, and we will certainly follow that up. But, up until now, we were very reluctant to do anything, because we did not want to upset the boat for our son.

Mr CADMAN—I see what you mean, but you almost seem to be saying that there should be a process at law whereby a secondary claim on access should be given to grandparents.

Witness 2—Yes, that is probably correct. I think that, somewhere along the line, when two people separate and there are children involved—in this case, grandchildren—the circumstances of the grandparents and how they can add to the child's welfare should be taken into account. Whether they have rights they can demand, I do not know. As far as I know they have not. I could be wrong. If there are cases, we are certainly not aware of them. They have a right to their grandchildren just as much as anyone else close in the family. I am also including uncles and aunties, down the line. The family unit is the whole thing, not just the father and mother but the grandparents, certainly, and to an extent also the uncles, aunties, brothers and sisters.

CHAIR—Do you support the presumption of equal time and shared access?

Witness 2—Definitely.

Witness 3—Yes.

CHAIR—I am a bit confused as to why your former daughter-in-law would make it more difficult if she knew you were around. That is obviously a personal issue. You have indicated in your submission that you do not understand. If you had a presumption of equal access from the outset and there was equal shared access with your grandson that would obviously give you more time with your grandson. How do you think your former daughter-in-law would appreciate that? Do you think you would be able to cooperate with her?

Witness 2—If she agreed with that we would certainly try to work out an agreement with her. We would agree straight up, regardless. If she put certain clauses in we would be willing to listen to the clauses. Equal access would be brilliant, but we would accept any access at all at this stage.

CHAIR—Thank you for attending this morning. They are very difficult and emotional circumstances. Grandparents are very important in children's lives. That is why part of this reference refers specifically to grandparents. Thank you for allowing us to hear your story this morning.

[10.12 a.m.]

WITNESS 4, (Private capacity)

CHAIR—Welcome. The evidence that you give at this public hearing is considered to be part of the proceedings of parliament. Therefore, I remind you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. I remind you that the comments you make are on the public record. You should be cautious in what you say to ensure that you do not identify individuals and that you do not refer to cases before the courts. Having said that, you have the option to go in camera if you so wish, or you can stay in the public hearing.

Witness 4—I will stay in the public hearing, thank you.

CHAIR—Thank you. You can provide us with a brief overview of the points that you wish to raise over and above those in your submission, then we will proceed to questions from the committee.

Witness 4—I am appearing on behalf of several of my workmates who are separated fathers and who are paying child support. From the people I know who are separated from their partners and paying child payments, the complaints are always the same. No-one begrudges paying child support; they are complaining about the unfair way the amount they have to pay is calculated. The suggestion is that child support should be calculated on a person's base rate of pay. Any overtime worked, penalty rates, shift allowance et cetera should not be taken into consideration. This way the person receiving the child support gets money, and the person paying the child support has a chance to save money and start a new life with another partner. As it now stands, any person paying child support has little or no incentive to work any longer than they have to, knowing that any extra money earned is going to increase their child support payments. Also, the amount payable should be calculated after tax and not on the gross amount.

Obviously these suggestions are aimed at blue-collar workers who work for wages and who are taxed every week. He or she has no chance of escaping child support payments because if the money is not paid willingly their weekly pay is garnisheed to cover the payments. The self-employed have the luxury of not having their pay garnisheed if no child support is paid, and there lies another inconsistency. A couple of nights ago on *A Current Affair*, a woman stated that her ex-partner who was self-employed had a turnover of around \$150,000 last year and paid no child support because, after expenses et cetera, his taxable income was actually zero. Why is his child support calculated after expenses while a person who is paid and taxed weekly has their child support calculated on their gross amount?

The other major complaint is about how often the ex-spouse breaks court rulings in regards to letting the father have the child or children for the allocated time. The father turns up at the designated pick-up point to get his child or children for his allocated weekend and the child does not show up. He rings his ex-partner, if he is fortunate enough not to have a domestic violence order against him and can actually talk to her, and asks why she did not bring the child. His ex-partner or ex-wife tells him whatever she wants and hangs up on him. What is his next course of

action? He rings family services—or whatever they are called—and they promptly tell him to go and see a solicitor. The result is the solicitor says: ‘No problem; I’ll fix it up. It will cost you between \$1,000 and \$1,500 for me to issue her with the necessary papers for contravening the court ruling.’ The magistrate gives her a slap on the wrist and she continues on her merry way. After four or five unpleasant experiences like this, the father is broke because of the legal fees and he just gives up on seeing his child or children, yet he is still expected to pay child support.

Another concern is that on separation of a couple the father, who automatically gives up any hope of getting custody of his children anyway, has to spend anything between \$10,000 to \$17,000 or more on legal fees just so he can get to see his child or children on weekends. For a person earning about \$35,000 that is a lot of money to have to pay out for something they should be entitled to. There should be a minimum standard set that automatically allows a non-custodial partner to have his or her children every second week once a month or whatever. If that is not satisfactory then—and only then—should legal proceedings be instigated. I thank members of this committee for taking the time to listen to my suggestions.

Mrs IRWIN—Thank you for your submission. You have suggested that if a resident parent receiving child support has a new partner earning a substantial income the non-resident parent should not have to pay the full rate of child support. The child support scheme, as you would be aware, currently works on the principle that the parents of the said child or children are responsible for their support. Do you think that should change? Let us say a woman remarries a man who earns a substantial amount of money. Are you saying that the child support payment from the father should reduce?

Witness 4—That is right. I will give you a classic example. I am working with a friend of mine. The wife of my friend’s brother-in-law was a head theatre nurse in one of the southern hospitals earning whatever they earn—\$80,000 or \$90,000 a year. She shot through with a doctor friend of hers who was earning perhaps \$200,000 a year. My friend’s brother-in-law is a pool cleaner earning about \$30,000 a year. She took the two kids. Between her and her new boyfriend, they are earning \$250,000 or \$260,000 a year and he is on \$30,000 a year and he is still expected to pay the full amount for his two girls.

Mrs IRWIN—But they are his children.

Witness 4—He isn’t saying he should not be paying the child support; he realises he has to pay it. But if someone is getting \$2,000 or \$3,000 a week, is his lousy \$180 or \$200 a week actually going to help anything?

Mrs IRWIN—It has been suggested by some individuals that, in those circumstances, a trust fund would be appropriate. Would you support that?

Witness 4—Yes, definitely.

Mrs IRWIN—You also stated that you support net instead of child support coming out of gross.

Witness 4—Yes.

Mrs IRWIN—How about a taxable deduction?

Witness 4—Yes, that is probably just as good.

Mr CADMAN—You have put up some pretty good arguments and you have put them into pretty concise words. I like the way you have done your job. Thank you. On the right of access, your experience indicates that it appears that the person with custody can make decisions at any time or on whim—

Witness 4—That is right.

Mr CADMAN—whether or not to grant access.

Witness 4—As for the last bit about the grandparents, it is a terrifying thought too. This person I am working with, the court granted him access every second weekend but, now that he has to work weekends for a while, it will not let him have the child because he cannot provide a babysitter. He said, ‘What about the child’s grandparents—my mother?’ They said, ‘How old is she?’ and he said, ‘Seventy-eight. She has her full wits about her; she drives her own car.’ They said, ‘No, she can’t look after him; she is too old.’ What right has Family Affairs—

Mr CADMAN—Does he have days off through the week, though?

Witness 4—Yes.

Mr CADMAN—Now, instead of weekends?

Witness 4—The child goes to kindergarten, preschool or whatever, so the court ruled that every second weekend he gets the child but then Family Affairs or the Family Court—whatever they are called these days—said that she cannot look after him because she’s too old. She is quite willing to go to a doctor and get a certificate that says that she has all her wits about her, she drives a car, there is nothing wrong with her, yet they will not let the child be looked after by the grandmother for eight hours while he is at work.

Mr CADMAN—Do you think that people can break agreements without penalty?

Witness 4—Yes, very easily. Judging by what I am hearing, it is very terrifying out there how often these agreements are broken and nothing is done about it. The person—mainly the father—has to go to court to get something done, and there goes more money.

Mr CADMAN—What do you think of the idea that if a person breaks an agreement—it is pretty harsh if they are on a low income—they will lose some of the benefits? Perhaps some of the benefits could be nondiscretionary. You could say, ‘Thirty per cent of the child support funds must go to clothes and you must produce children’s clothes to a value of, say, \$25 or \$50 to prove that you have actually spent some of that money on clothes,’ thereby applying restrictions to the use of funds that are received by the custodial parent.

Witness 4—That is a good idea. At least the person paying the child support could actually see where his money was going. Like I said, no-one is begrudging the fact that they have to pay

the child support, but they cannot see where it is going. This bloke's ex-partner turned up and dropped the kid off with just the clothes that he was wearing. There were no spare clothes—no nothing. He has to buy clothes every weekend. Every time that it happens she just drops him off in the clothes he has on.

Mr PRICE—To pick up on Mr Cadman's suggestion, a previous committee recommended that the paying parent could spend 25 per cent of the child support amount on worthwhile things—clothes, school fees, uniforms, shoes and those sorts of things—without agreement by the former partner or spouse. It also recommended that if there were agreement a further 50 per cent—that is, up to 75 per cent—of the child support could be paid by the paying parent on worthwhile things and the Child Support Agency would draw up an appropriate list of things that it could be spent on. What do you think about that suggestion? Does it still have some validity?

Witness 4—I think it is a very good idea.

CHAIR—Currently you are able to have 25 per cent of your child support directed to that list of identifiable areas: school fees, ballet fees—a whole host of different things. Have you had personal experience of separation and child support?

Witness 4—Yes, I have. I have been tangled up in it. I am living with a lady now and I have been living with her for 25 to 28 years. When we first got together she was separated from her husband. I raised two kids—a boy and a girl. At the time, the boy was about five or seven and the girl was two years older. I brought them up without any support whatsoever from her ex-husband, who refused to pay child support. Now they have left home and gone on their ways. So I do know a bit about it.

CHAIR—Like Mr Cadman, I really enjoyed your submission, because there does not appear to be any vested interest in it. A member of the public who talks to his mates and to people around him—with his neighbours or whatever—has been passionate enough to put together several pages of handwritten notes and I think that is tremendous. When I say 'vested interest', I mean that, generally, submissions are of a personal nature and about personal experience. Obviously, to you, it is a major social issue. Do you want to comment on that further? You have picked up and run with it. Why do you feel so passionate that you would put in a submission? It does not involve or concern you—you have not really had a personal experience with it; you have been part and parcel of the after-effects of a broken relationship. Why do feel so passionately about this?

Witness 4—I have seen the trauma it has caused. This chap that I am working and other people that I work with also have been through this. But I personally know and work with this chap nearly all the time and I have seen what it has done to him and how it has affected his health. He is absolutely financially destitute and he is on the verge of selling his house. The Family Court does not care—it says, 'Sell your car as well, as long as she is getting her payment.' I have seen what it is doing to his life and what a mess it is making of him. His health has suffered and he has got to the stage where he is passing blood. He is just a nervous wreck. Something has to be done. He does not know where to turn for help. Everywhere he turns for help costs him money. He just cannot afford to go to a solicitor or anything like that. As I stated in the letter, it is costing him somewhere between \$13,000 and \$17,000 for solicitors' fees.

There is no free help available to him. No-one is interested. Someone has to help him somewhere along the track. That is how I got involved.

CHAIR—Congratulations—I think that is very admirable in a community member. Do you think that the family law process and the separation process are not widely understood by the general public?

Witness 4—Most definitely, they are not understood.

CHAIR—Do you think that, if they were understood more easily, it would ease the trauma that is associated with separation, breakdown and ultimately Family Court, if you can afford it, and there would be some sort of emphasis within communities on ensuring that we have more family friendly communities?

Witness 4—Most definitely, yes.

CHAIR—I find it very interesting, because you are on the outside looking in, and we are always on the inside looking out in these hearings. In your opinion, would you see the need for a third structure, or a structure almost like a sheep race, that enables people to be channelled through in order that, ultimately, they can get to the end of it and choose a pathway—they can choose either to get on with one another and determine by themselves what the future arrangements are going to be after their separation for their children or to go off to a Family Law court. Do you think that would be a valuable structure?

Witness 4—It definitely would be a valuable structure. But then you have the pig-headedness of people too. It might be easier said than done. Half the time you just wonder about the animosity—whether they really have the child at heart or they are just trying to go out and wreck each other.

CHAIR—Do you have any thoughts about what structure or support services might be put into communities generally—realistically, it cannot go into every nook and cranny right across Australia, because it is a very large continent, but let us say a reasonable sized community—to assist people to go through these processes prior to a marriage breakdown? We have lots of non-government organisations out there now, but I am talking about something that everybody knows is there and has a well-known facade?

Witness 4—Not really—I have not given it that much thought, to tell you the truth.

CHAIR—Thank you very much for coming. We certainly appreciate the time you have taken to put in a well balanced and well thought out submission from a community member with no real experience in the issue.

[10.30 a.m.]

FAHEY, Mr Tony, Treasurer, Men Again Inc.

JERRETT, Mr Richard Ian, Chairman, Men Again Inc.

CHAIR—I now welcome the representatives from Men Again Inc. Thank you very much Mr Jerrett and Mr Fahey for coming along to the public hearing this morning. The evidence that you give at this public hearing is considered to be part of the proceedings of parliament. I therefore remind you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. I remind you that the comments you make are on the public record. You should be cautious in what you say to ensure that you do not identify individuals and that you do not refer to cases before the court. Could you provide us with a five-minute overview of your submission and then the committee will proceed to questions.

Mr Jerrett—Good morning, welcome to Cairns. We have an opening statement. All the members of our support group are products of a course run by Centrecare called MENDS. Unfortunately, due to the lack of federal funding this course looks as if it may not be continued in the Cairns area unless we can find a private sector sponsor. There are very few opportunities for men to attend a course such as MENDS, and the results we have had in this area speak for themselves. I have helped to run four of these 12-week courses now and I have participated in one myself. I would have to say that all the participants in these courses leave with a better understanding of the situation they are in and have a better grasp of who they are. They are better able to relate to their children and their exes and even to society on completion of the course. We need more funding to continue these courses.

We represent a small group of fathers who have recently been through the pain, anguish and trauma of separation. As you can see from information you have on our flyer, we are a self-funded support group for fathers in need of non-judgmental support. We offer a telephone answering service manned by volunteers who are willing to take time out to listen to men who are trying to cope with the problems associated with being separated from their families. We will on occasion meet with these men informally at a coffee shop to enable them to vent their frustrations. We are not counsellors and we are not legal advisers but, where necessary, we may suggest avenues for them to follow. Our flyers are displayed in the Family Court and many of the legal fraternity in Cairns are aware of our presence and are willing to recommend us to their clients.

The present Family Court system works to create an adversarial situation between separated parties. In many cases this has a dramatic effect on the way each parent treats the other, with the obvious negative effect on the children involved. Children need both parents and this just does not appear to be the outcome in many cases. We have developed a winner/loser mentality and the children seem to be the biggest losers. In our submission we made the suggestion of a compulsory parenting course to be embarked upon immediately a separation is formalised. This course would be results based and a pass mark would need to be achieved before any final orders could be made. We feel that an education program of this sort could clearly define the parental roles in the future and show the importance of each parent in the lives of the children. Parental

communication should be an important part of this course. Another benefit could be the potential for a reduction in unnecessary litigation. This formula will not work for everybody but if both parents are in possession of the facts right from the start then we may assume they would be making more educated decisions in relation to the children. Following the program there would be little excuse for unreasonable behaviour.

We support the contention of shared parenting even if it is not on a fifty-fifty basis. Even sixty-forty as a minimum allows non-residential parents to have a much greater input into the lives of the children. Non-residential parents would need to change their work schedules to suit this format, but it would also allow them the financial freedom to re-establish themselves in society with the prospect of having some financial security. Many of the non-residential dads we have contact with can see no future in their present position and quickly lose their desire to be productive members of our society. As we all know, suicide and stress related diseases claim too many dads' lives as it is. This must change.

There is a mantra in the Family Court that the decisions are always made in the best interests of the children. Supposing we considered that the best interests of the children were that both parents were content with the outcomes of the separation and were free to move on and start afresh. Surely non-residential parents would be in a better frame of mind if there was relief from the constant financial and emotional pressures that can result from these proceedings. This, in turn, can only benefit the children. When the relationship is intact the father is usually the major breadwinner with the mother in the care-giving role. This is not always the case, but I think, in general, we can make that assumption. Why not give the non-custodial parent the option of taking on a larger share of the care-giving role if he chooses. If his career path dictates this is not possible, he can have the option of weekend contact and providing financial support instead.

We hear a lot of statistics floated around about how only five per cent of divorce residence cases end up in court. We would question how many are settled amicably and how many do not get to court simply because of the emotional and financial pressures involved. Legal representation is a very expensive agony which, once embarked upon, can become a self-sustaining juggernaut. Non-residential parents are often not in a financial position to see it through and therefore give up not because they want to but simply because they cannot afford it. This, in itself, can lead to long-term grief. I have often spoken to non-residential parents who have endured grief and heartache for many years after a court decision went badly for them. Recently there have been cases in the Cairns court where full custody has been granted to the non-custodial parent or custody has been overturned. To the best of our knowledge this has only occurred in situations when the non-custodial parent has instigated the proceedings or the custodial parent has breached orders. Equal opportunity to legal representation should be a given. Finally, we believe that if the CSA is to continue in its current format then some improvements are needed. We are not disputing that parents should be financially responsible for their children, but when separation occurs there must be the opportunity to start over. The present system does not allow for this.

Mr PRICE—Richard, can you tell us a bit about the course called MENDS? What does it do?

Mr Jerrett—MENDS is a 12-week course run by Centrecare. It runs for one a week for about three or four hours. It was written by a clinical psychologist who resides in Brisbane. It addresses concerns about the breakdown of the marriage, self-esteem, relating to children,

relating to exes and how to deal with your ex. It introduces coping skills—which are so important. Some of the guys we see in the first weeks of these courses have what is almost like a stress disorder—it is shocking and frightening. As the course progresses, probably into the third or fourth week, you can see them starting to build a bond. Once they start to realise that they are in a group of guys who are in exactly the same position as they are then that whole thing changes around and they realise they are not alone. They start to become less scared and frightened.

Mr PRICE—Are you aware how much the course costs—or how much the course is funded for?

Mr Jerrett—These are not exact figures, I do not have those with me—and it is run by Centrecare—but as far as I am aware the three courses cost approximately \$15,000.

Mr PRICE—Do you pay child support?

Mr Jerrett—Yes.

Mr PRICE—Are you paying 25 per cent directly to your children for specific things as the chair indicated you are able to?

Mr Jerrett—No; I just make payments that—

Mr PRICE—Were you aware that you were able to do that?

Mr Jerrett—I was not aware of that; no. Our issues are not necessarily with the Child Support Agency. We understand that it is a body that needs to be there. I would rather see something happening in the way that we separate. I would rather see an education program put in place where, upon separation, you have to do this course—you have to go through this thing and you have to understand that your kids need both parents, not just one.

Mrs IRWIN—Richard, you were just talking about an education program. It has been suggested that we have education programs in schools, whether they be primary schools or high schools. We have drug education programs and we have sex education programs, but we do not have programs for children who are going through their parents' separation. We can even have parenting programs. What are your feelings on that?

Mr Jerrett—I am inclined to think that there should be something in place for kids. Do you mean as a life skills thing?

Mrs IRWIN—Yes.

Mr Jerrett—I do not have any problem with that. The more we know, the better off we are.

Mrs IRWIN—I think you said that you have done some counselling. Was there any mediation between you and your ex-partner prior to going to court regarding who would have the children or how often you would have the children? Out of curiosity, how often do you see your children?

Mr Jerrett—I have two children. My son is six, and I get to see him every second weekend and every Tuesday night. I have a daughter who is seven, whom I have not seen in two years.

Mrs IRWIN—Is there any counselling or mediation process that you and your wife could go to?

Mr Jerrett—Yes. We have entered into numerous counselling avenues. Some have been dictated by the Family Court. Unfortunately, when it comes to the issue of contact, my wife seems to pull the pin at the last minute. I have contact with my son, as I say, but I do not have it with my daughter.

Mrs IRWIN—It has been suggested that, for families that are separating, prior to the case going to the Family Court—and I know that they offer mediation—there should be compulsory mediation because it is costing some mums and dads a lot of money to go to the court. Some of the organisations and individuals who have come before this inquiry so far thought that, if mediation were compulsory before the case even hit the court, that might be a lot better.

Mr Jerrett—I will be honest with you: my experience of the mediation in the Family Court was pretty disappointing. The whole mediation process hinged on us making a decision in a very short space of time. Neither of us was willing to do that and neither of us was able to do that. We never made any progress. If you were educated to start with as to what the potential outcomes ought to be and where you should be going, then I feel that you would be better prepared to go into a mediation session and say, ‘This is where we should be and this is what we’re aiming for. How can we bring this together?’ It does not happen at the moment. Each of us is going in with a different agenda.

Mrs IRWIN—It has also been suggested, mainly by men’s groups from whom we have received submissions, that governments—and I am talking about federal, state and territory governments—are not offering enough resources to men. There are women’s refuges; but, if a dad has to leave the family home and he has no family support, where does he go? He does not have a men’s refuge to go to. It has also been stated that there are women’s legal centres that are, virtually, solely for women, but there are no such legal centres for men. Do you think that governments should be looking at this and offering these resources not only to the women but also to the men?

Mr Jerrett—Unfortunately, men do not shout loudly enough. When we have a problem, we tend to suck it in; we do not talk about it. If a woman gets separated, the first thing she does is go and talk to her friends; she vents that anger and frustration. If a man gets separated, he sucks it in. He can see his mate the next day, and his mate will say, ‘How’s it going,’ and he will say, ‘Fine. Great. How are you?’

Mrs IRWIN—He does not like to share his experiences.

Mr Jerrett—We do not share our pain.

Mrs IRWIN—Hence, there should be more resources there for men.

Mr Jerrett—We do not ask for help. That is our problem. It is a male problem; it is what we do.

Mr PRICE—It is a male taboo.

Mr Jerrett—Yes.

Mrs IRWIN—I hope that taboo is broken. Hopefully there will be help out there for men as well, as there is for women, to say, ‘You only have to hold your hand out and we will take that hand and take you on a journey.’ I hope things can change. Thank you.

Mr Jerrett—I hope so too. Thank you.

Mr CADMAN—Can I run through the normal process of separation with you? There are a couple of points in your submission that are really interesting. In your experience, does a couple just bust up—say, the woman takes the kids and goes and lives somewhere else unexpectedly—and there is then no legal process until the divorce is put in train? Or is there a legal separation process entered into soon after the separation? Could you give me a bit of an idea of your experience of what the normal process is and what the break-up between different types of separation might be?

Mr Fahey—Apparently some years ago you could go through the formal separation process, but nowadays there is really nothing you can do. The only thing you have to do in the best interests of the children is try and get in place consent orders and that sort of thing. I know when I went through my separation I had absolutely no knowledge of what the system was. I was given the ultimatum that I would have my children every second weekend.

Mr CADMAN—How did that occur? How did you get into that? Were you told by a court? Did you front up one day and the court told you that or was it that your ex told you that?

Mr Fahey—My ex told me as I was leaving the house—because she chose that I leave—‘You know you get the kids every second weekend. I’ll give you that.’

Mr CADMAN—Was there an order in place at that point or not?

Mr Fahey—Not at that point, no. There was not an order placed until close to six months after separation.

Mr CADMAN—You talked about post-separation counselling and education. What about something that says: no separation until there is some sort of counselling or education program? That problem you have identified and each party’s rights would be understood by all parties separating.

Mr Fahey—I do not think you are going to stop the separation.

Mr CADMAN—No, I do not mean that; I mean to bring in a fairer process.

Mr Jerrett—I think we need to educate people who are separating. I agree entirely.

Mr CADMAN—You have just described a situation where you were unaware of the process: you were told what the circumstances would be and immediately you started that break with the kids.

Mr Fahey—I did not have access to legal help, because of my financial situation. I knew I could not afford to take on a decent lawyer. I approached Legal Aid but, because my taxable income was shown as being at a certain level, I was out of the scope—even though I was not getting that cash in the hand due to paying money for the kids and all that sort of thing. I was not eligible for any help from Legal Aid, so there was absolutely nothing there for me.

Mr CADMAN—So any education or support mechanism needs to go in pretty early.

Mr Fahey—Definitely.

Mr Jerrett—Right at the start. You need to know where you are. What we are finding is that guys who are separating are in shock. Whether they left or whether their wife left does not matter. At the end of the day, the marriage has broken down and they are in shock. They are grieving that loss. They cannot think straight.

Mr CADMAN—I think you are saying some pretty important things here with respect to the intervention point. That is very helpful. Thanks.

Mr PRICE—Richard, may I ask: prior to the break-up, did you and your partner undertake any counselling?

Mr Jerrett—We made attempts at counselling. To be honest, my heart was not in it. I left my wife. My feeling was that I had stayed in the relationship for quite a few years before—

Mr PRICE—You actually left.

Mr Jerrett—I had two beautiful children and I wanted to stay there for them come hell or high water. When that situation became impossible, I decided it was time to go. I had made the decision to leave years before and I was going to leave, but I did not know when. I could not do that with the kids that I had. It was just too much.

Mr PRICE—One of the things that has impressed me about your contribution this morning is that you have really concentrated on the health aspects, skills aspects and rebuilding the person aspects of separation. Without decrying the Office of Women's Affairs, because I think they do a good job, federally we do not have an office for men's affairs that focuses on the issues of taboos, counselling and health. Do you see the creation of such an office as important or unimportant?

Mr Jerrett—I would not mind accessing something like that. The magazines on the newsstands—*GQ* and stuff like that—are pretty popular. Guys do want to know what is going on in their lives and they do want to know how they relate to it. If they get it from a men's magazine or a women's magazine, it does not really matter—any information they can get—but they will not ask for it. That is our problem. As men, we bottle it all up and say, 'Yeah, we can cope with

that. We can handle it,' and it could be six months before the break-up. It could be six months, a year or 18 months before you finally just say, 'Hey, no, I can't handle this. It's just too much.'

Mrs IRWIN—I think Mr Price asked a very good question. The more that you lobby state, federal and territory governments, I think the better you will be. I was involved in a lovely group that started up women's refuges. I might have a talk to a few of my colleagues to see if we can start a men's refuge in New South Wales.

Mr Jerrett—That would be great.

Mrs IRWIN—Do you think that a lot of men do not take any court action because of the cost factor? They realise that it will cost them \$10,000 or \$20,000. As we have heard today, some can cost \$100,000 or \$150,000. So is it the cost factor?

Mr Fahey—Definitely.

Mr Jerrett—An estimate was given to me at the start of our proceedings: 'This will go somewhere between \$20,000 and \$50,000.'

Mrs IRWIN—And that was what virtually stopped you?

Mr Jerrett—It has not stopped me, but it is crippling me. I do not have that kind of money to splash around. It is not there. As you know, you get on to these legal proceedings and it takes no time before, all of a sudden, you are up for \$10,000 and you still have not got to court. It takes no time to get up to \$20,000 and you still have not got to court. The onus is on the person who wants the contact to bring the action. If you have status quo there already, you have to break that status quo in some way to get more contact. In my personal experience, when I left my wife, I just assumed that I would get contact with my kids, I suppose, every second weekend or whatever, and that would be all I could get. It was pretty enlightening to realise that that was not the case. There are places you can go where you might be able to get a bit more contact.

Mrs IRWIN—How old are your children?

Mr Jerrett—My son is six and my daughter is seven.

CHAIR—Could I ask what your thoughts might be about the terms of reference. Your submission quite clearly supports the presumption of fifty-fifty shared care as a starting point. You go through the terms of reference in detail. You might make comment as to whether or not, or under what circumstances, a fifty-fifty presumption should be rebutted. The reason I ask you is simply because you are a men's group with all forms of partnership breakdowns—not necessarily marriage breakdowns—for various reasons, which involve children. You would come across some with domestic violence, some who have committed domestic violence and some who have had domestic violence committed against them—which is supposedly unheard of, but it happens—or there might have been drug use or alcohol abuse. There are a whole host of different reasons as to why a partnership broke down. Because you are confronted with those various reasons, could you give some consideration as to under which circumstances you would consider a rebuttal.

Mr Fahey—I would say where one parent can be proven to be an unsuitable parent, which happens. In that case fifty-fifty would not work. That could be for various reasons, whether it is drug or alcohol abuse or physical abuse or something like that. But another part that would have to be considered, more so for the men, would be their career—their earning capacity. If they choose—and that is the key word—to continue on the career path they are on, fifty-fifty may not be possible. Therefore, it could be reduced or an agreement reached.

CHAIR—If two adults are violent towards one another and, say, in this circumstance a father is violent towards his partner but not towards his children, should there be contact with the children under those circumstances?

Mr Fahey—Under careful consideration, yes. The problem with a separation is that it is such a volatile time. There are so many things going on, there are so many things happening. There are buttons being pushed left, right and centre. You can see why things get violent. You get people taking out DVOs that are unsubstantiated. You get people taking out DVOs because there has been violence. But I would assume that a lot of this is as a result of the breakdown so, if you resolve the breakdown issues, why shouldn't that father see his kids?

CHAIR—Should you have rebuttable presumption? Should it be rebutted if either parent is a substance abuser, such as an alcohol abuser who is not a violent person with alcohol abuse, but subjects the children to a clear demonstration of an adult in a severely intoxicated or drug induced manner?

Mr Fahey—That is not a suitable environment for children to be in, in my opinion. Therefore, it would have to be looked at. Maybe, if one of the parents did have a serious drinking problem, it is just what they need to be able to get over it—to work through it so that they then can take on a good sharing, responsible role with their children.

CHAIR—Tony, you indicate that if a person wanted to continue on their chosen career path, they would not be able to accede to fifty-fifty shared care. What we are talking about is a presumption of a place to start with shared care. Nobody is forcing 50 per cent care on that dad if he has got to work and cannot possibly do it or on that mum who has got to work and cannot possibly do it for any given reason. It is just a process of a place to start and then it is worked out from there on; you look at the circumstances surrounding the individual cases. Do you think it would be true to say that, currently, men would feel as though there is a presumption of fifty-fifty shared care in a family law court system or in a breakdown situation?

Mr Fahey—Are you asking whether men would feel that way now?

CHAIR—That it is currently available to them.

Mr Fahey—No way known—not even close.

CHAIR—What do you think that they think the percentage of care or contact that they would get with their children would be?

Mr Fahey—I think the average would be the standard: every second weekend and maybe a couple of weeks in school holidays from time to time. That is my understanding of what the general view of the public is; not just men but men and women—the general public.

CHAIR—My last question is: how many men are there in your group?

Mr Jerrett—It fluctuates; eight or nine.

CHAIR—Thank you very much. We certainly appreciate your ability to come in and put forward this submission in a very concise way and also your responses this morning.

ADAMSON, Mr Simon Peter, Spokesperson, Fathering After Separation

DOVEY, Mr Derek, Participant, Fathering After Separation

JAMES, Mr Edwin Warren, Participant, Fathering After Separation

PEARSON, Mr Richard Michael Aaron, Participant, Fathering After Separation

CHAIR—Good morning, gentlemen. Thank you for attending this morning's public hearing. I welcome you all. I remind you that the evidence you give at this public hearing is considered to be part of the proceedings of parliament and therefore any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. I remind you that the comments you make are on the public record. You should be cautious about what you say to ensure that you do not identify individuals or refer to cases before the court. I invite you to give a five-minute overview over and above what is in your submission and then we will proceed to questions. Thank you.

Mr Adamson—I have been asked to speak for the Fathering After Separation program run by Relationships Australia. The best interests of the child are of paramount importance and concern. As a group we believe there should be an assumption of an equal split in everything, including finances, to eliminate the current gender bias which presumes the mother has control over access times for the father. This obviously creates many problems. Fathers feel they have no control over visitation rights, the current system is harming fathers emotionally and financially and the impact on the children is hard to measure. A more egalitarian situation would allow both parents the opportunity to work, spend time with their children and maintain a suitable, healthy lifestyle. The long-term benefits of this would rub off on the children and the community.

The group feels that the parties' feelings and psychological factors due to separation need to be taken into account prior to court hearings. Getting messages across without emotions interfering is very difficult. Compulsory mediation for partners, as individuals and together, would assist in establishing the desires of the individuals and what they believe is in the best interests of the child or children and in their own best interests. I have had a hard time trying to write this out. It has taken a long time and I have written on many napkins in many coffee shops.

Mrs IRWIN—You can submit napkins—we will accept them.

Mr Adamson—I believe there are things that we have not addressed in the submission that do need to be addressed, but the importance of the items that I have brought up today is paramount and universal.

Mrs IRWIN—Just before I start questions, just quickly, could you let us know how many children you have each and how often you see those children.

Mr Dovey—I have three children and I have been separated for nearly two years. I have a totally fifty-fifty share of my children.

Mr Adamson—I have three beautiful girls and I have not seen my children in nearly 90 days.

Mr PRICE—Are they here in Cairns?

Mr Adamson—They are in Cairns but, unfortunately, the nature of the separation that I am involved in has created extreme tension between all parties.

Mr Pearson—I have a three-year-old son. I travel once a month to Townsville to see my son for two days a month. During that time there are costs for staying in motels and for travelling.

Mr James—I have a four-year-old daughter and a six-year-old son and currently I am doing the solicitor thing, trying to get a fifty-fifty share. It is costing me thousands.

Mrs IRWIN—Derek, how did you come to the fifty-fifty arrangement?

Mr Dovey—I insisted on it and fought for it tooth and nail. That is the only way I got it.

Mrs IRWIN—How much was the cost?

Mr Dovey—If you mean financially, I have lost track, really. I got to the stage where I sacked all of my solicitors and lawyers, and I represented myself. That is the only way I got settlement.

Mrs IRWIN—So it was not really through mediation, where your ex-partner and you sat down and said, ‘Listen here, we have to think about our children.’

Mr Dovey—The custody of the children was through mediation. We did that through the Family Court. We agreed on the fifty-fifty there. It was the property settlement that caused all the anguish.

Mrs IRWIN—In your submission, on page 2, you have stated:

Many fathers walk away because the struggle gets too hard.

Please feel free, all of you, to answer this—what other services should be available, do you think, to men?

Mr Pearson—I am a 26-year-old male. I have a son. I am about to go to court to fight for access, but the thing that pushes me away is that it is going to cost me thousands. I am going to send myself bankrupt in order to see my child.

Mrs IRWIN—Would anybody else like to comment on what other services you would like to see available for men?

Mr Dovey—There has to be more education. There has to be a greater emphasis on educating men on the importance of this and what options are available to them. I was in a similar situation. With a property settlement you are faced with a \$60,000 legal bill to go to court or you

accept the settlement. What sort of option is that? The system at the moment is creating so much resentment and it is awfully hard to patch things up afterwards.

Mrs IRWIN—Would your group support compulsory mediation? As you know, mediation is offered, but I am talking about compulsory mediation where both parties have got to sit down, where the facts are laid out in front of them and they are told: ‘This is how much it will cost you if you take the matter to court. This is how much it will cost you for solicitors. Let’s sit down and let’s think about the welfare of the child that both of you love.’ Would you support compulsory mediation?

Mr Adamson—Absolutely, but it must be done on an individual basis as well as in a group. As I stated, it is very hard to try and keep emotions out of these horrible times, and it is quite hard to address your feelings and put them across. If mediation is done on an individual basis to start with, your mediator would represent you in joint mediation.

Mrs IRWIN—I noticed that in your submission you have not mentioned the Child Support Agency or the child support formula. Do you have any comments to make on that?

Mr Adamson—It will open up a can of worms. How much time have you got?

Mrs IRWIN—You can make a comment.

CHAIR—We are here to listen to people’s comments, in particular on where they feel the system is letting them down and what changes they would like to see within the system. Please share your thoughts with us today. We need to hear them.

Mr Pearson—We look at how much the non-custodial parent earns, but we do not look at how much it costs to raise the child. If a father is earning \$100,000, he is paying out quite a lot of money. You cannot tell me that it costs that much every year to raise that child. So a father is then starting to think, ‘What’s the point in working? They are just going to take most of the money I’m making. Why have a career?’

Mr Adamson—I think you mentioned earlier about having a pool or some form of account whereby the child could have access to the money but, perhaps, the partner could not.

Mrs IRWIN—Are you all paying child support?

Mr Adamson—Yes.

Mrs IRWIN—Derek has got fifty-fifty.

Mr Dovey—I do not think fathers mind paying their fair share to raise their children. They do not resent that. I think the problem arises when it becomes so unjust that it is just not reasonable anymore. Under the current system, if you want custody of your children, the best thing you can do is go home, sit on your bum and do nothing. The court will say, ‘Wonderful, this parent is here. They are available 24 hours a day, so let’s give the kids to them.’ So what does the other parent do? Either they work their bum off to support the other parent who is earning nothing or

they give up work as well. If you want custody of your children now, the ideal way is to get on welfare. You will get 100 per cent custody—no worries at all.

Mr PRICE—The chair mentioned earlier that you are allowed to pay 25 per cent directly, without approval of the resident parent, towards a range of things such as health care and what have you. Are any of you doing that? Are you aware of that?

Mr Adamson—Yes. A representative from the Child Support Agency did come to the group and discuss those issues with us. There are very strong stipulations on what exactly you can spend it on—for instance, shoes and clothing were mentioned. He did state that they were not necessarily important items. There are fewer items available through the Child Support Agency, which stipulates what it considers to be important as opposed to what parents might.

Mr PRICE—Your organisation encourages people to go to Fathering After Separation; is that right?

Mr Adamson—Yes.

Mr PRICE—How long is that course and how much does it cost?

Mr Adamson—I am unaware of the cost. I am one of the fathers.

Mr Pearson—It is a free service.

Mr Adamson—It runs for seven nights, for about three hours a night.

Mr PRICE—Seven nights straight or seven nights over a staggered period?

Mr Adamson—Over a period of weeks.

Mr CADMAN—It has been my impression that, when a hearing is finally established, the court takes notice of interim orders as far as custody and access is concerned. Is that your experience?

Mr Adamson—I am not at that stage yet, but I am probably only a week off it.

Mr CADMAN—Richard is nodding his head.

Mr Pearson—Can you rephrase the question?

Mr CADMAN—If the arrangements of separation require the couple to get an interim order about how the access will take place and what money will be paid to provide for the children, that is an interim decision which is supposed to keep things ticking over until you get to the court for the settlement.

Mr Pearson—I am definitely all for that. I would just like to have equal access to my son. He is currently in Townsville for two years because his mother is studying down there. Before they moved down there at the start of this year, I had a 35 per cent share of the care.

Mr CADMAN—How did that happen? Did they decide to move, was it allowed by the court or what happened?

Mr Pearson—Nothing has gone through the court yet.

Mr CADMAN—So you have not approached the court to say, ‘This is a bit unfair. I need to have access’?

Mr Pearson—No. We have just gone through mediation and we both wanted to keep this out of the courts. It has now reached the point where it is going to end up in court. I want equal access; she does not want to give it.

Mr CADMAN—Who has created the situation where you need to go to court? Have the solicitors helped that along the way?

Mr Pearson—There have been no solicitors. When I leave here, I am going to see a solicitor. I am getting to see my son two days a month, which is not enough. With only two days a month, I cannot be a father.

Mr CADMAN—Do you know all of the rights and opportunities available to you? After mediation, do you think that you both know that?

Mr Pearson—I know a lot of my rights and I am still learning new rights as we go along. I do not know if she knows her rights. In conversations on the phone, she says that she has all these rights and that I have none. But I am now starting to learn my rights.

Mr CADMAN—Has anyone else any comments about interim orders?

Mr Adamson—I think that, if it is necessary, it obviously has to be done. If mediation between the two parties cannot be reached, interim orders would be next.

Mr CADMAN—Yes, that should be the next step.

Mr James—They should be a bit more enforceable than they are.

Mr CADMAN—Yes, they should be enforceable and there should be a presumption of fifty-fifty. Is that what you would like?

Mr James—Yes.

Mr Dovey—Two parties can go and see their solicitors—and this will probably happen today—and both solicitors will tell these people their rights and they will be absolutely miles apart.

Mr CADMAN—Yes, and they ramp up the conflict.

Mr Dovey—This has to head for conflict. People should be forced to sit in front of one person who says: ‘This is what the family’s rights are, and this is what is best for your kids. Try and work around it.’ The reality is that you will probably end up with fifty-fifty and the kid is going to miss one of you if he does not see a lot of you.

Mr CADMAN—Richard says he has done that.

Mr Dovey—Maybe he should do it again. Maybe he should be made to do it. Mediators will tell you that you cannot have forced mediation.

Mr CADMAN—You can have arbitration.

Mr Dovey—Yes, you would have to call it arbitration. People should have to sit down in front of an arbitrator and be made to realise that if they do not perform or they are not prepared to negotiate, he is going to use that information further on in the court process. When you go to mediation and arbitration, what sometimes happens is that the other person will just sit there blank faced and say, ‘I am not changing. I am here. You know exactly what it is like.’ That has to come back to them; it has to have consequences later on. If they still choose to go to court you can say: ‘You have made no attempt at mediation. If we go to court and you lose, you pay the costs’—or something like that. They have to be forced to sit down and actually negotiate—for the sake of the kids, for God’s sake!

You cannot expect anybody in this day and age to go through the legal system we have now, come out the other end and then go and play happy families for a weekend. It just will not happen. You just cannot beat each other up. There are three of us here; we have beaten each other up for nearly two years through the legal system. Say the weekend comes up and there is a school camp or something. Perhaps Mum and Dad can go and sit in the same room and be nice to each other. Big reality check: that is not going to happen.

CHAIR—How many are in your group Fathering After Separation?

Mr Adamson—I think it started off with five or six of us.

Mr Dovey—I think there have been several groups go through before us.

CHAIR—How many men, through the process of this Fathering After Separation, do you think do not pay child support?

Mr Adamson—I could not answer that, unfortunately.

CHAIR—The reason I ask is that you are very fortunate in that in Cairns there seems to be an abundance of support organisations or support structure, which has probably been built through demand and need, that may not be available in other places. Thus there may appear to the audience to be a biased view in favour of men’s groups this morning but, obviously, that is because there is a significant number of them. That is why we have brought them in: they are not everywhere. So we might get the feeling that every father wants to pay child support, every

father wants to spend time with his children and every father is being victimised. That might be the feeling that we have here this morning.

In fact that is not the reality. There are fathers who will go to the ends of the earth not to pay for their children. That is not because they have had a bad experience in family law or in communication with their wives. If they are self-employed they reduce their income so that they do not have to pay child support. They will go to so much trouble. They will leave job after job the moment somebody comes in with a subpoena or some sort of garnishee that says, 'You need to pay child support.' That is the reality in quite a few cases. How do you think it would be possible to ensure that all men—not just you guys; obviously, you guys are the good guys—have a better feeling about contributing towards their children? What do you think it would take?

Mr Dovey—The child support arrangements are fundamentally flawed right from the beginning. Generally speaking, a mother will go to them and say, 'This is the situation.' We have been told by an officer that this is how the system works. They sit down in a room, and the whole scenario is laid out in front of the mother. They work out her entitlements and what should happen. They know everything about the father; they have all the contact details. It is all explained to the mother, and she goes away happy. The first thing Child Support does is get on the phone to the father and say, 'You've got to pay \$200 a week. Start paying now.' Straightaway the father goes—

Mr PRICE—It is usually a letter.

Mr Dovey—It is a letter or whatever—they contact them. There is no personal touch any more. All the personal touch has gone straight out the window. All of a sudden Big Brother is telling the father, 'You've got to do this or else.' Nine times out of 10 it is in the early stages of the separation, where everyone is so bitter and twisted anyway and your emotions are going through the roof. The last thing you want is Big Brother telling you something. That is where it is fundamentally flawed: as soon as it starts. What they should be doing is saying, 'We've had your partner in; please come and talk to us,' and sitting down to discuss the scenario. I am doing exactly the same thing now. I have a private child support agreement with my ex, and Child Support rang me up and said, 'You're paying this.' I said, 'No.' We have had about 12 conversations now. The woman from Child Support keeps ringing me up, and I keep saying no. I just keep paying my ex-partner. The woman from Child Support has wasted hours and hours of her time, and I will keep wasting her time, too. It is none of her damn business, and that is the way that it is.

CHAIR—There is a section that allows you to have a private arrangement. If you can sort it out yourselves, the Child Support Agency does not want to be involved with your life. You can have private collection unless it gets to the point where the government has to start paying child support in a situation where you have agreed on it under a private arrangement. When it has come to a point where either partner has to go off to the government and get some sort of benefit, that is when the Child Support Agency comes in. But, generally, under private arrangement, if you can get your act together it does not want to be in your life. It is only involved where there is conflict in that act or there is some process of rearranging child support which means that the government might start to pick up the tab for the children when the capacity to pay might be there. So do you think that, where you are under private arrangement,

you should be able to continue in that process regardless of whether it costs the government or the taxpayer money?

Mr Dovey—My whole point is that you have to educate guys from the start. You have to lay it out for them and prove to them that it is a fair and equitable system and that what they are doing is quite just. My situation is a bit different. I have a private arrangement with my ex-partner and I am paying her a substantial amount every week. We had a dispute over winter clothing and I said that I was going to reduce that payment in order to buy winter clothing for the kids. That is what happened. She said, 'I disagree with that totally so, from now on, you do not pay me.' Now I have to pay CSA or whoever they are. I said, 'No, I have been paying you and I have a court order that says I have to pay you, so I am going to keep paying you.' I did not sign a court order to pay anybody else, so I just keep paying her every week and that is what has happened. But I still have the Child Support Agency ringing me up every week saying, 'You owe us money.' I say, 'No, I don't, because I paid it yesterday.' They keep wasting time and I keep paying it. I am not refusing to pay—I am just refusing to pay them.

CHAIR—Are you refusing to pay through them or do they seek an additional amount?

Mr Dovey—I am refusing to pay through them.

CHAIR—Is it the same amount or an additional amount?

Mr Dovey—It is exactly the same amount.

CHAIR—So, even though your ex-wife is getting the same amount as has been advocated by the Child Support Agency, you are saying that the Child Support Agency would like you to pay through them now because your wife disagreed with the fact that you were going to reduce that amount of money and pay it on clothing?

Mr Dovey—Yes.

Mrs IRWIN—Are you aware that, if you have financial hardship, there is an avenue open with the Child Support Agency?

Mr Pearson—I was paying child support privately to my ex-partner. Because I travel once a month to Townsville to see my son, I keep saying to her, 'Look, it is costing me as much to travel to see my son as I am paying in child support.' She refused to come to an agreement. I currently use the Child Support Agency. I go in to them and say, 'I want you to take charge of this and I will pay through you.' In doing that they assess my situation and take into account the fact that it costs me money for accommodation to travel to see my son.

Mrs IRWIN—So they are taking that into account?

Mr Pearson—They have helped in my case.

Mrs IRWIN—Just out of curiosity, Richard, was your son born in Cairns?

Mr Pearson—Yes. His grandparents on her side are here. I have no family here. It is just me. I have chosen to stay here because I want to be part of my son's life.

Mrs IRWIN—When and why was your son taken to Townsville?

Mr Pearson—At the start of this year he was taken there by the mother, because she is currently at university in Townsville. She did two years here and she has to do two years in Townsville because of the course she is doing.

Mrs IRWIN—And you agreed to that arrangement?

Mr Pearson—I agreed to it. We had an agreement on visitation: I would go down there one fortnight and the other fortnight she would travel up here. She has reneged on her agreement.

Mrs IRWIN—What is the cost to get to Townsville from Cairns?

Mr Pearson—For accommodation?

Mrs IRWIN—And fares.

Mr Pearson—For accommodation I am looking at a minimum of \$150 for two nights. The fuel is roughly \$60 there and back. There is also a food cost—I have to take food and buy food down there.

Mrs IRWIN—Out of curiosity, Richard, you stated that your ex-partner's parents are here in Cairns.

Mr Pearson—Yes.

Mrs IRWIN—Do they get the opportunity of seeing their grandchild?

Mr Pearson—That is another argument entirely. I am now being told that they have more rights than me. Because they are helping to financially support my son's mother, so she will give them more access to my son than me. It is basically a big fight, with her saying, 'You give me money and you can see your son.' That is what it is boiling down to.

CHAIR—What I am trying to get at this morning is that there appears to be victimisation because some fathers do not pay. All fathers are presumed to be the same in some people's eyes. Because some fathers are not responsible for their children, we put in place a kind of regime or a collection that presumes that all fathers are not going to pay for their children. Simon, what would you suggest we put in place that would encourage all fathers—I come back to this same question—to have better financial responsibility for the children they father, because the reality is that all fathers do not pay?

Mr Adamson—I think that is a generalisation. I believe individual cases should be taken into account. I can only speak personally, but every case that I have heard is different. I know of fathers who refuse to pay and will not pay and I know fathers who are willing to pay, who understand their responsibilities and who know that the money is not going towards their ex-

partners but going towards their children. But it is very hard to hand that money over to an ex-partner who appears to have new clothing or a drinking problem, or whatever the issues may be. I believe every case should be looked at individually. I do not think it is possible to generalise and say either, 'All fathers don't want to pay' or 'Only some fathers do want to pay.' It is a very difficult position.

CHAIR—The reality is that there is a child support debt out there of many hundreds of millions of dollars.

Mr Pearson—It is \$600 million.

CHAIR—Exactly, it is \$600 million. So somebody is not paying.

Mr Pearson—Can we also look at making fathers not just financially liable for their kids but physically liable. A lot of fathers stop paying because they cannot see their children, so they figure if they cannot see their child why should they have to pay for their child.

CHAIR—We probably should not go any further with this until we have a quorum. I do apologise. We will just chat informally until we get a quorum. Perhaps I am seeming to be difficult, but I just think that we need to get to the bottom of the fact that you cannot legislate for Australians to get on with one another and for partners to get on with one another. We seemingly cannot make a rule that enforces all people to be responsible, whether they be male or female, and to pay for the children they bring into the world, without discriminating against a lot of people who intend to pay and who will always pay and be responsible. You need to be able to get some semblance—and I am talking generally now—of how you can put in place a regime that would enable people to be more comfortable with being supportive of their children financially, physically and emotionally. I know that you have in your submission, which is excellent, the things that you agree with. Do you have a thought about how you could make people of both genders more physically, emotionally and financially responsible for their children?

Mr Pearson—Equal access.

Mr Dovey—You have to see that it is fair, you have to prove that it is fair and you have to explain why it is fair. Very few people would complain about that. You probably could argue that for every man, as you put it, who is not paying his full share, there could also be a woman who is not earning her fair share. I think that might be half your problem. He is not going to pay if she is sitting on the beach. That is exactly what is happening.

CHAIR—I now have a quorum so I can move on to the next witnesses. Thank you very much for your attendance this morning; we certainly appreciate your coming in. We are sorry that we had to be the devil's advocate, but that is the role that we play. We appreciate your coming in and spending your time.

[11.36 a.m.]

AKEE, Mrs Josephine Patricia, Indigenous (Torres Strait Islander) Family Consultant, Family Court of Australia

STUBBS, Ms Judith Anne, Registry Manager Townsville, Family Court of Australia

CHAIR—Good morning and thank you very much for attending this morning. The evidence that you give at this public hearing is considered to be part of the proceedings of parliament. I therefore remind you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. I remind you that the comments you make are on the public record. You should be cautious in what you say to ensure that you do not identify individuals and that you do not refer to cases before the court. Please proceed to make a brief overview, over and above your submission, of things that you might like to clarify and expand upon for the committee. Then we will proceed to questions.

Mrs Akee—I will first say, before I forget, that we have brought some additional resources that you are welcome to have. We will leave them here for afterwards. I belong to the Indigenous Family Consultant Program within the Family Court. There are six family consultants as a result of the Family Court of Australia's consultations with Indigenous communities, firstly in the Northern Territory in 1996, I think it was, and then some 18 months or so later in Far North Queensland. It was strongly recommended by Indigenous people in those communities that, for Indigenous people to access the services of the Family Court, there needed to be Indigenous people operating in the Family Court.

This was so that the Indigenous people were better able to understand the business of the Family Court, as opposed to the business of other courts. You people would be well aware that our people outnumber the litigants in other courts. One side of the coin is that they can successfully and properly access those court proceedings, if they get that far, and any services of the court. The flip side of the coin is that the different levels of the court can also understand better the various ways that we, as Indigenous people, operate. I would like to share too that I hold one of the six family consultant positions. I am the Torres Strait Islander Family Consultant because I am based in Queensland to serve that purpose under recommendation.

There are six of us. There are two Aboriginal consultants—one male and one female—in Darwin. There are two Aboriginal consultants—one male and one female—in Alice Springs. I also have an Aboriginal male counterpart here in the Cairns registry of the Family Court. The sorts of things I have seen that have benefited my fellow Indigenous people appearing in the court are that in Queensland the court is responding to the call from Torres Strait Islander people with respect to our customary child-rearing practices—namely, the Torres Strait Islanders' traditional giving and receiving of children. The court has been hearing quite a number of those cases, mostly in the homelands of the Torres Strait.

There is also the Peacemaker mediation training program, which we have worked on as a project within the Family Court here in Queensland at the community level and at the request of the Aboriginal communities in the Cape York area. There has also been a Strong Families project

delivered in the Northern Territory, specifically at the request of the Indigenous people of the Darwin area and of the Northern Territory. My counterparts in the Northern Territory have worked on what is known as the Pitlands circuits, which involve Indigenous family consultants travelling to these areas and linking up with the magistrates' delivery of services in those communities. It is an opportunity for the family consultants to share with the Aboriginal people in those communities—again, the difference is in the court's due processes—and also to deliver information about Family Court services as they differ from others.

A lot of work has been done by all the family consultants in our own specific regions for the discrete Aboriginal and Torres Strait Islander communities. There has been a lot of information delivery and there has been sharing of information from those communities which is taken back to the Family Court so that the court staff, at different levels, become aware that our communities are, if you like, diversified. There has also been help to make the Family Court of Australia and the legal profession aware of cultural practices—for instance, the structure of Indigenous families and communities and the way that we operate specifically as extended families as opposed to the nuclear family structure of wider Australia. That is a very important thing. Family consultants have been requested, time and time again by our people out in the communities and even in urban Australia, to highlight that within the ranks of the Family Court so that the court staff are well aware that we operate differently—that we do not operate like the nuclear family, where the emphasis is on the biological mother and father, but as an extended family.

CHAIR—Thank you. Judy, would you like to continue on from that?

Ms Stubbs—I would like to add a little bit to that. In the work that the six family consultants in the family Court do, they also try and provide services throughout all of Australia. The family consultants assist mediators, deputy registrars and other judicial staff of the court in Melbourne, Sydney and places like that. As a result of the extreme success of the program in North Queensland and the Northern Territory, there have been many requests from other areas and regions of Australia for an extension of the program. These requests have come from western New South Wales, out through the Dubbo area; Rockhampton—where, while we can provide some service, it is not on the ground there and a large range of Indigenous people are clustered there because of other factors; and in south-east Gippsland—in the Bairnsdale area et cetera. We are very aware that there are many areas that the program is unable to service, but we do the best we can in terms of linking up and ensuring that people who, for whatever reason, are coming to the court—for pre-filing, voluntary mediation or legal purposes—have access to and contact with the family consultants, who can then put them in touch with other resources in the local area.

Mr CADMAN—I am very interested in the Peacemaker program, which I take it is mainly Aboriginal people rather than Torres Strait Islanders. Is that right?

Mrs Akee—No, we intended to extend it further north but, because the request was raised in one of the Aboriginal communities of Cape York—Aurukun, I think it was—that was where we started the project. It was training so that people on the ground—language holders—were able to speak with their own people and acknowledge their own cultural protocols; such as that certain people are not allowed to speak to certain other people, which is totally different to how Western society operates. So the focus was there. It was a joint effort between the Family Court and

DATSIPD—the Department of Aboriginal and Torres Strait Islander Policy and Development. It was simply because the community justice groups—one of which we also have on Thursday Island—in these particular areas were getting some mediation training in family breakdown and family structure and how to cope and we were also working together with them so that the Family Court could deliver a training program that focused on Family Court work and Family Court issues. It was what the people needed.

Ms Stubbs—It was a consistent request through the consultative process that the court had undertaken with Cape York communities. They were saying that Indigenous people wanted to manage their own family matters—that they did not require the legal services of the court but would like assistance from the court in developing skills and enhancing their existing traditional skills of dealing with family problems. So part of the service we provided was to work cooperatively with other federal, state, and community based organisations to enhance existing skills in community justice groups and elders for their responsibility around families of their clan groups et cetera.

Mr CADMAN—You did not choose to take up the Stronger Families options used in the Northern Territory?

Mrs Akee—It was looked at. If I remember correctly, they had started the Stronger Families program some time before us, so they were working in their own way there. The Family Court in Far North Queensland was responding directly to the people in that particular community.

Mr CADMAN—That was last year. They have not seen the need to continue it this year, is that right? The Peacemaker program ran in 2002—

Mrs Akee—Yes.

Mr CADMAN—but there has been nothing in 2003. They thought that those two programs adequately covered their needs—is that right?

Mrs Akee—No. What has happened is that we had to evaluate how it went and then get feedback from the particular community where it was first trialled. It was then trialled in another community. When the request was made of those communities, the participants of that particular program and the justice groups had to respond as to how it would go from there on. What came back, as far as I know, because I was not directly involved, was that they felt that there needed to be closer contact on a regular basis so we could reiterate the training and so forth. So, to the best of my knowledge, the response was that we would not be able to go back on a regular basis because of funding limitations, but that certainly we would be working closely with them to find other ways of assisting them.

Ms Stubbs—The whole design of the Peacemaker program was to actually empower the community people to manage their community business in the community so that they would not be dependent on some other government service constantly coming back. The service we provide to back up and support that is access to the family consultants and to other resources in the court if they have a particularly difficult mediation or negotiation that they are trying to resolve in the community. So it is trying to build up the skills of isolated, Indigenous

communities, so they can, through their elders and justice groups, deal with their family problems at the lowest level possible.

Mr CADMAN—Reading your report, I think we could be excused for thinking that you have achieved that, because there is no further action.

Mrs Akee—Because of the increase in the number of people ringing up and wanting information in the first instance about accessing Family Court services, we can say there is more confidence in the Family Court now, simply because Indigenous staff are here. We have done a lot of promotional work to get people to somewhat understand the court process. There are simple things like really needing free legal advice in the first instance so that people know where they stand under the law. Then again, they are welcome to utilise our counselling and mediation service, which is free, voluntary and privileged. It has been our job as family consultants to explain to our people the different processes. We have emphasised very heavily the notion: ‘Please be prepared to sort out your own family situations here. It does not have to go through a court process where you will have to have legal representatives and all that sort of thing.’

Mr CADMAN—Why don’t you take over the Family Court altogether and let’s do the whole of Australia your way!

Mrs IRWIN—I just love the name: Peacemaker mediation program. It would be great if these sorts of programs worked. Can you tell us the success rate that you have had with the program? Also, just for the public record, tell us just a little bit about the program: how people find out about it and what you actually do when you have the mother, the father, the children and, as you have said, the extended family involved?

Ms Stubbs—The concept came about, as I said, from the consultations. We were getting consistent requests to help us help our own in the communities. From there it developed that a lot of government agencies got together and we tried to work cooperatively around who could provide what resources. We targeted the community justice groups, both urban here in Cairns as well as up in the remote communities. Those justice groups usually consist of either respected members of the community or elders of the community, so there is a range across each individual community; it is not just one family running the justice groups. We targeted representatives from all of the families and any particular group.

We provided training for the coordinators of the justice groups so that they were all aware of the issues that were involved. We then gathered information about what skills they had in their communities for the ordinary mediations that they were doing regarding other issues, and we built on that. Then we went out to the various locations that were targeted, such as Kowanyama, Aurukun and Napranum, and other venues, and we worked with the local people who had already been selected and were already being utilised by their communities to assist in disputes—in particular to assist in family breakdown or family disputes regarding children et cetera. Several days were involved in that training as we worked through how to go through an impartial, neutral mediation process, and how we facilitate that without becoming an advocate—all of those training skills that we were providing—and then there was a review of that.

The mediation process involved facilitators. Often there would need to be a gender balance because we were dealing with families. We needed both men’s business and women’s business to

be involved, so we would have gender-balanced mediation facilitators. The families would be able to identify who else in the communities they would like to be involved in it—someone who would be able to speak on behalf of the children. That may be more than just the parents: it could be grandparents, uncles or aunts who have particular cultural—

Mrs IRWIN—That is very important: the voices of the children.

Ms Stubbs—Yes, that is right. The families were allowed to include in the mediation particular family people who culturally had the right to speak on behalf of that family and children. Then the mediation or the justice group coordinators would also select other people from the community who were not directly involved to help maintain the balance in the negotiations et cetera and make sure that appropriate cultural things were also being considered when decisions were being negotiated around the children. There would be quite a big mediation process. It is not just a mediation between two people, as it is under the other system; it includes a very extended group, and we would work through that process.

Mrs IRWIN—As you were saying, it would include grandparents, aunts, uncles or someone who has been a family friend since school days.

Mrs Akee—More in a cultural way, even to the extent of the chastising that needs to happen, which has to come from certain people: the chastising of, say, the mother and father and how they had been operating, if there were domestically violent situations in front of the children. The people, the significant others in that particular family structure, are to have their say to help the family. This is seen, in our people's way, as a means of empowering our people again, because a lot of our people have felt that we have been disempowered for so long and that we do not have the ability or the right to take the stance of cleaning up our own problems, if I can say it that way.

My understanding is that this has been a means of empowering the people, the players there, and more so when they belong to a specific clan or group. Among the Aboriginal brothers and sisters it is just not done to get some other people here to give advice or have the right or authority to speak on a specific aspect of that particular family's life. Therefore, even though I am a consultant, my Aboriginal counterparts and I have had to stand back and allow this to happen. People come from different countries, as Aboriginal people say, and people belong to different groups and so it is our task within the Family Court to ensure that the right people are connected to them and the right people give the advice. Then we give the advice within the Family Court.

For instance, I have Canberra ACT as my allocated area of additional work, because there are not enough of us to go around. So I have to be very careful and very sensitive because I am going into Aboriginal territory and among Aboriginal people and I have to build up a rapport with those people and find out from them who the likely people are that councillors, mediators and children's reps need to talk to. We need to find out who family report writers need to speak to. We need to find out who the cultural experts in that particular area are and incorporate who has the right and authority to speak on specific issues belonging to that country or that area. Similarly, with my people in the Torres Strait, I cannot ask a western islander to go and throw some light on or give some cultural aspect to something for eastern islander people. So that is part of our task, our responsibility, our privilege to give that information.

Mrs IRWIN—I am very impressed. The success rate is quite good?

Mrs Akee—We believe so. Since its advent the family consultants program statistically shows that. Even many of our men ring and ask for information for Family Court issues concerning child support when they get letters and things like that. That is culturally inappropriate to some degree because I am a female but I just happen to hold the Torres Strait Islander position. My people have come to terms with that, that somebody is in there. I have had to make my apologies at times—‘I am a female but there is an Aboriginal brother here; are you willing to have him on board in the counselling and mediation?’ or whatever it might be.

Mrs IRWIN—That is one step forward, isn’t it, which is fantastic.

Mr PRICE—I must confess I am a bit towards Mr Cadman’s views. I think we should try adopting this for everyone, getting relatives involved—

Mrs IRWIN—Don’t forget me—hear, hear on that!

Mr PRICE—Would it be possible for the committee to go to the Torres Strait, the Northern Territory or North Queensland to see this in operation?

Ms Stubbs—Yes, I believe that would be possible. It would just be a matter of timing and coordination and those sorts of issues.

Mr PRICE—The other thing that I wanted to say is that in Sydney I have the largest group of urban Aboriginals but I do not believe there is any outreach program to them.

Mrs Akee—With respect to the six family consultants, one of the family consultants is obliged to carry the whole of New South Wales, Sydney, et cetera. From the ACT I have been known to go down to Bega in the southern part of New South Wales to link up with Aboriginal people there and to make networks with them. Hopefully, they can then assist me in setting up forums where we can get Aboriginal people and Torres Strait Islanders—if there are some of our people down there—to come forward to attend information sessions so that they feel comfortable that they can ask questions and become familiar with the court system.

For a number of our people, because of what has happened over the years and because the very word ‘court’ throws them, they may not necessarily take account of what is in a letter when they are requested to come. So it is part of my job to ring them up and say, ‘Did you get the letter? I am ringing you up now to tell you that we have made an appointment for you to come forward for counselling and mediation. I can tell you about what happens in there. You don’t have to go into court and be heard by a judge.’

It is very important for my people to know about the simple things like that. From the initial intake, if you like, when a call comes through and it is an Indigenous person, that is my opportunity to get information about where they are at and what is happening with them. It could well be that they are confused, that they do not know what services they need to access, so it is my job to help them understand. I say to them, ‘This can be Family Court business,’ or, ‘This is child support business,’ or, ‘This is Centrelink business’—whatever it may be—so they have a clear picture of it. Then I am obliged to say to them, ‘You have to get legal advice at the first

instance,' so that they are aware of that. I know, even though I do not see them at the end of the phone, that they will be thinking about the court, the law, a judge, a magistrate.

So, at that first instance, it is very important that we clear the way for them to come forward and for them to feel comfortable about coming to court. I have to encourage them along the notion that this is their opportunity to come and share how we live as Indigenous people, what is important to us and how we operate not only as families—and I am talking extended families—but also within our communities, our community structures, especially in what we know as discrete Indigenous communities where the majority are Indigenous people of that particular country or that island.

It is an opportunity for me to encourage them to let the court know about how we operate as Indigenous people. We are different to white folk, and it is important that we maintain our language, our way of rearing our children and these sorts of things. Our children need to grow up in a situation where it is a community life, an extended family life. You do not just have to listen to your mother and father, because there are other members—for instance, an aunt. My older sister would have every right to chastise my child, take care of my child and even tell me I was not doing the right thing with my child. She could say, 'I will take your child off you until you wake up to yourself.' There is this sort of thing.

It is an important responsibility of our people, and that must, I suppose, be cemented in the fact that we have a solid responsibility to maintain our culture. We are not able to do that sometimes with our children, say, from mixed race marriages, and this has been a concern for our womenfolk. If the fathers of their children are non-Indigenous, they have this threat and this constant worry that the children are going to be taken away from them and they will be far removed from their cultural identity, their cultural inheritance and their cultural rights, such is the strength of our feeling about it. We are not saying that the children should not spend time with their father, but we cannot lose that, especially as to date there have been too many cases to my people's mind where the children have gone to the white fathers and they have been far removed. I am not criticising the white fathers, but that is the way it has been.

We have Indigenous females who have been brought up with the mentality that we do not question the system, we do not know about the Family Court, we do not know about mediation services, we do not know about mediation and conferencing and all those sorts of things. It is a 'standing back' mentality, especially if the rest of our people are saying to them, 'You have no hope of winning in that court.' That is an added dilemma.

CHAIR—Thank you very much, Josephine. We really appreciate you and Judy coming in and giving us an account of how your service works. It has been most interesting. I am sure the committee will find much to talk about in relation to how we go forward with this inquiry, because it has been quite enlightening. So thank you to both of you for coming in. We appreciate it very much.

[12.04 p.m.]

CHAIR—I now welcome everyone to our community statement segment. Each person who would like to make a community statement will be allowed about three minutes. So that we can give as many people as required the opportunity to put forward their point of view, I ask that you try to keep your statements to the three minutes, and I will advise you gently when those three minutes are up. If there is anybody in the community who would like to make a three-minute statement, feel free to do so. This is your time.

James—Good morning. I understand that I have three minutes, so I will try to be brief. I was going to sit through and listen to all this, but I felt compelled to put down two points and I would like to read them out. If I do not read them out, I could turn into a blubbering mess.

CHAIR—You can read them out; you can do whatever you want, James.

James—Thank you. I would hate to see you Hoover me out of the carpet. As all concerned and loving parents are aware, there are far greater needs than financial support for a child or children. There is also a need for spiritual support—which is not religious per se—physical support, intellectual support and, most importantly, emotional support of the offspring. These factors, in particular the emotional support, are difficult for a non-residential parent to offer when courts, agencies, society in general and ex-spouses, male or female, insist on using children as pawns in a game of revenge, which is never conducive to helping the child achieve their full potential. Emotional support is difficult to offer when these external influences insist on depleting the non-residential parent's finances—and, ultimately, their esteem and chances of recovering and bettering themselves.

Often when separation occurs, to avoid rocking the boat, non-residential parents will forgo their legal status and rights with regard to contact. Finances are often settled to their detriment, they are emotionally distraught from loss of contact with their beloved offspring and they have few avenues open to them to address the trauma and grief. The emotional issues are compounded by the insistent pressures of financial stress. Without any doubt in my mind, the ultimate twin losses are the non-residential parent's inability to live their own life properly, prosperously and fully and the children's lack of much-needed and desired stable emotional support from the non-residential parent. The effects on both parties are negative and have long-term ramifications, especially in matters of the child's or children's own lives and their future relationships with their own children. I feel that the courts and all of society must understand that it is imperative that the emotional stability of all parties must precede or at least co-join an insistence on financial matters, particularly when there is little or no leeway in an individual's duress. That is point 1. May I add something to that?

CHAIR—Yes, please feel free.

James—These matters could be assisted by ongoing parental education programs, free and widespread counselling—and full advertising of such—and perhaps compulsory school based parenting, esteem and relationship skills education.

Point two is that it is generally globally acknowledged that people of grandparent age are viewed as community and familial elders. This validates their age and their life experiences, which are invaluable when handed on to children. I am certain that, in great part due to the increase in spousal separations in past, recent and current years, generations of children are feeling and will continue to feel a backlash from missing out on the experiences of these elders. Thank you.

CHAIR—Thank you, James. Is there anybody else who would like to come forward? Good morning.

Susan—I am here as a grandparent and also to put forward some of the issues that my son has encountered. After 16½ months of marriage, when their child was 4½ months old, my son's wife said she did not want to continue with the marriage. The child was born with severe congenital heart defects. He had open heart surgery at one week and again in June this year. He is now fairly well.

My son manages a property south of Mount Garnet in partnership with my husband and me. His indebtedness in the partnership means that his income has been negative for the last few years. In spite of that, her legal people would not accept that that was the true position, although the ATO has accepted the figures that we present each year for many years. He has to pay a high amount of maintenance for his son and it is all borrowed money. Of course, my husband and I are backing him, but really he still owes the partnership that money.

My former daughter-in-law has a positive bank account of nearly six figures because she was a teacher and she had long service leave and so on. In spite of that, she does not have to dip into her savings at all. My son has to pay spousal maintenance as well because there has been no property settlement yet. They are not actually divorced yet. When she decided the marriage was over, she would not have counselling under any circumstances, although our son was willing to. She did allow us to have access as grandparents in January this year but she would not allow us to have the child overnight—we had to return him each night for the three days of access we had.

She lives with her parents down at Mooloolaba, so you can see that the access for my son is absolutely impossible. Last month he had occasion to take the truck down to Gympie with some horses for somebody that we had sold them to and he was to have two days of access. He had not had access since January or February because of the hospitalisation of the child. In the agreement that they have stamped by the court he cannot have him a month either side of major surgery, so he had not had any access. But there is no catch-up mechanism in that for him to make up for the access he lost in the first six months of the year and he begged her for a second lot of two days, giving the child two days rest in between, and she refused. She said if he kept pestering her she would bring a domestic violence order against him. Although she will allow us access as grandparents, it is physically almost impossible because we have to stand all the costs of going down et cetera.

CHAIR—Thank you very much.

Dianne—Three years ago my marriage ended. The cocoon around me collapsed and I felt like my life was over. I would like to thank the government immensely for all the support and help

through that time with the assistance and programs that are in place. That safety net was a life-saving thing for me. That is my first point. Since then Alan and I have found each other and come together and we have two children each. We are getting married next year. The eldest two children, who are my biological children, are living with us full time. Through lots of mediation, which looks like costing us \$100,000-plus, we should finally get custody of our other two children. We class the four children as 'our' children. We are hoping for fifty-fifty custody to be totally fair. That is what I would like to say. I thank the government for the assistance to mothers so that we are able to get on our feet, get on with life and move on.

I am finding that more and more of today's fathers are from the new age, sensitive man era, with equal opportunities and everything, yet they are now treated as though they are not responsible for their children. They are treated like that, yet they have been brought up in the new age of sharing housework and equal opportunities. More and more often I am finding that, even though throughout relationships before children and even while there are children and the marriage is together and men are expected to change nappies et cetera, after the break-up there seems to be the old-fashioned thinking of: 'I'm the mother, I'm the caretaker and you're the breadwinner.' I am finding that generally; I am trying not to talk about our particular case.

If fathers are responsible, there should be a set amount of maintenance for the children, just like the set amount that the government gives to mothers when fathers are not paying maintenance or there is no father, and it should not be judged on an income base. In our situation, we are trying to get together and put money aside for the children's education and for their future, and it seems as though 50 per cent goes to tax, 27 per cent goes to maintenance and we are left to manage with the rest. We both work full time, but it is hard for us to put money aside for our four children's future. We are in favour of this 25 per cent, it sounds like a good idea, but there are people who will rot that system and buy a present for someone else and hand over the receipt. That happens, doesn't it? I find it really unfair that all fathers are put into that basket. Yes, there are a lot of fathers who do go out of their way to go into self-employment situations where they can divert their income into other areas, but I just find it really unfair that all fathers are put into that basket. How do you define between a father who cares and a father who is saving for his children's future? How many separated mothers are rotting the system?

One thing I wanted to make really clear is that mothers seem to be frightened that the children will love their fathers or grandparents more than they love them. They are worried that they are going to lose their children's love, and there seems to be strange belief that love is limited—'If you love them, you don't love me'—and there seems to be a lot of competition and fighting over such nonsense in that situation. Something else that was mentioned in this was compulsive mediation. Our experience with mediation has been disappointing. We found that, if we put forth something and the mother disagreed, that was it. It has been quite disappointing in that situation.

There have also been some questions about solicitors. You asked, 'Why haven't you seen a solicitor?' yet the first man who spoke stated that it cost in excess of \$100,000. These men have lost a lot of money in settlement and further in maintenance, and they are looking at bigger bills than just a mortgage when paying for court costs et cetera. Perhaps there could some way that did not involve money. I have heard of some cases where the father is earning an income and paying over hand and fist and the mother is on a pension and getting free legal aid. Because it is not really costing her anything, she can just turn up and argue the point. That is an issue that also concerns me.

Men today are also being asked to give a quick answer to questions, but emotions have stepped in—and we lost a bit of the group at that time—and their answer is not really a true answer, it is just one little facet of the answer. A lot of things that have been happening, emotions have stepped in and the situation is dramatised, and they have just given one quick little facet of the answer instead of the bigger answer. That is also unfortunate. A bit more help is needed in these situations to help these poor men who are trying to win over their families but who are being put into this ‘men don’t pay maintenance’ bucket, that it is just another way of not paying maintenance et cetera. Does that make sense?

CHAIR—It certainly does. Alan, would you like to make a comment?

Alan—There are a couple of major points I would like to make. I went to mediation in the Family Court, and as soon as I went in I realised that I was on the back foot. The mediator sided with the mother, because she was the primary caregiver. When we had the kids, we were both in full-time work. We chose at that time that the mother would stop working and look after the kids. That decision at that point is actually going against me now. It is very unfair.

The main thing about mediation is, if you have not got a central point to start from—which is fifty-fifty—why would the person who has the ball in their court give it away? They have no reason to give it away; they are losing. Whereas, if it starts with fifty-fifty, both parties have a chance to get something.

CHAIR—That is a very good point.

Dianne—Our two younger children—Alan’s biological children—frequently leave our home in tears, not wanting to go. It is distressing to both of us to see these children leave us in tears, not want to leave us. We only get limited time. The fights go on and we just get threats from her that, ‘If you do not go with what we want now, I will take more days from you.’ As you can see, it is just getting really distressing for both of us to watch these two children, aged three and seven, leaving our house in tears, telling us that they want to be with us more and they are not allowed to.

Alan—I have not wanted to go to solicitors because I believe that giving money to the solicitors is money that should be going to the kids.

Dianne—That is right. Just recently, we have been to a solicitor and we have been told a few thousand dollars to \$15,000 as our first ground. You know how crippling it is already with the settlement and maintenance we already have. Now looking at going into debt to pay solicitors’ bills will just cripple us totally. It is so distressing watching the two younger children so distressed like that, leaving us and wanting to be with us more. All that we think is fair is fifty-fifty.

Alan—We believe the kids would actually be better off living with us. I want to look after the kids and I would like them to live with us full time. We want to work harder and invest to try and make more money for the future of our kids. Without any effort or any risk on the part of the mother, she is taking half of anything we make. I think that the maintenance system should be some sort of base level and, if people are prepared to work harder and make more money, they

should benefit from that. Basically, you lose half on tax and half goes on maintenance. It is not right that the mother should get half of any extra money that we work hard to get—

Dianne—To set ourselves up.

Alan—for the kids; she has taken it away. The other point is that I pay maintenance to the mother. I do not want to pay money for the solicitors and then have her take the money that I pay her to look after the kids and use that money for solicitors to fight against me. That is so wrong.

CHAIR—I see. Thank you Alan and Dianne. We appreciate you coming up.

Mr A.—I just learnt of this public hearing on Wednesday through someone who is sitting with me this morning. I had a few moments sleep last night and I was up until 3 o'clock this morning just putting my contribution together. This is just a brief account of my dealings with the Family Court over child custody matters concerning my son. I am 39 years of age. My occupation is teaching instrumental music to junior and high school students at schools around Cairns. In January 2002 I became a father for the first time with my ex-partner. We had a beautiful son. Three and a half months later, my ex-partner decided I did not meet a certain criterion in relation to her idea of parenting so she went about having me removed from the house in which we lived. We were together for eight months.

The house was hers, the locks were changed, legal representation was sought and I was served an order by the Family Court stating that I would be entitled to two hours contact per week supervised by her at her house. Immediately, the Child Support Agency started collecting payments from me. This I endured painfully for three long months until, on 30 July last year at an interim hearing of the Family Court, I represented myself as a respondent to the mother's sole residency application. The outcome of this hearing was that I was given eight hours unsupervised contact per week. It felt like a present from heaven. It was far short of my shared residency proposal—which I considered to be the best option for our son, being fair, just, realistic and practicable—but it enabled me to have some input in my son's life and allowed my friends to meet him for the very first time. My son was seven months of age.

The mother had filed an application with the Magistrates Court, hoping to have considerable impact on the Family Court's decision. However, her 27 or so concocted allegations against me were not heard until three weeks later—on 23 August. The mother was furious. At the hearing I refuted every claim bar one—that was my admission to the judge in the Family Court that I needed to be near my son, even if it was just to hear him cry from the garden of the mother's home.

Mrs IRWIN—Would you like to sit down?

Mr A.—That would help.

CHAIR—We can do it at the table if you would like.

Mrs IRWIN—We could do it at the table, and we will get you a glass of water.

Mr A.—I am sorry I will not go on long; bear with me. That admission was sufficient evidence to consider that an act of harassment and intimidation had been committed, constituting domestic violence. The resulting order is in place until August next year. The final hearing was set for October last year in the Family Court. Preparation for proceedings and the prospect of the further court action was phenomenally stressful and was taking its toll on me. I sought my own legal team to engage battle with the mother's. Seven weeks of representation cost me \$31,000. I included that because of your interest in figures. According to legal experts the mother's seven months would have cost her closer to \$60,000—absolute madness.

On 6 December last year judgment was passed down. The mother was to continue to be primary carer and I was to become a permanent contact parent. A staged increase in contact time was detailed: at my son's first birthday, I would get 12 hours contact per week and, at 18 months of age, I would get 16 hours per week. In January 2004, when my son is two, he will get his first night with dad. At 2½ years of age he will get alternate weekends with his dad and at five years of age he will spend half the school holidays me. At no stage is shared residency implemented. In December last year, following such a devastating result, I applied for a reassessment of child support. The outcome is still unresolved but in the meantime child support debt has accrued to over \$2,000. So here is one man who resents paying child support for obvious reasons—not because I do not love my son; I know he has everything he needs financially. The mother immediately swore, 'You will never have him overnight and I will gather as much evidence as is necessary and spend every last cent to ensure that.' She continues to use the DV order as a powerful weapon for her whimsical breach claims. These have all failed.

For 13 months now I have travelled 200 kilometres per week up and down the highway six times in order to meet my contact obligations. Is this fair to my son? It is documented that the mother works on both Sundays and Wednesdays. On Wednesdays my son is cared for by the grandmother. Is this in my son's best interests when I am free to care for him? Finally, last Sunday I collected my son at the usual contact time. I buckled him into his child seat. As I closed his door and turned around the mother said, 'This is my husband. He will be here to collect the child at 5 o'clock.' As my working hours have been extended until 5.30, I drove off gutted and distraught in the knowledge of the conspiracy that had been unravelling since my son's conception 2½ years ago. My son was 20 months of age yesterday; he is yet to start calling me daddy. Before he gets to spend his first night with this natural father, another man, whom my son has no knowledge of, is about to be his parent seven days a week. How is this allowed to happen? The system must change, please.

Chris—Good afternoon. At the moment I have a fifty-fifty shared parenting relationship for my eight-year-old daughter. The only way I was able to get a shared parenting arrangement was to seek interim orders from the Family Court. I went down the mediation path with my ex, and found it just did not work. The way the mediation has been set up, it is too easy for it not to work. If the system were more arbitration, rather than mediation, it might achieve more positive results for people. At the moment, my daughter is really happy to have a fifty-fifty arrangement. She loves her mum and she loves her dad. I do not want to take her away from her mum, and she does not want to be taken away from her dad. But I feel the only way this fifty-fifty arrangement is going to stay in place is to finally go to court and have the orders made permanent. To date I have spent about \$15,000. Where I am going to find the money for the rest of it, if I have to go to court, I don't know. I don't know if I will be able to. If I can't find the money, I guess I will

just have to walk away. The only way I can get her mother to budge is to do it through the court with the order of a judge.

They talk about a child's best interest. We have a little girl here, who is eight years old, who wants to see her mum and her dad. In a lot of ways it appears that no-one is really listening to what she wants. I just hope at the end of the day we end up with a system that is more workable, that makes things more equitable for all members of the family—not just one person. If you did put some sort of arbitration system in place, it could achieve more results, rather than put families through a mediation system that often does not work or through a Family Court system that no-one can afford and where the money spent could better be spent in the interests of the child.

CHAIR—Ladies and gentlemen, I appreciate your time and effort in coming to this hearing this morning. To all of the witnesses who appeared before the committee, to the organisations and to the general public, we certainly appreciate you sharing with us your experiences in order that the committee can gain some genuine and real understanding and make recommendations at the end of this inquiry. It is an emotional and difficult task for the parents of children, for the children and for their extended families—grandparents, et cetera. It is, indeed, also an emotional task for the committee. We are all mothers and fathers—and grandparents, I think.

Mrs IRWIN—Soon to be.

CHAIR—I am a grandparent. So we have taken this very seriously and we intend to ensure that the interests of families and children are of paramount consideration in the government's thinking, whichever government it is. We apologise if we have held any of you up today—we have run a little over time. But thank you for coming along and sharing with us. We congratulate you on the time you have spent in putting together your submissions and your statements today. I declare this hearing closed.

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

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

Committee adjourned at 12.36 p.m.