COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS

Reference: Child custody inquiry

FRIDAY, 26 SEPTEMBER 2003

JOONDALUP, PERTH

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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS

Friday, 26 September 2003

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

Members in attendance: Ms George, Mrs Hull, Mrs Irwin and Mr Pearce

Terms of reference for the inquiry:

To inquire into and report on:

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

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

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

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

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

WITNESSES

Committee met at 8.37 a.m.

CHAIR—I declare open the 12th public hearing of the House of Representatives Standing Committee on Family and Community Affairs inquiry into child custody arrangements in the event of family separation. This inquiry addresses a very important issue that touches the lives of all Australians. To date, the committee has received over 1,500 submissions—a record for an inquiry by this committee and amongst the highest ever for a House of Representatives committee inquiry. We are grateful for the community's response. This is one important way in which the community can express its views. We would like to stress that the committee does not have preconceived views on the outcomes of the inquiry and takes all evidence with a view to ensuring fairness and equity. 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 women—by the end of the inquiry we will have heard from a diverse group and thus have received a balance over the range of views. The public hearings the committee is undertaking are focused on regional locations rather than just capital cities. At these hearings the focus will be on individuals and locally based organisations. Later in the inquiry we will hear from larger organisations, such as the Family 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 appearing as a witness today that the comments you make are on the public record. You should be cautious in what you say to ensure that you do not identify individuals and that you do not refer to cases which have been or are now before the courts. In recognition of the personal and sensitive nature of this inquiry, the committee has recently decided that, when individuals appear before the committee in a private capacity at a public hearing, the committee will use an individual's name during the hearing but the name will not be reported in the *Hansard* transcript that goes onto the committee's web site. Rather, in that transcript the individual witness appearing in a private capacity will be referred to as a numbered witness. The transcripts of public hearings that are currently on the committee's web site will be modified to reflect this decision. This is being done so that the committee can maximise the availability of public information while still protecting individuals and third parties. I particularly ask any media who might be present not to report the names of individuals who appear publicly at the hearing. About two hours have been set aside for the public hearing, and this will be followed by about an hour of community statements.

[8.40 a.m.]

WITNESS 1, (Private capacity)

CHAIR—I welcome our first witness. Thank you for coming in this morning. It is a great pleasure to have you here. The evidence that you give at this hearing is considered to be part of the proceedings of parliament. I, therefore, remind you that any attempt to mislead the committee is a very serious matter and could amount to contempt of the parliament. I remind you that you should be cautious in the comments you make on the public record to ensure that you do not identify individuals and that you do not refer to cases before the court. In order to ensure your privacy and that of third parties, while we will refer to you by name in the hearing, in the transcript record which goes onto the committee web site we will refer to your evidence as being from a numbered witness. You will know your evidence but you will not be publicly identifiable to others. Would you like to make a short five-minute opening statement before I invite the members to proceed with their questions?

Witness 1—Currently, when a child's parents separate you are basically given three choices. You can accept what has happened to you and go along with whatever the courts decide, and usually that is to have a custodial parent with a visiting non-custodial parent. The second option is that out of fear of losing your custodial or residential parent you do exactly what he or she says, and that is usually the mother. In some cases that means giving up completely even the leavings you get from the non-custodial parent. The third option, which was the option I took, was to think why on earth has this non-custodial parent been stolen from me? I am going to fight to get him back. That was the option I took. However, it is very rare and most children do not do that. In the long run the first two options basically amount to the same thing.

Mrs IRWIN—Thank you very much for coming before the inquiry. How old are you?

Witness 1—I am 19.

Mrs IRWIN—You have done a wonderful submission. I think you have spoken from the heart and your father should be very proud of you. You stated in your submission that you were eight years old when your parents separated. Is that correct?

Witness 1—It was actually just before I was eight. I was seven years and nine months when they separated—eight when they divorced.

Mrs IRWIN—In your submission you stated that you packed your bags and left mum in search of dad. You went to a police station and asked for assistance and they took you to your father. How old were you when that happened?

Witness 1—Eight.

Mrs IRWIN—It must have been very hard and very traumatic for you. We have heard voices of the mums, the dads, the grandparents and the extended family and it is important to hear the

voices of the children, and you are a wonderful young adult. You have stated in your submission—and it is great to hear:

However, I was too young, my preferences were not sought, nor my reasons for them. My mother won full residency.

Did your parents go to court regarding custody?

Witness 1—I believed so at the time. However, I was informed much later after I actually got to live with dad that it was by consent order for the simple reason that the lawyers told my father that if he tried to fight it in the courts he had next to zero chance of winning and that if I fought it on the domestic front he would be much more successful.

Mrs IRWIN—Do you have sisters? Are they younger than you or older?

Witness 1—Yes, one of them is three years younger and the other is 18 months younger than me.

Mrs IRWIN—Do you feel that children should have separate legal representation, that children's voices should be heard?

Witness 1—Very much so. It was only that my father did seek my opinion and that I was able to give it, even just to him, that eventually allowed me to think that, in reality, it was not dad who was abandoning me.

Mrs IRWIN—Did you have any counselling or mediation?

Witness 1—No.

Mrs IRWIN—None whatsoever?

Witness 1—None whatsoever. I was supposed to be kept in the dark completely, totally and utterly.

Mrs IRWIN—So, as far as you were concerned, even at the tender age of eight you felt that, if there had been some mediation—some people are saying that they feel mediation should be compulsory and that the voices of the children should be heard—you knew where you wanted to be?

Witness 1—Very much so. I fought from the age of eight until I was 12 to get to live with my dad. It was a long time.

Mrs IRWIN—Are your sisters of the same opinion as you?

Witness 1—They wanted to live with mum.

Mrs IRWIN—That is their decision; I can understand where you are coming from.

Witness 1—Yes. They wanted to live with mum. My youngest sister was probably more of an 'I don't mind'. My middle sister was very much, 'I want to live with mum.' So it did not really affect them as much.

Mrs IRWIN—We have had differing opinions from organisations and individuals on shared parenting arrangements. You have stated that you would support, am I correct in saying so, a fifty-fifty arrangement?

Witness 1—Very much so; it would have solved a lot of problems.

Mrs IRWIN—How do you see a fifty-fifty arrangement working? The reason I am asking is that some people have stated that fifty-fifty will work only if mum and dad are living close to each other, because they are very concerned about having to change schools. Children might be with mum for one term and dad for another, and they could lose their friends.

Witness 1—I can see how that would not be good. I would personally do it so that the family home is put into the children's names jointly, then the parents come and go.

Mrs IRWIN—That is the first time I have heard that in this inquiry; thank you for stating that.

Witness 1—It would be that one parent would be there for a week and go to their own house when it is not their turn. That way you have the children in their own house, they have their own group of friends and their schooling is not interrupted. In my opinion, the children are the really, truly innocent parties.

Mrs IRWIN—How far is the distance between your mother's house and your father's house?

Witness 1—My father lives in another country.

Mrs IRWIN—He lives overseas?

Witness 1—Yes.

Mrs IRWIN—Are you now back at home with your mother?

Witness 1—No, I am living with my fiancee at the moment. Dad did move back to Australia, but when I first lived with him I actually lived in Malaysia with him. He works for a Malaysian company, so that would not have worked in our case.

Mrs IRWIN—And dad is paying child support for your other two sisters?

Witness 1—As far as I know, he is paying child support for all three of us. I know for a fact that when I was living with him he was paying child support to my mother for all three of us.

Mrs IRWIN—And you think that it was unfair that he was paying child support for you when you were living with him?

Witness 1—I think it was unfair, yes. The concept of child support is good in an ideal sense but I think it does get abused, through my observations of other families.

Ms GEORGE—You state in your submission that no-one bothered to take your opinion into account in relation to outside agencies like the Kids Help Line and the school counsellor?

Witness 1—Yes, with the exception of my father.

Ms GEORGE—Is there an argument for setting up some kind of service that is available for young people, rather than what we see currently happening and matters being resolved in the legal framework? What steps would you see as being available for young people, other than the argument that they should have legal representation?

Witness 1—To be frank with you, help was available but it was in the form of the men's groups. I did not find that out until I got to live with dad and after I went to see one of them with him—it was not exactly with my father, but he suggested that I go to see them. They probably would have given me the best help I could have had because, not only would they have listened to my views, taken them into account, helped me with them and helped me to get to see my dad, they would also have tried to salvage some of the relationship with my mother. That would have been a plus because, when I went to live with my dad, I did not have a relationship with my mother.

Ms GEORGE—In relation to this idea of separate legal representation for young people, at what age do you think that is a feasible idea to put into practice?

Witness 1—I would definitely say that the current age of 12 is way too high. At eight I knew what I wanted. My middle sister at seven years of age knew what she wanted. My opinion is that every child who has the ability to speak should be able to give their opinion and their views. However, their age should be taken into account in most cases. For example, if you are four then you are much more open to influence than if you are 10 years old. That sort of thing should be taken into account.

Ms GEORGE—Had there been some sort of compulsory mediation, where mum and dad were forced to sit down and talk to the children and have their views considered, do you think that system might have worked in your parents' case?

Witness 1—It might have worked. I am very cautious about having mediation due to past experiences with counsellors and people like that. They might have used their jargon to turn what I had to say on its head.

Ms GEORGE—Elaborate on that; tell me what you mean.

Witness 1—I may say I want to live with dad and they would tell me, 'No, you don't want to live with your dad.' They may say something like, 'She says she wants to live with her father, however that might be her father influencing her to the point where he has told her what to say. So I recommend she lives with her mother.'

Ms GEORGE—Was it through the Family Court mediation that you had this experience?

Witness 1—No, it was not my personal experience; it is just a caution that I have picked up on through dealing with the Kids Help Line and the school counsellors, and from listening to other cases.

CHAIR—You have talked about your relationship with your mum breaking down because you decided that you wanted to have a more permanent relationship with your father. Do you think it is very difficult under the current circumstances for a child to hold a valuable relationship with both parents?

Witness 1—It is exceptionally difficult; almost to the point that I would say that it is virtually impossible unless that child is prepared to stand up against just about every barrier you can care to name—from everyone, such as family members including aunts, uncles, grandparents et cetera to counsellors and teachers.

CHAIR—Under the present circumstances we talk in this inquiry about a presumption of fifty-fifty shared care between families for the benefit of a child. Do you see a fifty-fifty shared care, as the basis to start from, would have meant acceptable care for you at the time, even bearing in mind that you wanted to live with your dad?

Witness 1—The only reason I wanted to live with dad was that I related to him better. As I said in my submission, I was closer to him than I was to my mother—a lot closer. The only reason I thought I had to make a decision between my parents was that I thought the idea of having both parents, fifty-fifty shared parenting, was not an option. Dad said that his lawyers had told him that, even if I fought for it, it probably would not have happened; however, if I went for broke, as the saying goes, and went for him I would have a lot more chance of having him.

CHAIR—You would have had a lot more chance of getting time with him?

Witness 1—I would have had a lot more chance of getting time with him if I went to live with him, as opposed to wanting shared parenting—if I wanted both.

CHAIR—The issue is certainly about ensuring that children can have an opportunity to have the love of both parents; whereas, when you opted to be with your father, because you had a better, more loving and trusting relationship with your father, you had to sacrifice your mother's feelings and affections at the time.

Witness 1—Yes, I did have to sacrifice. It was the only option that I could see at the time. It is still the only option I can see beyond going for shared parenting, which would be a lot more of a viable option nowadays than I would have thought it was when my parents were going through the courts.

CHAIR—Did your father have to report your financial plight for you to be able to spend more time with him?

Witness 1—When I went to see him he would take us out to the movies, much like most fathers do now. My campaign was mainly funded through the pocket money that I got on a weekly basis. It was more domestic disobedience. For example, if mum wanted to visit an auntie or uncle, I would refuse to go and I would go down to the stables; if she wanted me to do the

dishes, I would go to muck out the stables, just to be out of the house; and I would go to school early so that I would not have to be in a car with her. I would do my homework in my room and, whenever she asked me about it, I would say it was none of her business.

CHAIR—Do you have a relationship with your mum now?

Witness 1—Yes, I do now.

CHAIR—Is it a good relationship?

Witness 1—Yes, I would say it is a lot better than it was. It is quite good at the moment. It is probably not as good as it was before the divorce, but it is still quite good at the moment. Then again, it took me two years of living in another country, and quite a bit more after coming back, to be able to get that relationship back.

CHAIR—What about your grandparents? Did you have a relationship with either of your grandparents?

Witness 1—That is complicated. I have a good relationship with my grandparents on my mother's side now; however, when I was doing my campaign they were taboo. It is as simple as that. My father's parents divorced and none of us have a good relationship with his mother—not my mother, not my two sisters, not me and not my dad.

CHAIR—When you were living with your father as a young child and he was at work, did you—

Witness 1—I was at school.

CHAIR—Did you then have after school care?

Witness 1—I went to an international English school and we had quite long hours. He would pick me up after school.

CHAIR—If you were five years old and went to school from 9.30 a.m. to 3 p.m. and then had to be in some sort of care until your dad could pick you up—maybe at six o'clock or seven o'clock that evening—would you still have wanted to be in that same position?

Witness 1—Yes. I remember that after school, even when my parents were married, I would walk from the school to my dad's office and spend my after school time with him there as opposed to at home.

Mrs IRWIN—You started your campaign at a very young age. In your submission you state that you wrote to every politician, the Prime Minister, the Family Court and even to the Queen.

Witness 1—The Queen was the only one who replied, unfortunately.

Mrs IRWIN—Was that over 10 years ago?

Witness 1—Yes, that was when I first started; it was the first thing I wanted to do. I have to admit that I believed in the justice system and our democratic society. I thought as a citizen of Australia that if I wrote to these people then they would try to help me.

Mrs IRWIN—Your poem is beautiful. I hope it is printed one day; it is gorgeous. My last question is: what would you see as the benefit for children in an equal time sharing arrangement?

Witness 1—You get both parents.

Mrs IRWIN—I am coming back to the question I asked you earlier. For equal parenting, if the children are at school, do you feel that it is important that the parents live just a couple of kilometres from each other so as not to disrupt the children's schooling, sports or whatever?

Witness 1—It would help. If the parents were just going to argue, it would probably be better if they were living further away and if, say, they used school or sporting activities to interchange like one parent drops them off and the other parent comes to pick them up. It would obviously require a lot of communication between the parents. If they were amicable, of course, that would help. However, I believe that parenting requires a lot of sacrifice from both parents anyway. If you have a newborn child, you cannot go out to a nightclub every night. I believe that this would be just one of the other things you would have to do, and should do, as a parent to give your children the best opportunity in life.

Mrs IRWIN—I cannot state where you live. *Hansard* will show you as a number instead of as your name. How far did you come for today's hearing?

CHAIR—Did it take you about an hour to get here?

Witness 1—It was 50 kilometres.

CHAIR—We certainly appreciate your coming into this hearing. We are unable to get a lot of feedback from children or young people who have been in this position. The committee is in an awkward position, in that in speaking with children—and we are still trying to understand how we might be able to do that—we do not want to appear as though we are exploiting them and creating more pressure and concerns for them. To have the benefit of your very great experience, and you being still a very young person, is extremely valuable to this committee. I note that you indicated that it would be good if parents could come and go from the marital home without the children being taken away from their secure existence. There was recently a court order in Darwin whereby the parents were ordered out of the house. The children stay in the house and the parents take turns in the house. So it is not impossible; it is currently operating in one family situation that I know of and it seems to be working. It is a pretty new idea, but it may have the legs to get some momentum.

Witness 1—That definitely has potential.

CHAIR—Thank you. We appreciate your coming before us this morning. As I said, it has been invaluable for us, and your submission is invaluable to us. Thank you very much.

[9.03 a.m.]

WITNESS 2, (Private capacity)

CHAIR—Good morning. The evidence that you give at this public hearing is considered to be part of the proceedings of parliament. I therefore remind you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. I remind you that the comments you make are on the public record. You should be cautious in what you say to ensure that you do not identify individuals and that you do not refer to cases before the courts. As you are appearing today before the committee in a private capacity, in order to ensure that your privacy and that of third parties is protected we will refer to you by name in the hearing; however, in the transcript record that goes on to the committee's website, we will refer to your evidence as being from a numbered witness. You will know your evidence but you will not be publicly identifiable to others. Would you like to make a short, five-minute opening statement before I invite members to proceed with their questions?

Witness 2—I am a single mother of a child under four and an adult son who is 28. I work full time to support my family. I decided to make a submission to this inquiry because, although I am not happy with the system, I believe that the presumption that children should automatically have to spend equal time with both parents is potentially damaging to all parties involved. Part of my submission states that there are now, in our modern world, many cases where parents of children have never lived together either before or after the birth of the child. To presume that children should automatically spend time with both parents needs to be looked at on an individual basis. Family history, including circumstances before and after the arrival of a child, should be looked at and taken into consideration. Child Support Agency procedures need to be upgraded so that information provided is consistent and properly reflects its policies. I also think using the taxation system to determine child support payments opens the door to manipulation of the figures by the paying parent and puts stress on the paid parent to ensure that correct payments are made.

CHAIR—Thank you.

Ms GEORGE—You say that you are not happy with the system but you do not support the presumption of joint custody rebuttable. In your submission you talk about the shortcomings, as you see it, with the child support formula. Would you like to elaborate a little on the link between the formula and the tax system and how we might uncouple that?

Witness 2—I wish I could tell you how to uncouple it.

Ms GEORGE—Tell me your frustrations.

Witness 2—My frustration is that taxable income for child support purposes through the Child Support Agency is largely determined by taxation statements for several years or by a personal statement of income by the person or their employer. After that time, updates to the amount that people pay seem to be taken from each taxation statement. Because tax is used to generate revenue, people know that if they can write off investment properties they can write off

losses in shares and other things like that. My understanding is that the Child Support Agency does not have enough staff to check every single deduction that is made by every paying parent and so tends to accept whatever the statement says is the taxable income, unless the person who is paid then queries it because they have other knowledge.

Ms GEORGE—We get the common complaint that, if you are in the pay-as-you-earn system, the deductions are much easier to access but that if you are self-employed, which is the example I think you are using in your submission, you can minimise your income so the paid parent can spend years trying to get what is their just entitlement.

Witness 2—Yes. In my submission I was not actually using an example of a self-employed person; I was using the example of a paid person. When I rang the Child Support Agency to ask whether deductions were being taken into account, I was told that they did not have the staff to check each year and that I would have to put in a change of assessment form in order to make sure I was getting the correct amount. They said they did not want to approach the paying person because they might stop paying and at the moment they are at least paying something.

Ms GEORGE—That does not quite make sense to me. If the person is a wage earner, it is not what deductions are claimed but the taxable income that generates the application of the formula.

Witness 2—Taxable income as established by the Taxation Office is based on what you can deduct and, at the moment, people can deduct costs from an investment property or losses from shares or other things. That information, from what I have been told by the Child Support Agency, does not automatically get passed onto them. The amount of the taxable income does, but not each individual deduction.

Ms GEORGE—The other issue that you raise that probably has not been raised as clearly by others is the issue of whether parents have cohabited before the birth of the child. Do you want to say a little bit more on the public record to elaborate on the point that you make strongly in your submission?

Witness 2—People get into a relationship and, for whatever reason, a pregnancy ensues, although the parents have never lived together. This, from my experience, has been happening a lot more in probably the last eight to 10 years. That means that two people—a man and a woman—have no shared parenting knowledge, style or anything else. In some cases, they do not even know what each other's styles are. They could come from two totally different families. If custody is shared, it could be that the child is living in one house with a totally different set of values, goals, rules and everything else from the other family. Because the relationship broke up before a child was involved, the people probably do not have any real basis for any communication whatsoever. I cannot understand how, if there is antagonism involved, people can speak to each other in the best interests of the child.

Mrs IRWIN—You were saying you have a child under the age of four years. Does he have any contact with his father?

Witness 2—Yes, he does.

Mrs IRWIN—Can I ask what type of contact he has.

Witness 2—I will have to phrase it in a way which is acceptable for this hearing.

Mrs IRWIN—Please do.

Witness 2—At the moment he sees him twice a week—for two hours midweek and six hours on Saturdays.

Mrs IRWIN—How did you come to that arrangement? Was it through the courts or was it through mediation?

Witness 2—Initially, contact was arranged through mediation with a court counsellor and working something out. Then the situation degenerated and it was dealt with by the Family Court.

Mrs IRWIN—You stated in your submission that grandparents should only have contact where they can show reasons why they should. We have had a number of grandparents come before the inquiry who have had a great relationship with their grandchildren for two, three or four years. Then the grandchildren's mum and dad separated and they might not have seen them at all. Why did you state that?

Witness 2—I considered that the area in my submission that I had the least knowledge of. I just thought that, if the grandparents wanted to, they should be able to apply.

Mrs IRWIN—You would have heard what the witness before was saying in her evidence. On page 2 of your submission, you state:

My personal experience is that when a child is under the age of (about) 8 years of age, little regard is paid to any comments the child may make about in appropriate behaviour by either parent.

The previous witness was saying that she felt that the child's voice regarding the parents' separation was not heard. Would you agree with that?

Witness 2—I would totally agree with that. I think every child who can speak, as she said, should be asked—with perhaps different weight put on what they say depending on the age of the child. If it is considered that the child has been unduly influenced, then there should be some other body to assess the child and try to get to the truth of the matter so the child's view is heard.

Mrs IRWIN—Let us hear the voices of the children.

Witness 2—Yes.

Mrs IRWIN—You were talking about child support and you indicated that the child support formula is unfair to both parents. You did say both parents. Have you any suggestions of changes you would like to see to improve the system?

Witness 2—I think if there were real consequences for people if they deliberately misled the Child Support Agency—by trying to do what a lot of people do with their tax and make their taxable income as low as possible—and if they were enforced, then perhaps that would stop people doing it.

CHAIR—Do you have any thoughts as to whether or not there could be an independent structure outside of the family law court? I preface that by saying to you that, if you have been through the family law court, you have obviously had a costly experience.

Witness 2—That is correct.

CHAIR—Were you a recipient of legal aid?

Witness 2—No, I was not.

CHAIR—So you had to pay your own costs?

Witness 2—Yes, I did.

CHAIR—Do you have an approximate figure as to what that might have cost you?

Witness 2—At the moment it is in the vicinity of $21,000.

CHAIR—If you, as two reasonably-thinking adults, cannot get to an agreed position, then you really have nowhere else to go but to a family law court to try and resolve that issue.

Witness 2—There are many avenues, such as going to counselling and mediation, but if none of those works—because they depend on two people being willing to talk and move on their positions—yes, it appears that the only alternative at the moment is the Family Court.

CHAIR—If there had been a tribunal process where you had to go through all of the steps of the tribunal—it may be a tribunal of three with some legal expertise, some psychological expertise, some mediation expertise or somebody looking out for the interests of the children—and if you had been unable to resolve your issues then, you still had the family law court process to go to but the tribunal was a much less expensive option, do you think that could have helped you under your circumstances?

Witness 2—In my personal circumstances it probably would not have, but I think anything that can avoid the use of the process of the Family Court would be positive in lots of cases.

CHAIR—Through this whole hearing process, and from a lot of the submissions, there has been an anti-law, anti-solicitor, anti-lawyer feeling emerging strongly. Some people may get very good advice from legal professionals; others are constantly pitted against each other. People before us have said that if they were looking at coming to an arrangement their legal advice might be, 'Don't accept that, we can get more; we can get a better outcome for you than that.' They would have been quite happy with what they had, yet their legal advice was pushing them towards a better outcome. Have you had any experience of that?

Witness 2—I have not had experience of that because I employ my lawyer; they are not there to tell me what to do. I take their advice. So I have not personally had that experience, but because of some things that happened I can see how it would be easy to be caught up in that situation. I think people have to be responsible for knowing what they want and what is good for their child and just sticking to that and not thinking of anything that my be extra to that.

CHAIR—One lady explained to us that she was not in a position to do that because she was so fragile. Her lawyer became her crutch. She could not make a decision. She thought that that decision had to be made through that person. She regrets that, but she was in a fragile position and she made decisions that she should not have made and then she could not get out of them. And men have indicated the reverse: they have been really pressured by lawyers or legal advisers not to go for a shared residency or anything further because they just would not get it. They were told, 'There is a basic floor of 80-20 here and you are not going to get anything more than that.' Do you have any opinion on how we might be able to look at removing some of the legal process from the separation until such time as everything else has been exhausted? You would not be allowed to go to a solicitor until you have gone through this independent or third-tier structure, that unless you went through that process you would not be allowed to go and get legal advice.'

Witness 2—I cannot see why that would be a problem. If people are making statements like, 'You have to have shared custody as a presumption,' then surely they can say, 'Before you can go to Family Court, this is the process you have to go through.' Now there is a process for using the Family Court: you have to go to certain things before you ever get to a hearing. So you could extend that to include other processes.

CHAIR—The reason I came to that is that we seem to spend a lot of time talking about the five per cent of the most difficult cases that go to family law. There are 95 per cent out there—and we are assured of this by all of our material and all of the experts—who supposedly have made amicable decisions as adults. I question that strongly. I question that for every reason: they may have run out of money or it may have become all too hard. I would suspect that it would not be 95 per cent of the separated public out there—whether they be from separated marriages or just separated relationships—who would have done it amicably and are happy. Would you agree?

Witness 2—I would totally agree with that. I have been in a position where I have thought, 'This is too hard. I can't afford it; I can't mentally cope with it any more.' Then I look at my son and I think that there is no choice. At the time I found it hard to get information on what else I could do. I have since found out that legal aid has a different process from the Family Court which involves—I have forgotten the correct name—some sort of mediation but still involves legal representation. Both parties must have legal representation. I wonder how useful that is and how that differs from the current conciliation conferences or anything else which—I do not know whether this committee is aware—can go on for six hours or more. Nobody can tell me that after six hours of negotiation anybody can come to any sort of reasonable conclusion. I do not think anybody can concentrate after six hours.

CHAIR—Again, around the hearings there is the perception that we are looking at a forced fifty-fifty rebuttable shared care arrangement, and because of this small five per cent of people, supposedly the voices who cannot get their way, when in fact the other 95 per cent are not in the family law court. For them, the fifty-fifty joint rebuttable presumption is not an option, because

they think that the mum—or the partner that currently has the child in residence; we have lots of non-resident mums as well—always gets 80 per cent of the time and the dad always gets 20 per cent of the time. Do you think there is a possibility that looking at fifty-fifty rebuttable joint residency prior to any family law court procedure could work for a lot of people?

Witness 2—I believe fifty-fifty shared custody would work for some people. I do not believe that 85 or 95 per cent of the people who have amicable arrangements have 50 per cent shared custody. Some non-residential parents do not want 50 per cent shared custody; their lifestyle does not allow having 50 per cent total responsibility for a child. I do not know what the proportion is of people who have come to an arrangement for fifty-fifty custody, but I do not believe it is anything like 95 per cent.

CHAIR—Are you aware that the process that we are going through in understanding and determining whether or not it could work is a place to start? It would not be forced upon, for interest's sake, a mother who had a career that sent her packing all over the world every day or every other week and could not possibly have her child for 50 per cent of the time. It is a place from which to start the negotiations. It is an agreed place to start. It would not be enforced. Is it your perception that what we are looking at is enforced?

Witness 2—Yes. That was my perception—that you start there and then, if that is not what you want, you have to go to other places to change it.

CHAIR—I think there needs to be a much clearer focus on what we are looking at in this inquiry. If that was not considered to be enforced fifty-fifty shared care but a benchmark and a place from which to work, would that more acceptable to you?

Witness 2—I think that opens up a lot of doors to the non-custodial parent at the time to say, 'Right, it is fifty-fifty; you have to have fifty-fifty.' Then they may have somewhere else to fight from and say, 'No, I want fifty-fifty and you're having fifty-fifty.' I would prefer not to have somewhere to start. I would prefer people to be able to talk to each other and include the child and work out something that works for their particular family, not for every family to be treated the same.

Mr PEARCE—Following on from that point, I think we would all prefer families to be able to talk to one another and each family to be able to come up with something that works for them. Unfortunately a lot of families cannot talk to one another. That is partly why we are here. I want to talk a bit more about the rebuttable presumption of joint custody or shared parenting—whatever you would like to call it. You say in your submission that there should not be a presumption around children who are too young to give evidence. What is your definition of too young?

Witness 2—I do not have a definition. If there is a case where some kind of abuse happens in the family, there is a little flexibility, but children under eight are generally considered too young. If a child is not considered old enough to be heard, then I do not believe a decision should be made about them when they cannot have a say.

Mr PEARCE—You used the example of where there is some abuse or something. What about the many situations where there is absolutely no evidence of a history of abuse or violence

of any sort? What about the case where two people have been living together in a happy and loving relationship for several years and have been bringing up kids and for one reason or another they grow apart et cetera and where a five- or six-year-old child is torn, if you like, and wants to be able to give their view?

Witness 2—I certainly think that they should be able to.

Mr PEARCE—I am confused. I thought you were saying if they were eight or under, they should not be heard.

Witness 2—No, what I meant in my statement was that children who are under eight cannot give evidence in a court. A court says they are too young to give evidence. At the moment there is nowhere they can have their say and be heard. I believe every child who can speak should be heard and have their views listened to. It may be that a three-year old needs a different amount of listening to given to them or different actions taken on what they say. It would have to be very clear that the child had not been unduly influenced. No, I believe every child has the right to be heard and be part of something that affects their life.

Mr PEARCE—Given your experience—and I presume you have spoken to other people, your friends or family, who may have been through marriage breakdowns as well—and bearing in mind that governments at the end of the day can only do so much (we cannot come into everybody's lounge rooms, bang their heads together and tell people to talk; we can only do so much), what is the most significant thing you think we could do to improve the system?

Witness 2—You could introduce communication courses in schools so that students know about these sorts of things before they get into relationship situations.

Mr PEARCE—In other words, try to start before we get to this situation—try to avoid the situation.

Witness 2—Yes. I do not think there is one specific answer that will solve the situation now because people can be sent to communication and parenting courses that will have limited value for every person who goes.

CHAIR—We really appreciate your putting in your submission. It was very well targeted. You have had the experience of raising two other children. Were you in the same position?

Witness 2—No, I was in a different situation.

CHAIR—Okay. I think it has been valuable for us, and we certainly do thank you, and also for having the courage to come this morning. We really appreciate it.

[9.27 a.m.]

WITNESS 3, (Private capacity)

CHAIR—Good morning. The evidence you give at this public hearing is considered to be part of the proceedings of parliament. I therefore remind you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. I remind you that the comments you make are on the public record. You should be cautious in what you say to ensure that you do not identify individuals and that you do not refer to cases before the courts. As you are appearing today before the committee in a private capacity, in order to ensure your privacy and that the privacy of third parties is protected we will refer to you by name in the hearing; however, in the transcript record which goes on to the committee's web site, we will refer to your evidence as being from a numbered witness. You will know your evidence, but you will not be publicly identifiable to others. Would you like to make a short opening statement before I invite members to proceed with their questions?

Witness 3—I come from a perhaps interesting position in that I am a single mother of a 10-month-old daughter, but I also grew up, from about the age of five, as a child of divorced parents, so I have that history. As you were saying to the previous witness, there are so many people out there and every single one of them is a complex person, perhaps a fragile person, a poor person, a rich person—and that is the children as well as the parents. When you throw in lawyers, money, courts and all those sorts of things, not everyone is ever going to be happy. You cannot make any sort of a law and expect it to fit in with everyone across the board. The aim, at the very least, of the current Family Law Act and what is currently in place is right. That is, if you cannot make everyone happy, at least aim to make the child happy. They are the innocent party to this, and that is just such a great aim—that their interests are paramount. The Family Law Act sets out a whole lot of clear, fair and admirable principles with the child as the main focus. And where joint custody may be a good thing where there has been shared care before or where that is a good thing, there is already room for that the way things are.

I have several concerns, as outlined in my submission, with enforced joint custody. There are problems with the practicality of it in the child's or the parents' lives—school, sport, social life, that sort of thing. My parents were not locking horns particularly, but my experience of being a child of separated parents was that I had problems readjusting and adjusting to slightly different rules—what was allowed here was not allowed over there. I think if I was doing that back and forth every week or every couple of weeks—I do not know what the idea is—I am sure school would have suffered. I am sure social things would have suffered as I was growing up.

I think there are also a lot of practical difficulties as government agencies already have a lot of problems with the current system. I can only see it getting more confusing in terms of child support and who pays for what—that sort of thing. I have obvious concerns, as I think everybody does, of situations of family violence or abuse, including psychological or emotional abuse. As the mum of a very young baby, I feel that the attachment or the bond of a mother with a child—especially with a younger child—is great. Generally, mothers are still the primary caregivers in most homes, and whilst I am all for the father being involved—and surely if he had a huge role before a separation, that would have to continue—I think you have got to honour the fact that in

nature or all of history mothers have, and still do have, a really strong attachment and primary role, especially with young children.

Moving on to grandparents, I do believe that other important people should have a role in a child's life, especially if they have before. I think it gets a little confusing because it should go through either parent. If the child is seeing parents at different times, then the rest of the family should go through them. I was thinking in my situation that, if all of my or my child's father's family rang me up on a different day, my child would not be able to do the normal day-to-day things. I would not be up to the normal day-to-day things because I would be factoring in the whole family thing. So there is a bit of worry there, but I think it is very important for children to have that.

My child has a very close relationship with my parents. One other thought I had was if, for example, I died—I am not planning to, but if something happened—and my parents had no rights whatsoever to further that, then I think that is very important. Finally, I believe the current system is great as an aim. It may not be working perfectly, but it is spot on looking at the child. It is not working, and there are lots of reasons why it is not working, but I do believe that both parents have a great and important role to play in their children's lives. I think the government or the agencies or whoever should aim to encourage parents' responsibility for commitment to, and involvement with, their children financially and otherwise before considering any major change to that basis in family law.

Mr PEARCE—Thank you very much for coming in. I appreciated your submission. I have a couple of questions. You say in your submission:

I believe some fathers would take up joint custody, for the sole purpose of avoiding their Child Support responsibilities ...

What makes you think that, given that residence or custody is completely separate to the child support issue?

Witness 3—I guess it is an assumption of mine. If it was joint custody across the board and it was split fifty-fifty exactly and somehow that worked, then I assume that one parent would not be paying the other. There is no one residential parent, there is no one non-residential parent, so there would not be any payment taking place. There are so many problems with the Child Support Agency—people not paying and that sort of thing—I was worried that some parents, not all, would take that up rather than the child's interests being paramount in that parent's mind and say, 'I'm not going to give her or him any money; I am going to take the kids three days a week.' I am assuming a bit there, but that was a concern.

Mr PEARCE—In your submission you say:

Mothers are still by far the primary caregivers for children in all families. This factor should be considered.

We have had a lot of evidence given to us and a lot of people would say that the fact is more than considered given that 80 or 85 per cent of all cases go to the mother. That is already pretty well considered. You give me the impression that you feel that is not given weight and the reality is, when you look at the reality of determinations from the Family Court, that mothers are still considered the primary caregivers. What is your concern there?

Witness 3—My concern there was that if you said 'fifty-fifty across the board' that would not be given due weight. Again, fathers have a great role to play, but a lot of dads are not involved at the ground level, especially with young children, as I said, and to suddenly say now it is fifty-fifty when mum has been doing 90 or 80 per cent is a factor that should be considered. It is more of a concern if this enforced joint custody comes about rather than as it is at the moment.

Mr PEARCE—I am interested to know how we as a government, trying to make the right laws to help people and the agencies, deal with the issue. For example, to use my own case, I have not been home much this week because I have been on this committee. We were in Adelaide on Wednesday and the other days I have been out almost every night, and so my wife has been the primary caregiver for my son as a result of my doing my job. Given that that is the reality in a lot of cases and, in this day and age, there are also a lot of househusbands, where mum is out doing the work and dad is the primary caregiver, how do you ever get over this primary caregiver concept? People become primary caregivers because of the lifestyle that they as a couple choose—for example, mum will stay at home with a young kid and dad will go out and work or you go out and work and dad stays at home. We heard from somebody the other day who married a public servant who from day one had always been the worker and he had always stayed at home. So he had been the primary caregiver. How do we overcome that concept and is it a reasonable concept to actually use, given that people make that choice?

Witness 3—My main concern was with younger children, say before school age. Whether it is a mother or father, they spend most of their days with that person. I am not saying they could not have a great day—because they probably do—with dad, mum or whoever the other one is on the weekend but, looking at the child's interests again, you do not want to disrupt that. You want to honour that if they have had somebody at home with them looking after them since they were born or one or two years old. Whilst the other person is still a huge influence, they have a great time with them—and that is fine—it would perhaps be disruptive to alter the pattern. Kids like routine and that sort of thing. Perhaps it could be a progression if that was going to be the best for the child, and I think a lot of parents sort of agree. I know with the father of my child—it is not anywhere near joint custody—as she gets older, with her interests being our main concern, it will progress and she will spend more time with him. She cannot spend nights with him at the moment, but that will happen gradually. It will not be, 'One day you go there, no matter how you feel about it.'

Mr PEARCE—You make the point in your final dot point—and I suspect all members of the committee have read this:

I am under the impression that several men's and fathers' groups were behind the push for this Committee.

What has given you that impression?

Witness 3—It is an assumption. But I am concerned about the fact that a lot of the non-residential parents are not happy with how it is. Sometimes I think it is that five or 10 per cent of cases who are really angry or that have not worked out for whatever reason. So it is an angry minority who are pushing—saying fathers is perhaps not quite right. The non-residential parents are not happy and they have more time on their hands. At the start of my submission I said that I am a single mum. I was up late one night to get my submission in. I would have loved to have made it longer and more detailed, but I just wanted to get it in. I am time poor and I am money

poor. I get the feeling when I read the *West Australian* that there are some angry men's groups that are really lobbying for their interests, saying that children must have a male role model, teenage boys especially, and this sort of stuff. I do not think that is really based on evidence or on fact all the time. They have got a point but—

Mr PEARCE—My colleagues can speak for themselves, but in the time that I have been a member of parliament I would have to say to you that I have been approached by more women than I have men unhappy with the family law court and the Child Support Agency.

Witness 3—Okay, I will take that on board.

Mrs IRWIN—I am the reverse: I have had more men come to see me. You have got a beautiful 10-month old daughter and you have just stated that your ex-partner does have some contact with the child and you are hoping that once your daughter gets that little bit older there will be more contact. What type of contact is the father having at this stage?

Witness 3—At the moment he has been seeing her once a week at my place and he is just moving on to seeing her a couple of times a week. I have started taking her to his home to get her used to being there. As I said, that sort of progression as she grows up a bit—she is still being breast-fed—

Mrs IRWIN—And that is the hardest thing really when it comes to that. Mr Pearce asked you about joint custody in a statement that you made in your submission. Where would joint custody not work?

Witness 3—In answering this I guess I look at my experience as a child of separated parents more than as a parent. The parents would have to live close together. What if the parents' jobs take them away? For a time in my childhood I was living with my father in the south-west and mum was living in Perth, so we only saw her on holidays. But, even if we had been in the same city or town, I think that it just would not have worked. There was all the adjustment and the readjustment. What my mum thought was important in my life my dad did not think was important, and vice versa. What my mum thought were great rules that should be upheld my dad did not care about. I had a lot of trouble adjusting back and forth, even though I spent only one or two weeks of the holidays and came back for 10 weeks of what was probably more normal school life. It was not even on a weekend but was each term of school. I had a big readjustment time and I think that, if I had been doing that every week or fortnight, it would have heightened that. Perhaps you could say that you would have worked out some sort of a balance, but parents do not always—and this is where the encouragement and I think the main focus of the government should be—take into account the fact that the child's interests are the main focus. Perhaps people who really do not like each other any more can get together and say, 'What are the real ground rules that we are going to establish?' A child needs the rules and authority figures and all the love and nurture as well, but if it is going to be swapping back and forth between quite different lives with different sets of friends and different places that is going to be a problem as well. The logistics of it are just a bit too difficult.

Mrs IRWIN—You are talking about the circumstances with your parents who were divorced. Was that a private arrangement that your parents came to?

Witness 3—Yes, that was a private arrangement.

Mrs IRWIN—Did they ever ask you what you felt about that arrangement? Did they give you a choice?

Witness 3—No, they did not actually.

Mrs IRWIN—You would have heard a few of the comments today, and we are hearing the same thing right throughout Australia from organisations and a lot of individuals, that the voices of the children should be heard. When it comes to a decision like joint custody, do you think that the voices of the children should be heard, that they should be able to make up their own minds whether they want to be with mum or whether they should be dad?

Witness 3—I think that they should be heard but, having just become a parent myself, I know that there is so much more. It would be lovely to see all of the teenagers have a say. I am sure that I would have said, 'I'd love it if my parents got back together; or if I shared exactly fifty-fifty time.' In a child's mind—maybe not for all children—I think that sounds great. You get some valuable information listening to children, but there is this whole weight of the practicalities of being a parent—trying to work and run your own life and all the rest of it. Obviously, I think that they need to be taken into account as well.

Mrs IRWIN—How did you come to the arrangement you have now with your ex-partner in relation to your 10-month old baby?

Witness 3—I had a lot of troubles after she was born. He did not see her between when she was two weeks old and when she was five months old.

Mr PEARCE—Had you separated before the birth?

Witness 3—Yes. We were never married; we were just living de facto. We separated before the birth and, between when she was two weeks of age and when she was about five months of age, he did not see her at all, by his own choice. I will not go into that too much.

Mrs IRWIN—I am just interested in the arrangement.

Witness 3—I hoped, as soon as we split—when I was still pregnant—that we could work something out. That did not happen. When my daughter was about five months old he expressed some interest and wanted to be involved. We talked about that between ourselves. We thought of going to mediation through legal aid and that sort of thing, and we almost did. It is just getting better and better now, and I think that with our child as a focus we have agreed without the need for mediation, counselling or anything. One of the things we did worry about was what I think the second witness was speaking about before: when lawyers get involved. I am not necessarily badmouthing lawyers, but the legal process even in mediation means that, rather than saying, 'We can agree. We don't mind if this happens or that happens', there is somebody telling you to go for a bit more. Also, you do not know family law back to front, so you defer to your lawyer and your ex defers to their lawyer. It could have become more angry, more formal and, I think, more difficult, because we do agree and, as I said, it is progressing nicely now.

Ms GEORGE—Thank you for taking the time to put your submission in. You heard our second witness say that the cost incurred in pursuing a resolution to her particular situation was in the order of $21,000. I have a general concern about this view that only five per cent of cases end up in the Family Court, so, ipso facto, somehow the other 95 per cent get resolved amicably. It does not appear to me, based on evidence heard here and based on dealing with my constituents, that that is necessarily the case. I am worried that a lot of people believe that justice is not open to them, because it comes at a high price. How would it be if we were to look at a system that was less litigious and less costly? You are lucky: you have been able to resolve it. A lot of families cannot in that situation. Can you envisage any other process that might work? Let us say that you and your daughter's father could not come to an amicable settlement. Would some form of mediation prior to the legal system getting involved be something that we should be considering?

Witness 3—Yes. I think that that would be great because, as I said, we were very close to requiring that. Thankfully, we did not in the end, but the mediation or the counselling almost threw in legal advice straightaway, which made you think, 'I'd better be paying attention. I'd better write down all my points.' It did not make it nasty, but it just made you really picky about every single detail—'What about when he did this!'—rather than, in general, saying, 'Let's look at this in a non-litigious way' and making people focus on their children. I understand that it is so hard for a lot of people to forget what they have been through separate to the child or as well as the child in a break-up. I think that some system of counselling and mediation is just great. Where that can be separate altogether from any sort of legal stuff I think would be really good. But where there is violence or abuse you always have to take that into account, and I am sure that you are taking that into account in all of your thoughts on this. But, in short, I think that that would be good.

Ms GEORGE—You made the comment that you believed that some fathers would take up the joint custody option because of some financial motivation. We are also looking at the child support formula. One of the things that interest me is whether we can uncouple the payment from the number of contact days, because it seems that we have a lot of debate about the 109 days. That seems to become the issue: the money rather than what is in the best interests of the child. Is that what you were thinking when you wrote this down?

Witness 3—That is what I meant. I have got to know a few single mums since I became a mum and, whilst you would not trade being a parent for anything—and I am sure any mother or father would say the same—it is not easy. And it is not easy doing it when you are on a single parent pension or you are poor already. So whilst I am sure most of these people would say it is about what their child needs, they still need to be able to run the house and the car and pay for the telephone, the gas and whatever it is they need. So I think money does come into it. It is one of those necessary evils. It would be great not to worry about money and say that we are all fine and forget about money and just look at the child. It would be great if access or whatever did not have anything to do with it. I know in law that access does not have anything to do with it but it gets tangled up in it because people are, if not angry, really worried about that—because they have to put the food on the table for the child. Whether access is for 100 days, one day or half the week every week, I think single mums or resident mums are often financially disadvantaged or not in the best position. If you look at the demographic of Australia they are not high up on the rungs at all. That is why money almost comes above the interests of the child. I think it would be very good to separate those, but I do not know how the dads or the non-residential

parents would feel because whoever has the children for 109 nights, or whatever it is, is putting the food on the table on those nights.

I think the other issue is that you are running two households for children. Rather than running the main household—and the non-residential parent paying whatever it takes to keep that rolling along—and having a visiting house where the kids do not need to have sports fees paid and whatever else, you have to set up two households, so that doubles the costs. Parents may not mind that but I think there is definitely a spot there where people may get angry either way. The mums or the residential parents may say, 'But I've got them the majority of the time; I pay for the majority of the things. I should still get child support for that.' Then the other parent who may have them a lot of nights will be angry and think, 'Well, what am I paying for?'

It could be made a lot clearer in the child support formula that the payments are for the child. I get a statement sent out to me—and my ex-partner gets the same thing—which says, 'You will be paying your daughter this much money for the year,' rather than, 'You will be helping to provide the basics and necessities for your daughter.' The child support should focus on the child as well because my ex-partner could get angry if he thinks he is paying for my new pair of shoes, which is obviously not the truth, whereas the payment is for the basics and necessities that are needed for the child.

CHAIR—I would like to come back to your submission. In your last dot point—and Mr Pearce raised it as well—you said:

I am under the impression that several men's and fathers' groups were behind the push for this Committee. I too believe that fathers have a great and important role to play in their children's lives but so often it is the father opting out of his involvement with his children.

You go on to say more than this, but I would like to come to the fact that you have been in a single parent situation since your daughter was born. How would you feel if you were in an intact relationship—and your love for your daughter is obviously great, as every parent's love for their child is—and then you decided to split that relationship for various reasons, and you were then given only 20 per cent of the time with your daughter? Do you think that a mother's love is any greater than a father's love?

Witness 3—I do not, but I think the mother is particularly important with very young children, especially breast-fed children—and this has been my focus, because I have got a tiny one. It may not be very politically correct these days, but I do think a mother has a different bond, especially with a little baby or a small child, and that is why it is mostly the mums who are staying home. It is a very strong bond, especially in the young years, and it should be honoured. You will see a lot of little kids go to mum instead of dad. That is not to say that they love dad any less; it is just that, in the formative years, the attachment is to one primary care giver.

CHAIR—You have rebutted the presumption of fifty-fifty, because you have not been in a relationship where you have seen your child be part of a partner's life every day.

Witness 3—Yes.

CHAIR—So it does give you the perspective of understanding your needs. We are always looking at the children's best interests, and this committee is charged with looking at the children's best interests. Funnily enough, although everyone who comes before us is looking at the children's best interests, they always seem to preface it with, 'This is what has happened to me,' and not, 'This is what has happened to my child.' So we tend to still be focused on ourselves. If you were looking at the child's best interest and you had seen the way in which an intact family worked—the way in which, even if you were a stay-at-home mum, at 5.30 or six o'clock when he walks in the door you hand the child over and say, 'It's yours; I've had it for the day,' and the relationship builds between the father and that child—do you think you would have a different understanding of how a father feels when, maybe through no fault or all fault of his own, he has an established relationship with a child and is being removed from the relationship and feels as though he is never going to have that relationship and the only way to get it is to fight for it in the Family Court? They do not have the money to do so, they run out of money and they give up or it becomes so hard and so traumatic and they are trying to do it while they are working and they are trying to keep a relationship with the child. Do you see that side of the situation?

Witness 3—I absolutely do. As you say, if I was in the other position, of course I would really feel that. There is no way I would want to be a dad who was getting 20 per cent at the end of the day and all those legal problems. But I do not think a presumption of joint custody is necessarily the answer. Counselling, working it out, finding a better way of doing what we are already attempting to do is basically my point. I do not think it is perfect the way it is and I understand that there are a lot of people angry for many different reasons. I support encouraging fathers and mothers to keep the child's interests as the focus, whether that requires counselling for them or whatever. Maybe they can work out a better arrangement than 20-80, because if they have a strong bond with the child that may be better for the child. Obviously, the 20-80 is just a statistic in the Family Court. I do not think changing the law is the way to necessarily make this a better situation; I think the law is fine as it is.

CHAIR—Say the children are in a position in which they have built an established relationship and now it is fragmenting all around them. Things have changed enormously in the way in which parents parent children and the way in which a work force now delivers. I cannot believe the difference in the way my sons parent now to the way in which my husband parented. My boys have primary parenting roles along with my daughters-in-law, but they are also primary breadwinners—it staggers me. When my grandchildren are sick they seek their father, and yet, because he is the primary breadwinner, if they were to split, he would be considered to be the person who would be least likely to get the greater share of the child's upbringing.

As we are going around the country it is becoming more and more apparent that there is a perception that we are trying to do something that is going to take away parents' rights even more than it is going to give children back their rights. It is starting to become more and more evident in the way in which people are presenting. The submissions are similar, but some of them are very good. Some of the shared parenting arrangements that we have been witness to are with parents who do not even speak with one another, who do not have a relationship with one another at all and who cannot form a good relationship, but whose shared care arrangements work very well for the children.

Witness 3—As Jennie said, maybe taking some of the legal stuff out of it would foster something like that happening. I take your point about the breadwinner. You were talking about that as well, Chris. That is something I had not thought of—that a totally involved dad could be given a 20 per cent share of care. But the legal stuff does not make it any better. If they could work it out, it would also suit a lot of the single mums I have talked to. If their children have a healthy relationship with their dads, they say, 'Great, I could get so many more things done that afternoon, on those two afternoons or on those days.' The kids of a lot of the single mums I talk to are in day care a couple of days a week just so that the mums can manage to run their households and do the shopping and other things that need to be done.

I think there is definitely room for it, but there are the practicalities to consider. Even if you are looking at the parents' rights, the kids' rights and all of that, you have to ask what the work hours are. If parents are coming to more of an agreement, or something resembling an agreement, they can say, 'I do not finish until seven on this night, so there is no point.' Every individual case could be looked at. The child's best interests in a particular case with parents who work particular hours or whatever could be factored in rather than looking at children's rights across the board. I think the reason that a lot of people do not go for joint custody is that it would not quite work anyway. Dads are happy to have every weekend, every second weekend or whatever it may be, and a lot of single mums would be happy for the kids to go on holidays because they cannot pay for holiday care and that sort of thing.

I think you should encourage the situations where it is being done really well and it is working within the current system instead of looking at the percentage of cases where it is not working, it is going really badly and people are not happy. You should look at what is making it work in those cases where it is working to some extent and try and figure out how we can get that five per cent—or whatever the percentage of unhappy arrangements is—moving in that direction, rather than change the fundamental law.

CHAIR—We thank you very much for coming in today. We really appreciate your contribution, and your submission was certainly very good as well. Thank you very much

[10.03 a.m.]

ANDERSON, Ms Lea, Manager, Women's Law Centre of Western Australia

DAVIS, Ms Kate, Women's Law Centre of Western Australia

CHAIR—I welcome Ms Anderson and Ms Davis from the Women's Law Centre of Western Australia. Evidence that you give in 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 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 you do not refer to cases before the courts. If you would like to make a short, five-minute opening statement before I invite the members to proceed with the questions, please do so.

Ms Anderson—We appreciate the opportunity to speak to our submission. This inquiry has opened the debate about the most significant proposed changes to the premises underpinning our system of family law in Australia since 1975. As a result, it is our view that it is regrettable that more time has not been allocated for discussion around the estimated 1,500 submissions that your committee has received. I thank you very much for this opportunity but regret a process that can only be described as rushed or pressured. I say that, knowing that there would be many submissions that my agency would strongly disagree with and I am sure that some of those individuals and organisations would have wanted the right to speak to their submission as well.

As stated in our submission, the current system of family law prioritises the best interests of children and has the capacity to be flexible according to children's needs. Any change that would introduce a rebuttable presumption of joint residency indicates a shift away from the children's best interests to the rights of parents. There are also many practical problems associated with such a rebuttable presumption. The act, as it stands now, emphasises the rights of children to know and be cared for by both parents. The act currently provides that both parents are to share responsibilities towards children. The act now encourages parents to negotiate arrangements and, where parents cannot agree, the court will focus on the best interests of the children.

It is our view that very little is known about how well shared care actually works. Where it does appear to work, the key to its success seems to be in ongoing flexibility, good communication between parents and both parents having a consistent commitment towards the children's needs and interests. Often families find negotiating around those issues very difficult prior to separation and particularly after separation. The practical problems that we see that could arise where joint residency would be a concept that people would have to rebut or argue against before the Family Court are associated with the costs of running two households. This may be impractical if one parent resides in a suburb close to the city of Perth and another parent resides in Joondalup or in the northern suburbs. Where then do the children attend school? Who runs them around to their sporting commitments? If, for instance, the arrangement is to be week-on week-off, how do those children maintain their social, sporting and friendship relationships that are independent of their parents and families?

We are also concerned about the impact that is evident in many primary schools in particular, whereby children have a changeover experience as they move between households. A lot of teachers and administrative support workers within the education system are having to offer very strong support to these children, who may be facing some organisational issues about whether or not they have brought homework, sporting equipment or school uniforms from one house to the other or who may just to be feeling a bit unsettled even after having had a positive experience at the household that they have changed over from.

There has been some Californian research into the experience of joint residency. We are very concerned that there appears to be a significant increase in litigation before their family court equivalent jurisdictions. We are worried that, by offering the capacity to reopen family law matters and challenge the basis upon which those original matters have been determined, we would see an increased use of the court, an increased use of counselling services, a continuing high number of unrepresented litigants before that jurisdiction, and increased demands for services provided by legal aid commissions in the area of family law and by community legal centres like our own.

It is our view that the relationship between child support and family law is extremely complex. Apart from the use of language around the concept of custody, which in our system of family law was dropped in 1996 because of its implications of ownership with regard to children, we are further worried about the number of sleepover days being manipulated to seek reductions in child support assessments or obligations. Children should not be commodified or treated as property. My organisation would prefer that we address issues around child support before a separate inquiry and that we discuss a rebuttable presumption of financial support for all children. Our clients suffer the impact of financial hardship associated with a system of law around child support that has resulted in an agency that cannot collect millions of dollars owed to Australian children. Child support should never purchase contact with or residency of children.

There are real issues around the potential dangers for women and children in families that have had the experience of domestic and/or family violence. Often such violence escalates after separation. Any notion that an adult who perpetrates violence against a spouse or partner can still be a good parent is extremely dangerous to children. In the current system, when violence is alleged it has to be proved, corroborated and substantiated. These allegations are particularly serious and are not made easily before the Family Court.

Finally, real families in our communities are varied and diverse. The best interests of the children of gay and lesbian parents, the children of families who have accessed donor egg and donor sperm, and the children of families where child care is provided by extended family members need to be considered. How can a simple presumption of fifty-fifty shared care be imposed on those families? Who are the parents that we are talking about? These are issues that the court deals with now. These are families and children whose best interests the court must take into account when considering those matters.

Ms GEORGE—Thank you, Lea and Kate, for your submission. I think the submission has elaborated all the grounds that any reasonable person would put forward to rebut the presumption. You seem to have a view, though, that the committee terms of reference might be

leading to a mandated fifty-fifty legislative outcome. Is that the view that you have come to on the basis of the way debate has occurred in the proceedings to the inquiry?

Ms Anderson—I do think that perhaps there is a difference between the public perception of the debate around these issues and the intention of the committee with regard to the inquiry. The issues for us are about putting up a rebuttable presumption of joint residency. Such a presumption would have to be argued against. Many families who arrive at arrangements where care is shared—sometimes fifty-fifty; sometimes in other proportions—manage to do that without touching the systems of family law. Sometimes that is because they can arrive at those decisions amicably, and sometimes it is because those negotiations or decisions are made under what we have called 'the shadow of the law'. So the negotiations are put under some pressure because of people's fears about what may happen to them with regard to their contact with their children or perhaps their financial obligations. I should state that our agency represents women clients who are resident parents, who are carer or contact parents, and that we also work with grandparents.

Ms GEORGE—The issue of family violence is one that, of course, troubles all of us in coming to any outcomes that protect the interests of children. Do you know much about the New Zealand system and how it operates in terms of contact with a parent who may be at the centre of a claim about domestic violence?

Ms Anderson—It is my understanding that, where such a claim has been alleged and substantiated, contact is only allowed by their family court equivalent if the court is convinced that the child would be safe.

Ms GEORGE—You say that linking child support payments with contact arrangements fundamentally undermines the workability of child support. We have the two issues to look at, one of which is the operation of the formula. Could you just elaborate on how you might revisit that issue in a way which does what you are seeking in your submission?

Ms Anderson—Certainly. Our agency actually does not offer advice with regard to child support matters, because it is a particularly complex area of law and we do not receive specified funding—there are only two community legal centres within Western Australia that do. Certainly our clients come to us and we try to offer them the most appropriate referrals we can, and part of their issues often relate to child support. We stated very strongly in our verbal presentation that we do not believe that children should be treated as property or commodified within this process. The National Network of Women's Legal Services has for some time called for an inquiry into child support and has suggested that some sort of rebuttable presumption of financial responsibility and provisioning for children is a concept that should be considered.

Ms GEORGE—Thank you.

Mrs IRWIN—Welcome to the inquiry and congratulations on a great submission. I also have to congratulate your group because we have received an amendment to your submission on same-sex partnerships. I think out of the 1,500-plus submissions that we have received—and they are growing daily—this is the only one we have that refers to same-sex partnerships. You stated that in New South Wales lesbian partners cannot be named on their children's birth certificates but in Western Australia they can. Is that correct?

Ms Anderson—Yes, that is correct.

Mrs IRWIN—What other states to your knowledge allow that?

Ms Anderson—To be honest, I am not across the systems of the registrations of births throughout Australia. As you would probably be aware, the partnership legislation in the state of Tasmania has only very recently changed—and, in our view, it has been a very positive change. Quite unusually, WA and Tasmania were competing for the worst, most discriminatory legislation against same-sex people within the nation; now we are competing to see who has the best. My understanding of their legislation is that they do not have the same allowances for parents in the areas of adoption and registration of births as we do in WA, but I cannot with any strength purport to speak with regard to the Tasmanian legislation.

Mrs IRWIN—It is hard when one state or territory is completely different to another. I should not say this for you, but would you like to see this done nationally?

Ms Anderson—Yes, that is the stated national position of one of our networks.

Mrs IRWIN—Legislation through government?

Ms Anderson—Yes, and certainly having a consistent approach would be marvellous. I am sure that you are aware that, with regard to the definition of a 'de facto couple' and their property rights, there are variations between state and territory jurisdictions.

Mrs IRWIN—Has the Women's Law Centre of Western Australia received many telephone calls from concerned parents since this inquiry was announced? The reason why I ask this is that we have had some individuals and some organisations who have come before the inquiry or who have sent submissions who have stated that they have a concern that we might be going down the fifty-fifty path and that this is concerning the children. One example I can give you is that a young girl of 16 years of age contacted my office. She loves her mum and idolises her dad. She is with mum but can see dad any time she wants to. But, unfortunately, dad lives about 2½ hours away. She spent one weekend with her father just after the inquiry was announced. Dad said, 'Well, my darling, that means I can go back to court and we can have fifty-fifty. You can be with me for one term and with mum for the other term.' This really upset her because she thought mum and dad were going to be fighting again after they had sorted everything out. Hence, she phoned my office for assurance. Are you getting phone calls like this?

Ms Anderson—Not only is it obvious from the telephone contact that we have from clients or potential clients that the ante has been upped in the negotiations of their family law issues with regard to the children but also we have had a couple of clients who have brought to us correspondence from the other party's lawyers where they have been close to reaching agreement with regard to property settlements and child support but the other party has indicated—or their lawyers have indicated—that the agreement is now off and that they would prefer a slightly different percentage to be allocated to the woman and that if she does not agree to that then they will seek joint residency.

Mrs IRWIN—You note that few parents opt for fifty-fifty arrangements. Why is this?

Ms Anderson—Why is it that few parents seek that?

Mrs IRWIN—Yes, at this stage.

Ms Anderson—Through the statistics that are compiled by the court, it appears that for many families that may not be the most practical way of sharing the care of children. That may be because parents live and work in different areas of a city, or it may be because they live and work in different areas within regional Western Australia—or Australia for that matter. There are lots of practical issues around that. One of the things that concerned us is that the system does not seem to measure the families that make their arrangements without touching the courts or the Child Support Agency. For instance, if you look at the statistics compiled by the Australian Bureau of Statistics of families that separate with children under the age of 16, often in any given year those figures are much higher than the number of cases that go to the court. There may be a number of reasons for that. I am not trying to suggest that all of those families make arrangements readily and easily. As we have stated in our submission, some are negotiating within the shadow of the law and that gives us great concern.

Mrs IRWIN—In your submission you have stated the risk of child poverty in equal residence. I remember seeing it last night when I was going over your submission, because I did not get your submission until yesterday as we only found out yesterday that you were coming before us today. What do you mean by that?

Ms Anderson—There are some very real problems, particularly for households that are headed by single parents. Between 75 and 85 per cent of those households are headed by women. Many of them are living in disadvantaged economic circumstances and are dependent on Centrelink benefits, sometimes with a small amount of child support in addition to that. If the child support is unable to be collected because there may be some faults with our existing systems of child support collections—that is one issue. If both parents are dependent on Centrelink benefits and we move to a system where there is a rebuttable presumption of shared care—and that will make it difficult for people to argue either for or against before the courts themselves—how do you share family tax benefits and who gets the single parenting payment? For the children growing up in those households, having to kit out and supply the basic needs for children—and we are not talking about tickets to Cirque du Soleil or all sorts of extravagant treats; we are talking about sandshoes, school uniforms, paying for school excursions—becomes more and more difficult because you are trying to provide a reasonable standard of living.

Mrs IRWIN—On page 2 of your submission, under the heading ‘Increased problems of access to justice’, you state:

Most women who seek our assistance have either reached the limit of the Legal Aid funding or have been denied a grant of aid.

When is a grant of aid denied, and what changes would you like to see regarding this?

Ms Anderson—We participated in the compilation of a submission on legal aid funding for a Senate inquiry. Grants of aid can be denied where the clients fail to meet the merits test for the potential success of the matter in law, or they may be denied because the client fails to meet a means test. Those tests vary between the state and territory jurisdictions for legal aid

commissions. With regard to the merits test—that is, whether or not the legal aid commission, on the face of it, believes that the matter has a chance of succeeding—we do not think that is access to justice for ordinary citizens as, before your matter even hits a tribunal or the court to be heard, someone who is not a judicial officer is making a decision on its potential success. We do not think that is a very good system of justice.

If you go to the Family Court on any given day, you will see that it is not an easy place to be around—people are anxious, it has a very high proportion of unrepresented litigants and it is very confusing. It is an area of law where emotions run high and people are feeling particularly anxious. If your first language is other than English, perhaps your functional literacy levels are not great or you are feeling very emotional about your matter, you may not understand what is being said to you. Most of the clients who come to our service represent themselves. We try to provide them with as much assistance as we can but the minute we have a solicitor who goes on the record, for an agency as small as mine, that is 40 to 60 women who we are not speaking to in any given week. We will go on the record when we have sufficient solicitor hours to cover the services we provide. We do so only in fairly extreme cases where the clients have had a shocking experience of domestic or family violence, where their first language may be other than English or where they may face other additional challenges as a result of disabilities. It is very difficult issue.

We believe that unrepresented litigants can only increase, and that the court itself may not be able to cope with the pressures. If you think people are unhappy with the current system of family law now, we believe the introduction of a rebuttable presumption of joint residence will only increase people's unhappiness with the courts and the system. They will have a longer time to wait; they will have less access to legal advice, information, representation or education; and they will be complaining. It will not just affect services like ours or legal aid commissions: the courts and counselling services will all require, in our view, a significant input of funding.

Mrs IRWIN—And there is the effect that it will have on the children from a psychological point of view.

Ms Anderson—Children are traumatised by the conflict that their parents experience. They do not really want to know, quite often, what it is that is going on between their parents and their extended family members. The court currently has the capacity to place the children's best interests at the forefront of their decision-making processes. We believe that that flexibility should be maintained.

Mr PEARCE—Thank you very much for taking the time to come in today. I have a couple of questions. Firstly, I would like to go back to one of the original points that Jennie raised in one of her first questions. I think you said, Ms Anderson, that there is a bit of a difference in the perception of what the committee might have in mind and what the public might have in mind regarding the rebuttable presumption. I notice in your submission that every time you refer to it as a 'presumption of joint residence' and not as a 'rebuttable presumption of joint residence'. Was there a reason for that?

Ms Anderson—The implication was that we were dealing with a rebuttable presumption of joint residence.

Mr PEARCE—I am just worried that maybe it was a result of having a different perception about it, because I think it paints a completely different picture: a rebuttable presumption is different from a presumption, isn't it? Do you have any comment on that?

Ms Anderson—I guess I would have thought that implicit in the earlier sections of our submission where we deal with what a rebuttable presumption of joint residency would be. We reject the introduction of that. Then, probably because it is easier to write and read, we used a shorthand reference. We apologise for any confusion.

Mr PEARCE—I take the point you were just making that you believe that the court should retain its flexibility. You said, 'I think it already has the ability to give joint residency, and it should retain its flexibility.' So, if it already has that flexibility and there were a rebuttable presumption of joint residence, it would still have its flexibility.

Ms Anderson—Except that people would have to argue against the application of such a presumption if they disagreed with the impact of such a presumption on the care of their children.

Mr PEARCE—But people could disagree with it now, couldn't they? They do that throughout the proceedings in their affidavits and in their submissions to the court. They agree, they disagree or they put their view forward, don't they? The point I am getting at—just taking your line of thinking about the court having the flexibility—is that, even if the parliament were to legislate for a rebuttable presumption of joint residence, the flexibility would remain.

Ms Anderson—In our view, it would be much harder for unrepresented litigants—and they are a high proportion of the client base that the court is dealing with—to put the arguments up to seek the outcomes that they desire for the residency and ongoing care of their children.

Mr PEARCE—I appreciate that, but I thought that we were talking about the flexibility of the court, not that of the people who are representing themselves.

Ms Anderson—I think that if you introduce a rebuttable presumption you are in fact constraining the way that the court considers the arguments that come before it. Currently, if you sit at the back of the Family Court on any given day, you will see the judiciary and magistracy supporting unrepresented litigants in the arguments that they put forward. It takes a lot of time and resources, and great patience.

Mr PEARCE—I notice that on a couple of occasions in your submission you refer to the potential impact of the rebuttable presumption. For example, down the bottom of page 1 you say:

> In creating a presumption of joint residence the government would be creating a presumption that most families will need to rebut.

Then, over the page, under section (b), you say:

> Creating a presumption that will need to be rebutted by the majority of separating families …

What gives you the feeling that it would need to be rebutted by the majority of families?

Ms Anderson—It appears that most families post separation do not have joint residency. There are practical problems associated with trying to establish joint residency, particularly within families who do not live in the same suburb or who cannot maintain life in, say, a small regional and isolated town within Western Australia. It is quite obvious that, for many families—for instance, those living in regional WA—at the time of separation one or the other of the parents may seek to return to the city. That is either because of the support of extended family members and networks or perhaps because of the greater opportunities for paid employment.

Mr PEARCE—So you are saying that, based on your experience, if there were a rebuttable presumption, it would be rebutted by the majority of people going to court?

Ms Anderson—Yes.

Mr PEARCE—Also, under section (f), 'Minimal caring experience', you say:

A presumption of joint residence would be unreasonable where one of the parents has very little skill or experience caring for children.

Is that your position regardless of whether that is a mother or a father?

Ms Anderson—Absolutely. There are many fathers who are the full-time carers of children and who have the capacity to offer that care. I made a brief reference to this earlier, for the benefit of the committee: we work with clients who are the resident parent and we work with clients who are the contact parent. Whilst we are a women's legal service, we are not a separatist service by any stretch of the imagination. Quite often, dads will accompany their daughters in when they are seeking legal information and advice.

Mr PEARCE—Under section (j), 'Recovery orders and Interim orders', on page 10 you say:

... the introduction of a presumption of joint residence undermines the weight of the status quo argument ...

I am interested in this status quo argument. A couple of lines further down you say:

The status quo practice currently provides a degree of certainty, stability and protection of children's interests ...

'Status quo' is an interesting term. I have read several submissions and I have had several of my constituents come to see me to tell me about their experiences. They told me that, when they go to court, one or the other parent uses the status quo argument, the court process is determined and then, lo and behold, they up and leave. The status quo existed for the sake of the court process. The property settlement is generally the trigger, in my experience. For example, once the property settlement is sorted out, Jim decided that he wanted to move because that was the family home and he does not feel the same in it any more, so Jim—or Mary—used the status quo argument. What is the status quo? I am in Perth at the moment—that is my status quo. I will not be here tomorrow, not that I do not like Perth. Is the status quo argument given too much emphasis in our system today, given that it can change tomorrow?

Ms Anderson—I do not think that the status quo argument is given too much emphasis. The court needs to be able to provide a determination that offers children, particularly, some sense of security at what can only be described as a very difficult period for them. If you think that the parents have issues and feel emotional about it, you only have to work with children in this area to observe the impact on those children. Interim orders are decided often with little evidence coming before the court, but the parties impacted by those orders have the capacity to return to the court and to seek for those orders to be changed. It was interesting to be asked about the New Zealand experience for families where there has been some experience of domestic and/or family violence, where the paramount safety concerns with regard to the members of those families are very important and need to be considered when making a determination on the status quo. We know from the experience that our clients bring with them into the agency that the status quo may well be the father being the primary care giver.

Mr PEARCE—You mentioned that, if there was a rebuttable presumption, you would worry that that would put a lot more onus onto people having to rebut it et cetera, but then you feel that the emphasis on the status quo argument is okay. Let us say you are a father and your marriage breaks down and you separate, if you believe that doing the right thing would be to leave the family home and leave the children in their family home with their mother, aren't you—and I am playing devil's advocate in asking this question—in essence, if the status quo argument is given as much emphasis going forward, by default, disadvantaging your case from day one?

Ms Anderson—Not necessarily. The status quo argument really only applies at the interim order stage. Sometimes those orders will stay in place for a long period of time, because the difficulty between the relationships settle down and arrangements can be made. If parties are unhappy with interim orders, you can bet your bottom dollar that they are back in the court trying to sort it out.

Ms GEORGE—If they have got the money.

Ms Anderson—If they can afford it. But often they are in there representing themselves, trying to seek orders that better reflect the circumstances that they want.

Mr PEARCE—In your experience with the clients that you represent, how often are interim orders changed?

Ms Anderson—To be honest, I could not, with any validity, give you some sort of statistical overview, but I am happy to come back to the committee and address that.

CHAIR—Thank you. It would be very good if you could take that on notice and come back to the committee with that. Ms Anderson, you have primarily spoken here today of the Family Court and all of the options, availabilities and processes that the Family Court can undertake in order to be able to resolve this without any changes. I keep coming back to this: five per cent are in the Family Court. There is 95 per cent out there that, for one reason or another, may have started in the Family Court and have used up all of their finances and have had to drop out because they do not have any further finances or they may not want to go to the Family Court for every good reason. For example, they may not need the stress in their lives or the time that it takes in the Family Court process—there are a multitude of reasons.

I can understand why you are a legal service, why you speak in legal terms and why your submission is extensively in legal terms. I look at the 95 per cent who have an inability in many of the cases to get an outcome that would be acceptable but they have no choice. When I look at point 2, 'Practical problems with a presumption of joint residence', on page 5 of your submission, you talk about how the Family Court causes deep distrust of one another for parents. You say:

Many parents who are separating agree to joint residence agreements, without reference to the family court ... it is currently quite unlikely for the Family Court to *order* joint residence in contested cases. In the small proportion of cases which go to trial in the Family Court (less than 5%) the parties tend to be deeply distrustful of one another, uncooperative and unable to find agreement despite court mandated counselling and conciliation conferences.

Basically, you are saying that there are many circumstances where women and children would be in dangerous situations or it would be unworkable. I say to you that many people have come before us who currently have a joint residence who have all those things in place—that is, distrust and even dislike of one another as individuals—but they have shared residence and it actually works. Do you think that, by looking at it in a legal framework, you cannot see that things like these can work or currently work? With respect, I understand that you are talking in legal terms. I have a bit of an aversion towards the legal people being involved in this scenario because you have nowhere to go but to work within the law, as you have demonstrated quite aptly right through your submission. Is it not possible that the 95 per cent of people out there could come to an agreement more readily, without such aggression or aggrievement, if they thought that they could get an equal attitude towards their parenting?

Ms Anderson—I think it is time for me to come out to the committee: I am not actually legally trained. I am a non-legal coordinator of a community based legal centre.

CHAIR—Did you write this submission?

Ms Anderson—Kate primarily wrote the submission but the responsibility lies with the agency. I did the fairly rushed work on the addendum. Let me say at the outset that the thing that distinguishes community based legal centres is that we do come from a more holistic framework and we recognise that the solution is not always a strictly legal solution or one that fits in with the minority of matters—the five per cent that you have referred to—that actually go to trial and determination at the Family Court.

We support a system that offers a variety of services to individuals and families. Those services should include counselling, mediation and alternative dispute resolution procedures, but the provision of those services, in our view, should not be at the expense of—or should not take away from—the provision of improved access to cheap, good legal advice for those individuals and families that require it. I can tell you that we very happily divert people who call our agency into counselling, into mediation and into alternative dispute resolution procedures. Without formally surveying people—we are going to do that in our next client survey—we estimate that we can divert less than 10 per cent of our potential clients into those alternatives. We welcome those alternatives, but not at the cost of improved access to justice through the provision of legal aid commissions and increased funding to Aboriginal legal services, to Indigenous family violence programs and to community legal centres.

CHAIR—Ms Anderson, I am very pleased that you are interested in diverting people. Would you then support a third-tier structure that took away, primarily, all of this negotiation area upon separation, prior to being allowed to go to a solicitor to discuss a legal outcome from your separation? Would you support a new third-tier structure that you went through in order to ensure that the legal people were kept out of something that was, frankly, a family concern until a point of time where it broke down and it was not able to go any further?

Ms Anderson—Not at this stage. I think that individuals and family members should know what their legal rights and responsibilities are within the process, because they do impinge. The system currently provides and does divert people into counselling and mediation.

CHAIR—But that is the family law court system. I am talking about the 95 per cent of the people who do not go into the family law court.

Ms Anderson—My understanding of the statistics that we have been discussing is that 95 per cent of the matters lodged at the court do not proceed to trial and hearing. That 95 per cent is the statistic with regard to the matters that are lodged in the court. As I am sure you are aware, there are counselling and alternative dispute resolution processes that exist parallel to the court system, and we do support the provision of those alternatives. But what we are saying is: you cannot wash completely the legal solutions and rights—

CHAIR—No, and nobody is suggesting that. We are saying that you go through a process prior to being able to access legal services.

Ms Anderson—Quite often following counselling consent orders can be drafted on behalf of parties, but I think one of the most important things that we hope to be saying to you today is that the system needs to be flexible. There has been some discussion, as I understand it, with regard to this possible alternative process of those panels of three consisting of social workers and psychologists. There are roles for those professionals within the breakdown of family relationships, and there is a capacity for those professionals to be involved. But if you think people complain about courts and lawyers, wait till you hear what they say about social workers—it is even more unpleasant.

CHAIR—You talk about flexibility and you talk about being able to move within the scheme of things, but in all honesty the submission that you have here does not demonstrate what you are saying. It says on page 5:

> In circumstances of domestic violence or child abuse a presumption of joint residence will create a legal presumption that the children spend half of their time with the person who perpetrated their abuse, or who was violent in the home. Such a presumption is clearly not in the children's best interests and should not be contemplated by government.

Commonsense is required. The whole purpose and whole preamble of this inquiry was about the best interests of the child. Nobody is looking to put a child in a position where they are abused. You have taken it in the context that a presumption means that if you come from an abusive family, with an abusive father or mother, you are going to spend 50 per cent of the time with them. I suggest that the discussion you are putting on the table today does not fit the rhetoric within your submission, because it does not seem to be flexible or demonstrate a commonsense approach.

Mrs IRWIN—Does Kate want to answer that?

CHAIR—No, I would firstly like Ms Anderson to answer that.

Ms Anderson—It is not clear within the terms of reference that formed the parameters of this discussion of a rebuttable presumption of joint residency how it is, and on what grounds, you would be able to argue against that.

CHAIR—It certainly is clear about the best interests of the child.

Ms Anderson—Presumably, if such a rebuttable presumption were introduced into law, we would strongly advocate that, where there has been experience of domestic and family violence, you do not have to rebut such a presumption. It should not even be an alternative being considered. If there is time for the committee to analyse the overseas experience—if you could have a look at the New Zealand system and the experience in California and some of the other American jurisdictions—the evidence of families where there has been experience of domestic and family violence is very important.

CHAIR—Thank you very much.

Mrs IRWIN—May I ask one question?

CHAIR—No. Thank you very much.

Mrs IRWIN—It is only five to 11. It was only going to be a yes or no question. Lea and Kate were going to be here until 11 o'clock.

CHAIR—We were trying to make up some time because we had an inclusion. Could we not have the debate here, but you can ask a question.

Mrs IRWIN—Thank you very much, Chair. As I stated earlier, we only saw your submission yesterday so it was late last night—it was about 11 o'clock—when I actually went through it. I was going to ask a particular question that I jotted down and I decided, prior to coming to this inquiry, that I was not going to ask it. But, especially with the opening statement that you made, I am going to ask the question now. Lea, I have been contacted by some organisations and individuals regarding the time allowed for this inquiry. As you will be aware, the government referred this inquiry to our committee on 25 June. Submissions for organisations and individuals closed on 18 August. We started our public hearings at the end of August and we have to report to the parliament out of session by 31 December. Does your organisation feel, like some other organisations and individuals that have contacted me personally, that the time frame that has been given to this inquiry runs the risk of making recommendations which may not serve the best interests of all concerned, especially the mums, dads, grandparents and the children?

Ms Anderson—I did make that point at the very beginning of my submission.

Mrs IRWIN—That is why I am asking this question now.

Ms Anderson—We are extremely concerned about what we could only describe as a rushed and pressured process. I feel extremely grateful that we have had the opportunity to submit. I was given notice at about 11 o'clock yesterday morning that we would have the opportunity to appear before you today. I think that, in a democratic system such as ours, all the individuals and organisations that have gone to the trouble of making a submission should have the opportunity to speak to their submissions. I understand that as a committee you are flat out like lizards drinking and that you were in Darwin hearing from people yesterday—

Mrs IRWIN—And in South Australia on Wednesday.

Ms Anderson—and it is very important that people have the right to have their say, including those organisations and individuals who would have a submission completely the antithesis of ours.

CHAIR—Thank you very much for your appearance today. Could I make the comment that there would be no committee in parliament that would hear from every single person who had put in a submission—whether there were 60 submissions, 200 submissions or 1,500 submissions—individually. Mrs Irwin might like to indicate whether she knows of a parliamentary committee that would hear, in person, all of the people who have made a submission.

Mrs IRWIN—The chair is correct. The inquiry just finished into substance abuse had 300 submissions. That went over a period of three years, and I do not want to see this inquiry go that long. But, as deputy chair, I am very upset that we have had people who have put their names to paper and written their stories and we are not going to be given the time to sit down and read those submissions. We cannot get them all here before us, but we should have time to read them.

Mr PEARCE—Could I just remind the committee that in 2005 it will be 30 years since the disastrous Labor introduction of the Family Law Act. We have had 30 years to review it.

CHAIR—That point has been made. Thank you very much for appearing today.

[10.56 a.m.]

MELSOM, Mr Gordon, Co-Convenor, Family Law Foundation

WALTERS, Ms Jennifer, Co-Convenor, Family Law Foundation

CHAIR—The committee welcomes representatives from the Family Law Foundation. The evidence that you give at this public hearing is considered to be part of the proceedings of the parliament. I therefore remind you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. I also 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. We invite you to make a short five-minute opening statement before I ask members to proceed with questions.

Mr Melsom—Whilst I will be making the opening statement, Ms Walters and I will share the questions. As you will have noticed from our submission, we represent a wide range of community services and organisations, so we do not have a particular perspective.

The law encourages families to reach agreement about arrangements for the children. In fact, most families agree about the parenting arrangements for their children without the need for any court intervention. I heard that mentioned earlier. If issues cannot be resolved through agreement, then the Family Court can make a determination. The law is clear that any determination must be made with the best interests of children as the paramount consideration. Such a determination will be made in the context of the particular facts and circumstances in each case.

The reality is that pre separation the primary care givers of children are women. That is because that is how most families structure their relationships in our society. Post separation, this trend continues, with ABS statistics showing that 84 per cent of single parent households in Australia are headed by women—this was in 2000. In the United States, a similar trend is reflected, with sole physical custody the most common option. Between 12 and 24 per cent of children are in joint physical custody. We define 'joint physical custody', as most researchers do in the US, as being between 30 and 50 per cent of residency with one of the parents.

In Australia there are only about three per cent of families that have shared residence arrangements. Little is known about the impact of these arrangements on children. We have to look at overseas research for any substantial data about joint residence arrangements and their impact on children. As was outlined in our paper, this research shows that shared residence arrangements can be successful, given the right set of circumstances. Some of these are: where there has been a history of cooperation; where there is a history of parenting patterns that reflect pre separation shared care; where there are low levels of parental conflict; where parents reside in roughly the same area, allowing children to attend one school and maintain social links; and where parents are able to reduce or alter their working hours to an extent that they are able to accommodate those arrangements. Whether these factors are going to be apparent in the majority of families that separate is unknown. However, it is unlikely, given that separation is typically a time of conflict, stress and financial constraints. When parents decide to separate it is usually

because they cannot cooperate sufficiently to stay in that relationship. What research does show is that a shared residence arrangement is logistically difficult and a very complex task of mutual cooperation.

I would like to conclude by highlighting some of the Family Law Foundation's concerns and recommendations. The starting position should place the best interest of the children as the paramount consideration. Under the current system, parenting can be a shared responsibility and can be an option if it is in the child's best interest. A shift from that position to a rebuttable presumption potentially has the effect of undermining the child's best interests by placing parents' needs and the concept of parental fairness above the needs of children. We also have the word 'commodify' that I heard earlier but I assure you that there was no collaboration in that. The presumption can commodify children by treating them as property to be shared.

A radical change to the legislation should not be introduced without sufficient evidence and research to suggest it would be appropriate and in the best interests of children. Parents should be encouraged to share the responsibilities of parenting not only after separation but also while families are intact. In my day job I am CEO of Relationships Australia in Western Australia. One of our major functions is in fact to try and encourage that and we think that should be taken further.

There should be careful consideration of the impact on children and families if this presumption is introduced, given that litigation is likely to increase as people will be obliged to start proceedings to rebut the presumption where it is clearly inappropriate. There is also likely to be reopening of cases and applications to court to determine a range of specific issues, such as where the child will attend school. Increased litigation is likely to increase conflict and uncertainty and increase the strain on family finances, all of which are likely to have adverse affects on children.

A presumption of shared residence could have the effect of reducing the income of households already dependent on income tested benefits, which will presumably impact greatly and increase the call on those benefits. The child support formula recognises that with increased contact there should be a reduction in child support paid. However, increased contact will not necessarily reduce the costs of maintaining a child to any significant extent, especially in respect of some of the fixed costs such as rent, education costs and clothing.

Ms GEORGE—Thank you for your submission. What I found particularly interesting is that we have a dearth of research in Australia about shared parenting and so few post separation situations where it is actually occurring. You argue on one page of your submission that as the law stands it already provides for joint residency arrangements, providing they are in the best interests of the child. Then on the next page you refer to the HILDA survey, which shows that parents are complaining about the lack of contact and that both men and women want more. How do you reconcile that with what you say on this page about the law providing for it? The argument that seems to be coming through is that, despite the amendments in 1995 that made those provisions and parenting plans a possibility, little has in fact moved. Could you amplify that for us, please?

Ms Walters—The statistics are interesting and they probably reflect some of the views that we already hold. There should be some research. That was part of our recommendations. We

should be looking at some of the reasons why that contact is not happening. It may well be the finances involved in exercising contact but we have a lot of research that shows that financial consequences are mainly a burden on the women. Smyth and Weston collated a lot of that research about the financial consequences on families following divorce and it unilaterally found that that affected the women more than the men in relationships. There should be a lot more research done around those figures and why that is not happening.

Ms GEORGE—I get the feeling reading your submission that you also have a perception of what the outcomes might be because you make reference to words such as 'imposing joint custody'. Can you elaborate on why you think starting from a premise of joint sharing will necessarily lead to an imposition of joint custody?

Ms Walters—I think in some situations it will have the effect of being an imposition. We talk about orders made in the shadow of the law; if the law is such that this presumption operates then that will happen in the shadow of the law of joint presumption.

Ms GEORGE—If the law were not to be changed, how do we give effect to some of the principles that underwrite family law, such as the child having the right to know and be cared for by both parents? When you look at the outcomes, they do not seem to be upholding the principles that underpin the law. Where do we go from here?

Ms Walters—We do not know a lot of the reasons why that is not happening. There is not the data in Australia to show that. All we have is anecdotal evidence and comments. We need to undertake a lot more research to look at this whole issue.

Ms GEORGE—I am interested in one bit of research that you quote from Ricci 1997, which states:

> ... when a parenting pattern is constructive, many arrangements can work ... the prize is not a prescribed timeshare arrangement but a healthy pattern of parenting.

You also cite British research which suggests that the imposition of notions of shared cared might be best meeting the interests of the parents and, in an argument that that could be sustained in some situations, that a shared fifty-fifty basis 'can become uniquely oppressive' for some children. Can you talk about some of the British research and the Ricci findings? Obviously, if there have been some longitudinal studies done in these areas we need to know about them before we come to a conclusion.

Ms Walters—Carol Smart's research was interesting. It showed that when these joint residence arrangements are put in place the burden then shifts to the children to make sure that the parents have this equal arrangement. So the timesharing thing shifts to the children, to their detriment. That is why she describes is as being 'uniquely oppressive' for some children. Is that what you were referring to in Carol Smart's research?

Ms GEORGE—How long was that study? How many families?

Ms Walters—I would have to get back to you with that.

Ms GEORGE—Could you do that?

CHAIR—That would be very good.

Mr PEARCE—Thank you very much for coming in today. I would like to ask you a couple of questions. Firstly, as I was saying earlier, we have had the Family Law Act since 1975. The submissions reveal there is a lot of concern about how that act and that court have operated for many years. Both males and females have expressed a lot of concern about the court being so adversarial, the judgments and determinations, the process, the atmosphere in the court et cetera. That has been going on for decades. I notice in your submission that at the end you make five recommendations to us. But essentially none of the recommendations deal with any change to the act whatsoever. Are you saying that in your opinion the act and the court and the system overall should remain as is? Do you advocate any changes to the act at all?

Ms Walters—We are quite happy with the position at the moment with the court having the child's best interest as its paramount consideration. We do not have an issue with that. We think that is an appropriate starting point. In terms of the court, a lot should happen before people go into court; where appropriate people should be deflected from the court system because of its adversarial nature—the nature of the beast of family law. A lot more should be happening prior to that.

Mr PEARCE—If after all that happens and they do get into the court then basically your organisation is saying that the system and the law as it is today is acceptable. Is that your position?

Mr Melsom—Reasonably so, yes. We also recognise that it does not work for a lot of people and we think that needs to be worked on. But we think that could be done outside the court system.

Mr PEARCE—Mr Melsom, you mentioned in your opening remarks that you are concerned that the introduction of a rebuttable presumption of joint residence would undermine the concept of the best interests of the children. I would like to elaborate on that a bit more because it is unclear to me how that could be the case. We are keeping the whole concept of the children's best interests at the forefront and any change—not just a rebuttable presumption, but any sort of change in relation to things like contact, residency and child support—would always centre around the child's best interest. I do not think there is any suggestion that we would move away from that.

Given that, in effect, the court already has an ability to grant joint residence and will continue to have flexibility, how would the introduction of a more formal incision of rebuttable presumption, as one option as a starting point only, undermine that concept? Based on the information presented to the court by the affidavits in other submissions, the judge of the day can make any determination that they see fit. One of the good things about our country is that we have that flexibility.

Mr Melsom—To the extent that you are a upping the ante to a certain extent in that you are starting at a point where there is an assumption of joint residency. I think that imposes a whole new set of dynamics that are different from the current set of dynamics that exists.

Mr PEARCE—Do you think those dynamics would be negative compared to our current dynamics?

Mr Melsom—I think they would put more pressure on where there are situations in relation to people challenging that assumption to start with in terms of either of the parents not necessarily being fit enough. I have sat on the Family Court on a number of occasions in the mornings and the amount of vitriol that goes on there is quite staggering. I get quite shocked by it all. I think that upping the ante by making that joint fifty-fifty assumption is going to perhaps heighten some tensions and make it more difficult.

Mr PEARCE—If you think about it logically, when you say, 'upping the ante', which ante? To play devil's advocate, there is already a dynamic that says that for 80 per cent of the time the mother is going to get custody. That is a dynamic that already exists. So there is an 80-20 dynamic. What you are saying is that having a 50-50 dynamic is going to up the ante. Do you mean the 20 per cent ante? There is an 80-20 dynamic that exists that creates stress and pressure. You are saying that an equal dynamic would create more stress and pressure. But there is already a very substantial imbalance now. Logically, how is a 50-50 dynamic upping the ante?

Ms Walters—What we were talking about before 'in the shadow of the law'. At the moment, around 95 per cent of the matters that proceed do not go to a final determination. We can speculate that some of those other orders are made in the shadow of the law. That is happening.

Mr PEARCE—You are saying that, in those cases, there might be an increased emphasis of those people wanting to go for the jugular so to speak for and upping the ante?

Ms Walters—Yes.

Ms Walters—Those 80-20 statistics are of orders that are made by agreement. They are consent orders. In regard to contested matters in the Family Court, the statistics are a bit different about residence orders. It is something like 60 per cent to mums and 30 per cent to dads.

Mr Melsom—That changes from the 80-20 to the 60-40—

Ms Walters—It is a bit different in contested matters that go to trial. So it is really 80-20 by agreement.

Mr PEARCE—I want to return to your earlier answer where you said that, in the event that a matter reaches the court, in essence, you are happy with the act and the system and the process. Mr Melsom, in your capacity as CEO of Relationships Australia, I would have thought that there would have been a lot of evidence that you would have come across from people over a long time that demonstrated that the system overall is just not working—and I mean for the mother, the father and for the children. Certainly in this inquiry there are a lot of submissions from all those groups of people and also from legal and welfare groups that say the system is not working. Frankly, I am surprised that, essentially, you would be happy to see the act and the system remain the same. Can you talk a little bit more about that?

Mr Melsom—To say that we are happy with the act would probably be an exaggeration. What we are saying is that we are not convinced that a change to fifty-fifty rebuttal is going to

necessarily improve the chances of having a less conflictual and a less emotional or stressful situation when people are going through separation and divorce. We operate a child contact centre and we see some pretty horrific things in relation to what parents subject their children to—things that, in my view, are absolutely the pits. It is a major issue for us. To say that the system as it is now is perfect would be far from our thinking, but we are not convinced that a change in that, as is suggested, is the best way to go.

Mr PEARCE—I have one final question. It might be difficult, but I am really interested in what you have said there. Given that we would want always to think about the children's best interests, in your experience, what could be done to better accommodate the children's best interests—and also the parents'? Do you have any suggestions?

Mr Melsom—If we are taking it outside the court system, there is very clear research that indicates that it is not so much the break-up that affects the children adversely; it is the conflict between parents not only during the relationship but also as it is exacerbated at that time of separation and divorce where there is that adversarial scenario. Clearly, that is a major issue that needs to be addressed. My colleague has commented about trying to do more things outside the court system so that the level of estrangement is not taken to the levels that it is. The amount of vitriol that comes out of people who would never have reached that state in normal circumstances is quite oppressive.

Mrs IRWIN—Following on from that, let us talk about representing the children. Do you think there are enough opportunities in the current system for children to have a direct influence on decisions which affect their post separation circumstances?

Ms Walters—Children's wishes are quite difficult. You do not want to be putting children in a position where they have to make a choice between parents. You have to be very careful about that. We have to understand what might be behind the children's wishes—are they influenced by parents? We should try to look at the children's best interests and look at everybody's situation, including the parents' situation, but be really careful about how we get that information from children so that we are not asking them to choose between their parents.

Mrs IRWIN—Do you feel that the children should not have a say in who they want to live with?

Ms Walters—They should be heard, but I think you have got to be very careful about how you approach that issue of ascertaining children's wishes.

Mr Melsom—There can be pressure put on by either parent who say to the child, 'Say you want to come and live with me.' The child can be in a very invidious position, which creates a great deal of stress, and it is clearly not in their best interests.

Ms Walters—Sometimes children do not want to be put in a position where they have to give an opinion. The law is such that they do not have to provide one.

Mrs IRWIN—Because they love mum and dad equally and they do not want to make that decision.

Ms Walters—They may want someone else to make that decision for them.

Mrs IRWIN—On page 7 of your submission you list some recommendations. I will not read out recommendation 1, because you have covered it a little in your opening statement but, in relation to that recommendation, in what circumstances would you see joint residence as being in the best interests of the child?

Ms Walters—Where there has been a pattern of pre-separation parenting and involvement of both parents. That would be the ideal situation but, unfortunately, the way society is structured, that is not necessarily the case. There are logistical issues, where both parents are not living in the same area. My personal circumstances are that we have a joint residence situation. It works because we have a great relationship. We live one street away from each other. Not everybody's situation is amenable like that.

Mr Melsom—I have a similar comment. I heard one committee member make a comment on the last submission about knowing some people who live far apart from each other and it still works. I think that increases the difficulty because of transport and things like that. It can work, but I think determination to make it work has to be one of the fundamental things. The commitment that we—that is, the parents—have to consider is subordinating our own desires to put the welfare of the children first. In other words, are we making a decision which is in the best interests of the child, which will also satisfy each of us, or are we making a decision for personal reasons—and then you can get power balances and things like that?

Mrs IRWIN—Jennifer, you said that in your circumstances you were fortunate not to live very far from your ex-partner. A number of the submissions that I have read so far regarding joint residence, and a lot of the people who are supporting that, have said that they felt it would only really work if they lived in close proximity, especially once the children reached school. It is very hard on kids if they have to go from one school to another. They lose friends and their sporting activities.

Ms Walters—The dynamics of the parents' relationship are also really important, because if an element of conflict creeps into that it makes it so much more difficult—because the children are interacting a lot more with the parents.

Mrs IRWIN—Out of curiosity, how did you come to that arrangement you have?

Ms Walters—By consent.

Mrs IRWIN—Just the two of you, not through the court?

Ms Walters—That is right.

CHAIR—In your submission you have given us a bit of an understanding in the current legislative provisions, and on page 2 of the submission you say:

In the process of determining what is in the child's best interest, the courts are required to make an assessment of the child and the family's circumstances. The court must take into account a list of factors when deciding what orders are most likely to promote the child's best interest.

And you go on to list a number of issues. Bearing in mind that the previous submission went into the issue of the biological parent of a child and covered not just same-sex parents but also those who have used the process of donor eggs et cetera, I do not see this listed as a factor here. Of course, your list is not the complete and entire list of factors. Could you indicate to me what weight is given to or where in this process the emphasis moves to the biological parent?

Mr Melsom—I think we will need to take that on notice.

CHAIR—Could you take that question on notice? It would be in respect of looking at the issues of the Women's Legal Service, where they have made reference to the biological parent in the separation. It is a reference very concerned about the biological parent, and they have given examples. I will provide you with a copy of their submission and the attachment in order that you might be able to give us some sort of response on notice regarding where they give some very good case studies of same-sex couples who would be impacted upon by a fifty-fifty joint presumption. This submission talks about biological parents, and at this point in time we have not distinguished between biological parents.

Mr Melsom—And neither have we.

CHAIR—And neither have you. We have not been distinguishing between biological parents; we have been talking about the parents of children. However, it was very clear in the previous submission and from the previous witness that biological parenting is uppermost in their mind. I have not thought about the biological parent side of it to be frank and honest. Obviously, you have not thought about the biological parent side of it. You list these factors that are taken into consideration. Under what circumstances and where do the biological parent's rights come into consideration when you are determining what is in the child's best interests?

Ms Walters—Those factors are still relevant to anyone seeking to have contact with a child—and that could be a grandparent or anyone else. The court will look at all the factors when they make a determination about those issues.

CHAIR—But they will not just try and determine whether there is a biological parent in place here to determine those factors? Is a biological parent considered? At what stage do we ask the question: is this person the biological parent? I think it is a very important issue that has been raised. Also on page 2, under the heading 'What research tells us about', you quote Chief Justice Nicholson, who said:

> The fact is that we do live in a society where the mother is the primary care giver in most intact marriages.

It again conjures up the perception that, if the mother is at home and caring for the child, she is considered the primary care giver, yet there might be a host of educational and other areas that the father might provide—such as the learning environment, the teaching, the playing, the kicking the football, the taking to karate or ballet and being one of the dads on the sideline in the ballet class et cetera. Is that not considered primary care?

Mr Melsom—I cannot speak for Justice Nicholson, but I think the comments you make are totally accurate. I think we are a changing society, where fathers are playing a greater and more integral role than they have in the past in bringing up their children. I also think the reality is that

a lot of mothers do work. But it also comes down to the point where the mother tends to take prime responsibility. I am paraphrasing what Justice Nicholson basically said: mothers take primary responsibility in most intact marriages that we are aware of. While both parents do things with the children—and they will be different things; sometimes they will be the same, but quite often they will be different—in the intact marriages the mother is generally the primary care giver and does most of the care.

CHAIR—Thank you very much. I would be interested in receiving a response. Thank you very much for your attendance this morning. We certainly appreciate you coming along and providing us with your insight into the process.

Mr Melsom—Thank you for the opportunity.

[11.29 a.m.]

CUOMO, Mr Mark Donato, Director of Legal Services, Aboriginal Legal Service of Western Australia

BRAJCICH, Ms Tonia Maree, Managing Solicitor, Family Law Unit, Aboriginal Legal Service of Western Australia

CHAIR—I have so far neglected to introduce the members of the committee, so I will do that now. The committee consists of Kay Hull, who is the deputy chair of the committee; Mrs Julia Irwin, the member for Fowler in New South Wales; Mr Chris Pearce, the member for Aston in Victoria; and Ms Jennie George, the member for Throsby in New South Wales. I am the member for Riverina in New South Wales. I acknowledge Mr Barry Haase, the member for Kalgoorlie, who is in the audience.

Mr Haase—Thank you, Kay.

CHAIR—We welcome Tonia and Mark to the hearing this morning as representatives from the Aboriginal Legal Service of WA. The evidence that you give at this public hearing is considered to be part of the proceedings of parliament. I therefore remind you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. I remind you that the comments you make are on the public record. You should be cautious in what you say to ensure that you do not identify individuals and that you do not refer to cases before the courts. For the *Hansard*, would you please state the capacity in which you appear before the committee.

Mr Cuomo—I am the director of legal services at the Aboriginal Legal Service in Western Australia. My job is to run the legal practice.

Ms Brajcich—I am the managing solicitor of the Family Law Unit at the ALS.

CHAIR—Would you like to make a short five-minute opening statement before I invite the members to ask questions?

Mr Cuomo—We will make a very brief opening statement just to tell you who we are and why we are here. The Aboriginal Legal Service in Western Australia is an Aboriginal and Torres Strait Islander legal service. We cover the whole of Western Australia; there is one service that covers Western Australia. We operate in Perth and 17 country locations. We have offices from Kununurra in the north, to Albany in the south, to Kalgoorlie in the east, and we have a large operation in Perth. We are an Aboriginal community controlled organisation. We are controlled by an elected board of Aboriginal people who come from all areas of the state. We have a family law practice and have had that practice for some time. We have been in existence as a service for nearly 30 years now and our family law practice, almost uniquely amongst ATSILSs, has been going for a fair bit of that time.

The committee has raised lawyer based solutions and suchlike issues with other witnesses. The submission that has been presented to the committee is largely the work of Ms Brajcich as the solicitor most experienced and in charge of our family law practice. However, our style of practice is dictated by the wishes of the Aboriginal community who employ us; the community—speaking through the committee and, indeed, ATSIC from time to time—direct us in the manner in which we practise. They have mandated a practice that relies very largely upon mediation that requires us to give due respect and expression to the culture of the Aboriginal people whom we serve. Unfortunately and regrettably, we must also practise through the resource constraints that are imposed upon us, which means that for many reasons we also seek alternatives because they are cheaper than litigation. It is from that background and with regard to those things that we have made this submission to the committee and, if the committee wishes to ask us questions, we would like to talk from that experience.

CHAIR—Thank you for much.

Mrs IRWIN—In respect of involving fathers within the Aboriginal community, are there strategies that could promote greater shared parental responsibility amongst Aboriginal families where the parents have separated?

Ms Brajcich—Within the law, the parents' starting point is that both parents have equal responsibility for the children—so fathers and mothers equally. As to how that is actually exercised, that is for the parents to sort out themselves, if they can. If they cannot then the court has a wide discretion to be able to look at that and impose its own strategies tailor-made to that particular family. I would not say that there is a particular strategy that would be suitable for all families, no.

Mrs IRWIN—Do grandparents have a lot of involvement with their grandchildren?

Mr Cuomo—Generally, yes.

Mrs IRWIN—Especially if they going through the court with a marriage breakdown, because I know that within the Aboriginal community you can have your great-grandparents, grandparents, aunts, uncles, brothers, sisters—virtually all the extended family.

Ms Brajcich—That is right. At the ALS we represent quite a lot of extended family members: grandmothers—paternal grandmothers particularly—and quite a lot of aunts, uncles and older sisters as well quite frequently.

Mrs IRWIN—Regarding the Child Support Agency, you also suggested in your submission that child support should be calculated according to the actual time spent with children. Can you elaborate on that?

Ms Brajcich—Basically, the way child support works at the moment is through a stepped regime: a certain number of days will take you into a certain step of child support calculation and then you can go to the next step. It works on a percentage of child support nights that the child spends with a parent. Obviously there is quite a range within those steps and therefore we would say it would be fairer if it was more exact and was calculated on the actual number of days or nights that the child spends with the parents. We suggest that it would be better if it was

converted to days rather than nights because a lot of children will spend one night—say, the Saturday night—with the other parent but be spending two full days with that parent. So the parent is supporting them essentially for all their eating and entertaining time and yet they are being credited with one night of the child staying with them. So I think days would be more practical. That is our view.

Mrs IRWIN—My final question is about rebutting the presumption. You were suggesting that an equal time presumption would not be appropriate for Aboriginal families. Can you expand on the reasons why you have stated this?

Ms Brajcich—We think that a presumption fetters the discretion of the court. The court's job is to come up with a solution and impose a solution on families who cannot come up with their own solution. If you start with a presumption, that fetters the court's ability to do that. There would be difficulties in domestic violence circumstances, and Aboriginal people have been quite vocal of late about that being a difficulty in their communities. The Aboriginal Legal Service would not support there being a presumption that would prevent the court from being able to look at domestic violence in the way it ought to.

There are other difficulties in terms of poverty. The committee has already heard from previous speakers here about it being easier to have joint custody or a shared time regime if parents live close together or are able to travel. Poverty issues impact on that. For example, if you are dependent on state housing and the only housing you can get is far away from the other parent, or if you do not have reliable transport or the money to get here and there, it is going to break down. Those would be difficulties.

As we have said in the submission, there are going to be difficulties if you are going to set time by calendars, clocks and so on. For some members of the Aboriginal community that will just not work. That is not the time construct for their culture. There are also cultural obligations that can impact. For example, if a funeral comes up it is quite often appropriate that the child be taken along and that is an open-ended kind of time. So to pay back day for day is just not going to be practicable for some families. I stress that that is not so for all families, but those are problems that would come up regularly within the Aboriginal community.

Ms GEORGE—Tonia and Mark, thank you very much for the submission; it is of excellent quality.

Ms Brajcich—Thank you.

Ms GEORGE—It has helped resolve a few things in my mind because it is one of the few submissions that actually does not favour rebuttable presumption of joint custody but it goes beyond saying the status quo is fine—because I do not think in practice that the status quo is fine. Could you just elaborate on how you think the suggested amendments to section 68F that you have made in your submission might give greater effect to the principles that underpin the 1995 amendments?

Ms Brajcich—Yes.

Ms GEORGE—The committee has the option either to go down the route, I guess, of proposing new legislative change or looking at the act as it exists and saying that we could do certain things to improve that. I have had a dilemma because I have not heard many people with an alternative to the existing system. So I would like you to put on public record what you think we might be able to do.

Ms Brajcich—The intention of the 1995 changes was to promote the joint responsibility of both parents and to take into account the need of a child to have input from other significant people within the child's family, for example grandparents, aunts, uncles and extended family. The term 'significant people' is quite wide; it could extend further through to the biological parent issue that I have heard discussed and to all sorts of other significant people. That was the intention. Our view is that it has not really happened that way. Children are still, we think, often regarded as possessions in the Family Court setting. There is still an all or nothing approach, with perhaps the word 'residence' substituted for 'custody' and the word 'contact' substituted for 'access.' The approach has perhaps been more in naming than in having an actual effect.

The submissions suggest that there is a way of simply tweaking the act to take the 1995 amendments a little further so that what was supposed to happen can in fact happen. The way the law approaches the subject is that parents start out with joint responsibility and then the court has the power to alter that, with reference to a number of factors which are listed in section 68F of the act. Those factors cover the child's wishes and they cover the capacity of each parent, or any other person, to care for the child. These factors apply to whoever is before the court, not only parents but grandparents and other people. They also cover issues of culture and family violence, and at the end there is a bit that says they cover any other relevant circumstances.

Our view is that, by adding to that list, the court would be able to make specific orders imposing a joint time regime and it would be able to look at orders imposing a contact regime that covers people other than the people immediately before the court, and people apart from the parents. This would be a way to take the 1995 amendments further so that they are effective, but it would still allow the court to exercise its full discretion so that things can be tailor-made to the individual child. For some children a joint regime would be entirely appropriate; for others it would not.

The other reason to include it in the act is that, when people break up, they do not necessarily fight in the Family Court. A lot of them simply want legal information about what their options and their starting points are. They will take that information with them when they go through an alternative dispute resolution process or when they go to a lawyer just wanting to know how to formalise orders. It is common for people when they break up to simply want to formalise things in a particular way and have it set out. They do not want to squabble; they want it formalised. If this was on the table as an option, as something that was available to them, we think it might meet that need in appropriate cases.

Ms GEORGE—We have heard from a lot of people about the domestic violence issue. The way I understand it, if you rebut the presumption of joint custody on the grounds of domestic violence, you are, in theory, reversing the onus of proof—that is, that it is on the victim. Do I have it right or not?

Ms Brajcich—Being a family lawyer, I do not deal with presumptions very often. A criminal lawyer would have far more experience in that sort of thing. My understanding of the way it works is that your starting point is different. Your starting point is as per the presumption. To rebut that, I suppose it would depend on the particular legislation as to what happens next. It could be specified that it simply falls away and then the court can look at the whole situation tailor-made to the best interests of the child without anyone bearing an onus, or it could be written a different way so that it reversed to the other party. I think it would depend on how you wrote it up. Currently there is not really any particular onus; it is up to the court to work out what is best for the child and neither party bears the onus.

Ms GEORGE—But you are suggesting here, and I quote from your submission:

… by requiring the victim of violence to bear the onus of establishing grounds for rebuttal, the victim is placed at a disadvantage as regards the court process compared with the perpetrator.

Ms Brajcich—That is right. I have just addressed the question of what happens after you have rebutted it. But if there is a presumption to begin with then the onus to rebut would be on the person who is not happy with it.

Ms GEORGE—Is that kind of inverting the traditional onus of proof principles?

Ms Brajcich—It is not so much inverting them as creating an onus where there currently is not one. Without a presumption, both parties go before the court and the court works out what it thinks is best, or the parties work out their own arrangements, in which case there is no argument. But if you start off with a presumption then you have a different starting point. The presumption stands unless the person who is not happy with it convinces the court that that presumption ought not to apply. What happens after that—whether, for example, once you have rebutted the presumption, the onus is borne by this person or that person—would be up to the legislation. To get rid of the presumption, the onus would be on the person who did not like it.

Ms GEORGE—I was interested in your comments about the child support formula. We cannot go through it all, but I refer to the case you record at Paraburdoo, where:

… His Worship—

the magistrate—

sitting in the Court of Petty Sessions … determined that a man who has no contact with his 13 year old daughter and who has 2 step-children living with him, had a qualified legal duty to financially support the step-children and that his child support assessed liability … should be reduced because of this.

This is a constant issue that I deal with with my constituents who repartner. They refer to their beliefs about the injustices and anomalies in the way the formula currently applies. What has been the outcome? You say here:

This decision has broken new ground, and has attracted much interest …

Do we know where it has gone from there?

Ms Brajcich—No. It is very new; we do not know yet. The magistrate did say that it was a qualified situation, so it would only apply in particular circumstances. But, as I noted in the submissions, potentially that would reduce the number of people to support a child down to one if the other party had the qualified legal privilege applying in respect of their own stepchildren. It is a difficult issue. Obviously, if you have children living in your household—your own or stepchildren—you are going to support them. But then what about your other children? It is a vexed issue. We do not express a view on it. So far, we have not seen the results, because it is so new. It is just attracting a lot of interest, and we are waiting to see which way it goes.

Mr Cuomo—I will just raise another vexatious point on that question. It is interesting that you were talking about Paraburdoo. You overlay on that particular set of circumstances the difficulty of coping with people with widely varying incomes. Paraburdoo is a mining area and it is a prey to that. That can add to the complexity there, too.

Mr PEARCE—You mentioned that your service would not support the introduction of a presumption in the Family Court. But a lot of the evidence in submissions that we have received throughout Australia shows and history proves that there is already a presumption. There is lots of evidence from people who have said that they have gone to lawyers, and the lawyers can pretty well tell them what is going to happen and what they need to do, because they know the way the court is going to go. Sometimes they even know what one judge would do compared to another judge, for example. So do you agree that in reality there is already a presumption there—that in most cases the mother will receive custody under given circumstances, or whatever?

Mr Cuomo—I understand the question. I suppose that, before answering it, we would have to ask you: what is the presumption that you asking us to react to? How would you outline that presumption?

Mr PEARCE—I think that you are saying that you would not support a presumption being formally in place within the court, because it would take away the court's flexibility. I think that was your basic tenet. But a lot of the evidence suggests to us that presumptions already exist, and the court of course retains complete flexibility today—as it would if there were a rebuttable presumption; the flexibility would not change at all. So I wonder why you would be so opposed to it. If there are already presumptions—whether they are good presumptions or bad presumptions—and if the court were to retain all its flexibility, why would you be so opposed to it?

Ms Brajcich—I think the situation you are describing is not so much a presumption as legal advice to people based on their particular circumstances. A lawyer who works in family law can look at a particular set of circumstances and say, 'This is the result you're likely to get.' Obviously, that is what you pay a lawyer for: that expertise. But different people will get different advice. If their circumstances are the same as someone else's then one would expect them to get the same sort of advice, but I would not agree that that is a presumption. That would be people presenting with similar scenarios and receiving broadly similar advice. It is not a presumption.

Mr PEARCE—Again I come back to a lot of the submissions that we have been reading over the past several weeks—and we have even heard today in a lot of submissions—where the concept of the primary carer is a presumption, that on many of the issues that are discussed it is

assumed that the status quo is a presumption. I am putting to you that there are a lot of presumptions already in place. I wonder why it should be such an issue. I am playing devil's advocate here; I am not advocating one way or the other. If there were another equitable presumption as a starting point but the court retained every bit of flexibility that it has today within that—that is, it could take any amount of evidence to move it away from that starting point—I wonder why you would be so opposed to that. I am just trying to logically understand what the difference is, because, as you well know, a court can determine equal residence today.

Ms Brajcich—Yes. I think the presumptions you are talking about are perhaps community presumptions about who the primary caregiver will be. If you look at it in a purely legal sense, the law is not gender biased; it says that both parents have equal responsibility as a starting point. Then, if the court is to change that, it looks at various factors that are in neutral terms, neither male nor female. I accept that the way our society works often a mother will be the person looking after the child, but not always. The way the law works is that if it is the mother who has the status quo then that will be a matter that is in her favour essentially unless she is doing a bad job of it. But looking at the law and the way the law works, it is the same for a father who happens to have the status quo. But I suppose as community we still run our families in a particular way quite often and those people will have certain expectations as to who is going to look after the children after the parents break up. But I think it is a community issue. As a legal issue, there is not that presumption. The law comes in at a late point where the parties have already been raising their family in a particular way and perhaps the status quo reflects the presumptions that family had and how they chose to run their family. But the law itself does not hold those presumptions, I do not think.

Mr PEARCE—Therefore, in essence what you are saying is that you are happy with the current framework that exists today for the Family Court: is that your position?

Ms Brajcich—Not quite. We say that the starting point is okay and the process where the court looks at a variety of factors is also okay. What should be added into those factors, which is not currently there, is an extra factor whereby the court considers specifically whether or not joint sharing as proposed would be a good idea for a particular child in particular circumstances. Also, another factor added to that list could be whether it would be appropriate for orders to be made for the child to have contact with such and such a significant person—with a grandparent or other member of the family or another person entirely who is somehow significant to the child, say, a step-parent from whom the child's own parent is now estranged but who has been important to the child. We say that these are things that the court should be able to consider and should be added. But those are the only changes we are proposing.

Mr PEARCE—I would be most interested in your response to this question, because clearly you have great experience and are very competent. Throughout this whole process we have received, as you know, a lot of submissions and we have heard from a lot of people. In our roles as MPs a lot of people seem to be forgetting that we see this ourselves on almost a daily basis. If you actually look at the key stakeholders in the system, if you like, there are the children themselves, the parents, the support agencies or groups or whatever term you wish to use, the legal profession, the court itself and the bureaucracy. They are the major stakeholders. I sometimes feel that, of those various stakeholders, the children quite often want to see change—and we have heard from some of them today. The parents nearly always want to some change in relation to the court or child support. Some of the welfare support groups and lobbying groups

want to see change. But we have not heard a lot from the legal profession or the courts themselves or the bureaucracy that they want to see change. Do you think there is a reason for that?

Ms Brajcich—In my view, the system overall is a good one. It exists and is capable of working very well. The difficulties are perhaps more in the process. Some people are not able to access competent advice about their options. Some people are grieving so hard at the time, because it is a very traumatic thing to go through, that they cannot take in the competent advice they get and they cannot apply it. There are a lot of changes going on in their lives. A separation involves the family, the home, the money, the partner—there are just so many things going on that it is hard to focus on the legal issues. There is difficulty in the way the process works. Most of your information, or your evidence, has to be provided on affidavit, and some people just are not up to doing that. They do not have the advice to know what is relevant and what they should put in, or they simply do not have the skill to write it in a way that is persuasive, or they do not have the money. Certainly you can do it yourself and you can get filing fees waived, but the advantage of having a lawyer is that you are told how to put your case. If you cannot afford to do that, you might have a certain disadvantage unless you are particularly able. There are difficulties with the process, and that is perhaps where the problems are. Perhaps that is a thing to be addressed.

I suppose alternative dispute resolution aims at short-circuiting people having to go through that process, because then they can speak about what they think is important. Often they will have a limited grant of aid or some sort of access to legal advice about yes, you can do this; no, you cannot do that; or have you thought about the other. I think the difficulty lies more in the process than in the law. As far as getting through to a trial is concerned, we have heard several times today that not many cases go through to a final contested hearing before a judge. Most cases do not get to the point that I am talking about, where all of these factors come into play and a neutral person sits there, looks at both sides and makes a decision. Most cases do not get that far. Some cases settle because the parties get on well enough for that to happen. They want to formalise arrangements and everything is fine. Some people settle because they have to, because they cannot go any further. That is a process issue rather than what the law actually says. It is people not being able to access the law, and that is a different problem.

Mr PEARCE—I have been contacted by some people throughout this process and I have read some of the submissions, and I am interested in whether you think there is any element of the following point in the community. There is a lot of concern from people about the rebuttable presumption of shared parenting, because they are worried about some of the impacts, just as you are. I think there is also some level of anxiety among some people about any change in this area, which could be quite inaccurate in the sense that some of the people who might purport to support the rebuttable presumption are doing it not so much because they actually want a fifty-fifty arrangement but because of the anxiety as a result of feeling deprived of contact with their children.

Ms Brajcich—Yes.

Mr PEARCE—I have had some people say to me: ‘At the end of the day I can understand the residency being the way it is, but I’m continually getting access or contact with my children frustrated in one way or another. I go as per the arrangement to collect them and they are not

there, or they've disappeared. Or I get rung the night before and get told, "I've changed my mind. You can't have them" or whatever.' This continual process of contact quite often being used by both mothers and fathers as a manipulative tool is creating a lot of this frustration and concern about 'How can I see my children?' Have you experienced any of that?

Ms Brajcich—Yes. It is a problem. I am a lawyer, not a social scientist, but I suppose it stems from viewing the child as a possession. You can use the child as a weapon to get at the other person. I see it quite often in various cases, and certainly not only with Aboriginal people at the ALS but also in my life as a lawyer working for non-Aboriginal people. We think the changes we have proposed begin to address this problem by reinforcing that the child is an individual with individual needs that must be met. If the possibility of a joint time regime is on the cards, you have to view the child as not solely yours. You cannot assume you are the one who will get the majority of the time.

Mr PEARCE—That is right.

Ms Brajcich—You will also have some difficulty with petty mud-slinging, where one person is going to carp and be critical and difficult—and this exists now—and the court may think they do not have the capacity to care for the child more than the other person, or perhaps not even half the time. That is an argument that is occasionally run now: someone is being consistently difficult in contact to a parent with whom the child ought to be having contact—so we are not talking about the gross domestic violence cases or cases where contact should not happen. It is certainly an option for parties to be saying to the court, 'This person does not have the capacity; whereas, if it were reversed, I would make sure the child saw both. That is what is best for the child.' It is an option for the court currently. The difficulty, as I was saying earlier, is access to the law to be able to get to that point, because it is a judge who is going to deal with that. Up until then you are simply enforcing orders as best you can, and there are problems associated with that.

Mr PEARCE—Have you had any experience with the Family Court not being very good at enforcement in relation to this?

Ms Brajcich—There are some difficulties with it, simply because you cannot really reverse the status quo we were talking about earlier at an interim level unless something fairly bad is going on. You would need to build up quite a pattern on an interim basis before that could be altered. At a final level, I think the court is very good and has the power to be able to deal with it and is able to deal with it. Until you get to that level there are problems, simply because of the way the law works until then. The idea is to try to preserve a status quo. The court does have the option in particularly difficult cases, and it uses it. Breach proceedings can be brought and the court can be fairly hefty in the punishments it imposes, which can go up to imprisonment. So far as I am aware, that has only happened once, but it is an option. Fines, recognisance or something are more common. Where it is looking at a very difficult situation for a child, with the child coming and going on whether or not there is going to be contact—no, there is not; yes, there is—the court is also able to expedite the trial and bring it before a judge more quickly so that the court can look at all those factors. So, in the interim period, it is difficult to sort out that issue; when it gets before a judge, it is able to be sorted out. There are ways it can be done, and that has to be tailor-made to the individual circumstances.

CHAIR—Thank you. In the interests of time, which we are going slightly over, I want to ask you one thing, Tonia. In our hearings and submissions we have an enormous amount of indication that people think perjury takes place in the court process. Many people—non-resident mothers and non-resident fathers—have raised with us that the advice from their lawyers is that really you have to prove the parent unfit. Say you have a non-custodial dad and he wants to have more time with his child. It is constantly brought to the table from the witnesses and in the submissions that they say, 'Look, you are not going to get that, because the basis is 80-20, so to speak. You have to prove that that person is an unfit parent in order to get the desired outcome for yourself.' Time and time again they have said, 'But we do not want to prove that they are an unfit parent: they are not; they are a very good parent. We just want to extend our time with our child.' It has happened with both women and men sitting in the position that you are currently sitting in now. Do you think that there is a perjury issue in the system, simply because it is a method to get to a position in order that you achieve the desired outcome for yourself rather than for your child?

Ms Brajcich—Certainly a lot of people complain to me that the other side has lied about them in their documents. That may be simply because they see things differently—obviously two people will view things slightly differently. I would be fairly horrified to think that lawyers are telling people that they should lie in court. As lawyers, we are officers of the court, and that is not a thing that should be happening.

CHAIR—I am not saying they are telling them to lie. The essence is: 'You are 80-20 and what you really have to do is prove that they're an unfit parent.' I am not saying that the lawyers are saying, 'Go and lie and say they're an unfit parent.' They are saying, 'Find some way to prove that they are an unfit parent.' I am wondering whether that might add to the issue of perjury, which has come up time and time again, that nobody takes action against those people who are determined to have committed perjury in a court. That is the issue—I am not saying that lawyers are saying, 'Go and lie.'

Ms Brajcich—First of all, I disagree that you have to prove the other person unfit—certainly for contact, but even for residence. The way one is supposed to argue a residence case is: 'Who is more fit?' and not 'Who is less fit?' If you are found out in mudslinging, you have the problem I talked about in that you may lack the capacity to properly promote the child's relationship with the other parent. So there would be certain difficulties if you went down a mudslinging path and if you were found out. If someone were found out in not having told the truth—and if there were only two people there, there are going to be certain evidentiary issues in proving whether or not someone has not told the truth—there is that problem and the court is going to take a dim view of someone who has lied to it.

The court will be more inclined, rather than sending the matter off down the police/criminal court way—because these people, at the end of the day, are the child's parents and the court has to bear in mind what is best for the child, and that is not necessarily seeing mum or dad in prison because they said something they ought not to have said—to deal with it within the context of what is before it: is this a person the child should be exposed to more or less? What steps, if any, should be taken to prevent the child from being exposed to that sort of behaviour? The court would take it into account in a more indirect way rather than a punishing criminal way. But the court certainly has very hefty contempt powers.

CHAIR—But in our experience it does not appear that the court is looking at perjury and taking action on perjury. That has been the issue that has been raised time and again—when it is found out that perjury has been committed, it does not appear that any action is being taken. This is the evidence that we are hearing.

Ms Brajcich—I can only assume from that that no application is being made to the court for steps to be taken in terms of contempt. You can make applications in respect of contempt. If the court itself sees a blatant contempt, it can do something off its own bat. Those would certainly be options. I can only assume that that is what is happening. Sometimes when people are said by one party not to have told the truth, it is not always a matter that needs to be taken further in the context of the family law proceedings because the lie they told is not going to take them any further. So it does not need to be addressed in the family law proceedings, but it can certainly be reported to the police. One is not supposed to lie to the court, and there are sanctions for that if you do it and if the evidence exists to catch you out. It is a dodgy thing to try.

CHAIR—Thank you. We really do appreciate you coming before us this morning. With all of the evidence and the submissions, it really has been an excellent process.

[12.10 p.m.]

WITNESS 4, (Private capacity)

CHAIR—Welcome. Thank you for coming before the committee today. 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 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.

As you are appearing before the committee today in a private capacity, in order to ensure that your privacy and that of third parties is protected, we will refer to you by name in the hearing. However, in the transcript record, which goes onto the committee's web site, we will refer to your evidence as being from a numbered witness. You will know your evidence, but you will not be publicly identifiable to others. If you would like to give a short five-minute overview of your issues, I will then ask that the committee proceed to questions.

Witness 4—I read with interest paragraph (b) of the committee's terms of reference:

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

I do not even know whether my child exists, let alone have contact. What is access? I do not know what the word means, because I have not seen it. I have a mother, who is a mother of six children herself, who does not know whether her grandchild exists. The child has five aunts and uncles, and I doubt, if the child exists, that she knows where they are and who they are.

I have been onto the CSA several times. I have asked them to explain 'their', on their logo. Each time there has been no response, apart from a verbal one over the phone. They have explained to me that it is for me to find out whether the child exists. The monetary payments just keep coming and they will take them out accordingly, with penalties for late payment. It is only to be wondered at what sort of person works for the CSA. Everyone—all the despots in the world—needs someone to back them up in order to support their regimes. How can this exist in Australia in 2003? I am quite flabbergasted. It seems that very little is done about it, except paying lip-service.

I have a stack of letters to the editor there, with people complaining about it. Everyone can read these things, including Labor politicians, but what has been done about it? Isn't that the reason we are here, so that something is done? Everything—any meaningful change to this legislation—the government tries to do seems to be stonewalled by the opposition.

Penalty payments are one thing. If a person falls upon hard times, penalty payments continue. I have a friend in Kalgoorlie whom I spoke to just yesterday. He owes $1,000 in penalty payments. Where do these go to? How come we cannot find out? It seems to have little consequence that the child is not being looked after, as long as this person pays that penalty first.

Why is it that I cannot find out whether my child exists? Why is it my responsibility to find this out at my expense? Why is there no-one to turn to in this country?

CHAIR—Thank you. I will now proceed to Mr Pearce for questions.

Mr PEARCE—Thank you very much for coming along today. I just want to get this clear so that I understand: you are currently making payments to the Child Support Agency for your child.

Witness 4—Yes. The invisible child, I call it, in my letters to the CSA.

Mr PEARCE—So that is a payment that has been determined on your gross income as per the formula that exists today.

Witness 4—Yes, on the gross income.

Mr PEARCE—Are you saying that you have no idea where that payment is going?

Witness 4—No.

Mr PEARCE—But do you know it is going to your former partner? Is it that it is going to your former partner and you are unsure what is happening to it then?

Witness 4—They put the payments to the former partner who has moved in Queensland, which is like another country away. I presume that, yes, it is going to them, but where is the child? Access is a non-event.

Mr PEARCE—Have you ever taken any particular action such as trying to take your former partner through the court system and gain access to your child?

Witness 4—No. I fronted the CSA about it and said I wanted a reduction in the payment, or no payment at all, so that I could afford to see the child. I have not seen the child or heard from it for the last three years. I have not seen it at all for almost 10 years now.

Mr PEARCE—How old is your child now?

Witness 4—Ten years, going on 11. It says in this section here:

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

My father died not knowing where his grandchild was. My mother is 90 next birthday. She is a mother of six and grandmother of many, and she does not even know if the child exists. How could I tell my father, when he is over 90, that I do not know where his little one is, as he called it?

Mr PEARCE—Outside the Child Support Agency, have you ever sought advice from any other support group or any other collective about how to correct the situation? Have you ever been able to get any advice?

Witness 4—No, only the CSA and mutual friends—many of them have the same problem.

Mrs IRWIN—You stated in your submission that you were in a de facto relationship in 1990. Is your child a boy or a girl?

Witness 4—A girl.

Mrs IRWIN—She was born in December of 1992. You also stated that the child's mother was exercising her rights under WA law and 'being the "owner" of the child left the state'. And, in your opening address, you stated that you feel that you do not know that the child exists.

Witness 4—That is right.

Mrs IRWIN—But you have also stated:

It was not until about three years later that I found out the then place of residence of the child ...

And that was in Queensland.

Witness 4—Yes. I am talking about current dates. I do not know if the child exists now. I have had no correspondence and nothing to indicate that the child is even on the planet, for the last three years.

Mrs IRWIN—So the problem you really have is with the Child Support Agency. That is why I want to have a talk with you: to see what changes you would like to see made. You stated that you contacted the Child Support Agency regarding a reduction in the amount of money that you were paying—money that would allow you to fly to Queensland. The Child Support Agency stated to you then—

Witness 4—It was rejected outright by a female person, the adjudicator on that particular case. I was to pay the full amount and find my own way there.

Mrs IRWIN—So you have no contact whatsoever with the child in Queensland? You do not know where to write to?

Witness 4—My inside information tells me that she is now going under her mother's maiden name and not mine.

Mrs IRWIN—So you are saying—and just tell me if I am right—that you do not mind paying child support, you would like to know where the child is and where the money is going and you would like, if you flew over there to see your child, to have that taken off child support.

Witness 4—Something like that, yes. I would like a reduction so that I could afford to fly there.

Mrs IRWIN—I have a final question. You have come a long way down to the hearing from Kalgoorlie. I want to talk about Kalgoorlie. Are you a long-time resident?

Witness 4—Yes. I was born and bred there, in the East Coolgardie district, as it is still called.

Mrs IRWIN—Some people, when they say they are born and bred in Broken Hill, say they are from Broken Hill but if you went there when you were one you are virtually from away. I want to talk about custodial parents and non-custodial parents in Kalgoorlie. I have before me statistics from July 1999. Unfortunately, we are still waiting to get up-to-date statistics from the department. I notice that the figure for custodial parents receiving maintenance in Kalgoorlie—remember, this was 1999—was 4,478, and the figure for non-custodial parents paying maintenance was 6,246. That is the highest figure—as per the 1999 statistics—in Western Australia. Why do you feel these figures are so high for Kalgoorlie?

Witness 4—I could not put my finger on figures like that but, then again, you look at the divorce rate. It is 50 per cent, isn't it?

Mrs IRWIN—I just found it so high in Kalgoorlie. If you take the 4,478 that are receiving maintenance and you have got over 6,000 who are in Kalgoorlie paying maintenance, I am wondering where the other 2,232 people have gone—which includes the children. Have they come back to the CBD or to other parts of Western Australia? I am wondering whether you, as a long-time resident, might have a thought as to why the statistics are so high for that part of the state.

Witness 4—The only meetings that we have there are conjured up by the CSA, and they are only there just to tell us how much we pay and when we pay it. There is no body to unite the people there and get together the single parents, for example. There is always a problem with the shiftwork—people are unable to attend meetings and things like that. But really there is no conjoined body to unite them. I am quite amazed at those figures you have just explained to me. I was quite unaware of them.

Mrs IRWIN—They are here; I can give you a copy of them later. I was a bit disappointed to hear you say that there were no support services for men in Kalgoorlie. I think it was Mr Pearce that asked you a question about whether there was anybody you could turn to for assistance. We have had a number of men's groups come before us in the Northern Territory and in virtually all of the states that we have been to, but you are saying that there are none in Kalgoorlie you could turn to for assistance in your plight.

Witness 4—Not to my knowledge, no. The only information I get about the whole problem is from the federal member for Kalgoorlie, who keeps me enlightened as to what is going on in parliament.

Mrs IRWIN—That is good to hear.

Mr PEARCE—As you would expect from him.

Mrs IRWIN—He might be able to assist you with some men's groups in Kalgoorlie.

Witness 4—But that does not—

Mrs IRWIN—There are none.

Witness 4—solve the problem. Surely I am not alone in this; it is just I am only one spokesperson here amongst many. How many amongst the persons you have already noted in Kalgoorlie are in the same boat or perhaps worse? Why is there nothing to tell you that you are even paying for a live person? The CSA is not obliged to tell you. Why isn't it?

Mrs IRWIN—I can understand what you are saying.

Ms GEORGE—I hear from my constituents they find the CSA method quite impersonal. Often you have to ring and you have one case officer dealing with your case; the next time, it is someone else.

Witness 4—Yes. If you only have one person, then you have got to start all the rigmarole again. One person is not even a jury. One person says yea or nay, and you abide by that. Then, if you like, you put your hand in your hip pocket and off you go to the court. Why should you, as a parent, have to put your hand in your hip pocket?

Ms GEORGE—I have the opportunity of, every couple of months, having someone come to talk to my constituents directly, face-to-face. In more remote and regional areas, do you have that service available from the Child Support Agency, where somebody actually comes out to talk to a community of people?

Witness 4—No, nothing like that. They are quite unresponsive to it all there. Like I said earlier, it would take a certain type of person to actually get up in the morning and really love going to that job.

Ms GEORGE—So your only way of contact is by phone or by mail; you do not have any direct face-to-face contact.

Witness 4—There is no association, not by phone. It is three years since the phone rang from that direction, and then it was only to ask for money over and above what I was already paying. All correspondence is returned. Like I said, I do not even know if the child exists.

CHAIR—You are a non-resident father who obviously has not had any real involvement with your child since its birth. I am going to move away from the child support issue for just one moment. If you had posed to you the possibility of fifty-fifty access or residence of your child, would you be in a position where you would want to take that access and have a relationship with your child?

Witness 4—Most decidedly so. I have an 18-year-old daughter as well, from another partner, and she wants to know where her sister is. I would jump at the chance to take her across—even if we drove, flew or whatever—to visit for one day or two days even.

CHAIR—Your submission is fairly succinct about the issues of the payment and not having any understanding of whether your child is 'on the planet'. I assume you mean you do not know

whether the child is still living; anything could have happened to her and you would not know. Obviously, even among all those things that you are concerned about, you would welcome the opportunity to spend time with your child and have residence with your child.

Witness 4—I would welcome that opportunity. The school holidays would be an ideal time to spend a week wherever they are. I could take her down to the beach or wherever. I would not know now where to go because I have had no contact for three years. I know where her parents live, that is all. They live just out of Brisbane in Queensland.

CHAIR—Have you ever applied for some contact with your child?

Witness 4—I have done nothing recently. I have waited for them to make some response. My 18-year-old daughter has had her correspondence returned and she does not want to know anything more about it. It is getting so that I neither do I, but I want to know where my money is going.

CHAIR—What would be the obstacles that would prevent you, living in Kalgoorlie, from applying for some contact, some residence, or some quality time with your child?

Witness 4—The distance, of course, from Kalgoorlie to Brisbane and the cost would be obstacles. The distance is a big bugbear.

CHAIR—So primarily it would be a distance factor that would prevent you from seeking to go to court to get some contact with your daughter?

Witness 4—I am reluctant to do that. Why should you have to go to court to have access to your flesh and blood? Why should this be?

CHAIR—Okay, that is a fair answer. I guess you demonstrate some of the issues that have been raised by witnesses and by organisations that would oppose the proposition of a rebuttable presumption of a fifty-fifty joint residency. They talk about the tyranny of distance and the capacity to achieve that joint residency, and we have in front of us today somebody who is in that very position. That is why it is very valuable to be able to talk with you in order that we can understand how it would work. Would you be able to afford to go from Kalgoorlie-Boulder to Brisbane twice a year to have contact or visit your child?

Witness 4—I would love that. I would welcome the opportunity.

CHAIR—Would you be able to afford to bring her over to Kalgoorlie-Boulder as well, in order that you could have more time with her?

Witness 4—Knowing the mother, I could not see that ever transpiring. It would not happen.

CHAIR—But you would look to meet the costs of covering that distance in order for that to happen?

Witness 4—I think the cost would be exorbitant because you would still have to return the child, which amounts to four trips a year, doesn't it? I could not do that.

Mr PEARCE—What was the reason for your partner moving to Queensland?

Witness 4—Her parents and all her relatives live there. Her mother and father live just out of Brisbane. She is from there originally.

Mrs IRWIN—I heard you mention another daughter 18 years of age; is that correct?

Witness 4—Yes, she is 18 going on 19 years old.

Mrs IRWIN—Does she live with you?

Witness 4—She lives with a lady friend of hers who is not related to me.

Mrs IRWIN—She has not seen her sister, has she?

Witness 4—No. None of us have seen her for 10 years now.

Mrs IRWIN—You have not gone to court?

CHAIR—We just asked about that.

Witness 4—No.

CHAIR—We appreciate your coming in today and certainly appreciate your local member coming all this way with you. As I said, you present to us in person some of the difficulties that have been raised with us by various organisations and through other submissions and it is very helpful for us to be able to speak with you. Thank you very much for coming in here this morning.

Witness 4—Thank you for the chance to address you. Let us hope that something more happens than just paying lip service to this very real problem.

CHAIR—Thank you.

Proceedings suspended from 12.30 p.m. to 12.52 p.m.

WITNESS 5, (Private capacity)

CHAIR—Welcome. The evidence that you give at this public hearing is considered to be part of the proceedings of parliament. I, therefore, remind you that any attempt to mislead the committee is a very serious matter and could amount to 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. While we will refer to you by name during the hearing, in order to ensure that your privacy and that of third parties is protected, in the transcript record which goes onto the committee's web site we will refer to your evidence as being from a numbered witness. You will know your evidence but you will not be publicly identifiable to others. Would you like to make a short statement before I invite the members to proceed with their questions?

Witness 5—Yes. I have given you a copy of the statement I would like to make. Thank you for the opportunity to address this vitally important inquiry. After hearing the sad story of the witness before me, I would like to make the point that my comments will be more general than a simple referral to my personal experience. I do not claim to be an expert in the matter of child custody arrangements, nor do I belong to or represent any interest groups. What I have stated in my submission are my personal beliefs, which I have formed over the years, particularly since becoming a father. I have two children—a boy aged 10 and a girl aged six. Nine months ago, my marriage broke down and the issue of child custody arrangements became critically important to me. My submission to the committee is based on my personal experience with my own family and on my interpretations of discussions with friends and relatives, many of whom have experienced a family breakdown and its consequences.

I now make a number of specific points, in addition to the submission I have already put forward in writing. Point 1: I am sure that the committee is well aware of the statistics on the rate of divorce. More than one-third of marriages end in divorce and, fortunately, the majority of the resulting negotiations are conducted in an environment that favours the welfare of the children. Most divorces do not end up before court. However, I note that the child custody and access outcomes in cases that cannot be negotiated and therefore end up in court are a powerful influencing factor in the out of court negotiations regarding child access and care arrangements. Often the negotiations are based on what the parents assume the court would decide rather than on what they believe is best for the children, their family and their personal or work commitments.

CHAIR—The committee has your statement that you have so generously put in front of us. That will be taken and the committee will note that. It would take more than five minutes to go through all of that, and the committee would like to be able to ask you questions. The committee also has your submission, so maybe you could make an overview of your points here, then the committee can proceed to ask you some questions.

Witness 5—I can summarise it for you.

CHAIR—That would be very good.

Witness 5—The first point I was making is that the assumptions made by the court not only have an influence on the cases that come in front of the court but also a strong influence on all the cases, on all the family separations. Therefore, it is very important that the assumptions are set right in the first place and look not only at those separations that are usually troubled by conflict but also at those separations that are not troubled by conflict.

The second point is that, having read a lot of the submissions, even the ones from rather large and reputable organisations, it looks to me as though most of the submissions represent the interests of the mother or the father rather than the interests of the child. Putting that focus back on the interests of the child I think is most important. All the submissions agree that both parents spending time with a child is of the utmost importance for the development of the child. I find it astonishing that some of the submissions argue that two days access every fortnight would enable one parent to develop a sufficient relationship with the child. In that sense, I am arguing strongly that the assumption should be made that there is fifty-fifty access and exemptions for other reasons should be looked at.

A number of arguments were also brought forward by some of the submissions, which I will address shortly. One of them is the financial burden. If you look at the financial burden of separation, you have to look at a number of issues. The first is the financial burden caused by the separation and not by the share arrangement. Every separation causes a financial burden because assets are split, incomes have to be split and often two households have to be set up, so the family will experience extra burdens independent of the care arrangement. When we are looking just at the care arrangements, there are probably two major expenses. The first one is the initial expense to set up a new home and maybe a new child's room—these sorts of issues. My argument is that, even if one of the parents only has access once every fortnight for two days, a lot of these facilities still have to be set up for the child or the children. There has to be a bed for the child. There have to be some toys and some clothes. So if that child is there for two days a fortnight or seven days a fortnight, there is no extra initial financial set-up burden on the parent.

The second issue is the ongoing expenses, such as food, entertainment, transportation and all these sorts of things. Of course, they are looked after at the moment through the child-care arrangement. If the child-care arrangement is changed from two days a fortnight to seven days a fortnight—a fifty-fifty share—then obviously that would be reflected in the child-care payment. The total cost would not increase; it would just shift from who has the expenses and how much.

The last argument that I read repeatedly in the submissions was on social security support payments and how they are going to be split. I think there has to be change in the social security payments, such as the way the formula of family benefit payments is calculated and split between the partners, because that is an additional difficulty we have to face in changing to a fifty-fifty arrangement. I think that should not hold us back from changing to a fifty-fifty arrangement, if that is in the best interests of the child. We can work out the technicality of how we split family benefit payments afterwards.

Another point I made was on access to third parties—that is, grandparents or other people. My belief is that the court should restrict itself to making a ruling on those issues where one parent is not available or is perhaps deceased. Otherwise I think it would be appropriate to leave it to the parents to allow their children access to their grandparents, friends or other important people in their life, as they have done during the marriage when they lived together.

My final point is that the current child support formula encourages a trade-off between caring for the child and money received. I think that this trade-off often leads to results which are not to the benefit of the children but to the benefit of the parents or one of the parents. I think how the child support formula is calculated needs to be looked at and reworked. Also, if an assumption is made that there is a fifty-fifty split, it would go a long way towards minimising that trade-off between child-care payments and child-care arrangements.

Ms GEORGE—Just taking up your last point, you are reinforcing what a lot of evidence that has come to the committee suggests—that is, that the formula and the way it works at the moment can be used as leverage by either party to maximise the amount of financial recompense.

Witness 5—That is correct.

Ms GEORGE—That can sometimes intrude into what is in the best interests of the child. In looking at uncoupling those two issues, I have a worry about whether we might be driving a family unit, particularly one with younger children and a non-working resident parent, below poverty level subsistence. Do you have a view on that? In trying to make the formula's application fairer, in trying to uncouple it, how do we then build in a system that ensures that no resident parent and their child, particularly if the parent is non-working, have to exist below a reasonable standard of living?

Witness 5—I think that the formula has to take into account to some degree how much each parent is looking after the child—whether it is a fifty-fifty or thirty-seventy split. I think the formula has to recognise this. But, at the moment, the formula can be used much more so as a negotiation and a trade-off tool because of the assumptions made in the court. If the assumptions in the court were based on a fifty-fifty arrangement upfront and most partners could assume that a court would rule on a fifty-fifty arrangement unless there were other circumstances like domestic violence or whatever, the chance for a trade-off would already be greatly reduced.

Ms GEORGE—If the resident parent with the responsibility for a very young child, say, under the age of one, is not in full-time work and the non-resident parent—let us say the father—is in a high-paid job, how do you apportion the costs between the non-working parent and the working parent to ensure that the child does not suffer?

Witness 5—My first argument is that there should not be a resident parent and a non-resident parent; there should be a fifty-fifty split so both parents are resident and non-resident parents at certain times of the month, week or whichever arrangement of time.

Ms GEORGE—And when that is not practical?

Witness 5—When it is not practical and you have an arrangement that is not fifty-fifty, then I agree that the child support formula has to take into account that the person who has the child more often needs some financial support from the other person, if that support is available through a high-paid job or whatever scenario we are looking at at the moment.

Mrs IRWIN—You actually answered in your opening statement quite a few of the questions that I was going to ask. I was going to follow on what Ms George has asked you as well. We

have had a number of women come before us who have been separated—some for only 12 months and others for two or three years—and they have children aged 10 or 12. They are concerned that, if there is a change in the formula of child support, without the money that might be coming from the non-custodial parent they would not be able to bring up their children the way that they have been able to do. They say, 'I would love to go back to work but there is no job for me. I have been out of the work force for 10 years. What sort of retraining am I going to get if you are going to reduce those payments?' I think that is what Jennie was trying to get at. A concern that a number of women's groups have got is that, if this formula does change, where does that leave them? I think you have just addressed that. You have got to consider the circumstances at the time. Would you agree with that?

Witness 5—I would agree with that, but there is one other point that I would like to make as well. Separation is a difficult time for everyone involved—for the child as well as for the parents. Child separation puts demands on everyone—the children and their parents—to adjust to new situations. One of those situations in most cases is a reduction in your standard of living. Another adjustment that most people have to make is going back into the work force. In some circumstances you might have been out of the work force for two, three or six years because you have been looking after children and you might not be able to get into the same position you were holding before you gave up work to look after the children. But I think those are the changed circumstances a person experiencing separation has to take into account. They have to get on with their lives the best they can. Sometimes it means starting off again with a lower job and over the next few years working your career back up to where you were before you left. As you said, a lot of women want to go back into the work force and they find it hard. My experience is that often in those cases they look too narrowly in what they want to do. They often want to go back into the same sorts of positions or jobs that they had before, and that is not always possible.

Mrs IRWIN—You have been separated for nine months. If you don't mind my asking, do you have fifty-fifty or are you heading that way?

Witness 5—Yes, I have, although I do not think that is part of the submission that I am making. I have no personal axe to grind. I have got fifty-fifty. I have got a separation I am happy with and I have got a partner I can negotiate with, and we both look after the children.

Mrs IRWIN—That was a private agreement, was it?

Witness 5—It was a private agreement. We did not go to the courts at all. But in going through the experience of the last nine months, I have talked to a lot of other mothers and fathers in the same situation and that drove me to providing the submission rather than my personal experience.

Mrs IRWIN—You mentioned grandparents and access that grandparents will have to children. You feel that the courts really should not decide; is that correct? It should be left up to the parents of the children?

Witness 5—That is correct.

Mrs IRWIN—We have had a number of grandparents come before the inquiry who have had a very loving, caring relationship with their grandchildren. Once the marriage has split the majority of them have stated that they are not having any access at all to their grandchildren. They would like to be recognised through the court system. Forget about what has happened to mum and dad, they love the children just as much as the parents do and they want the courts to allow them to have access because mum or dad are not allowing them to do that.

Witness 5—I think the important issue that you mentioned there is not so much how much the grandparents love the grandchildren but how much the grandchildren love the grandparents—they have a need to see them, want to see them and continue that relationship. From my experience often the people who miss out are the parents of the partner who does not get access to the children or who only gets two days once a fortnight. Those are the grandparents the children miss out on seeing because time is already so restricted. If there were a fifty-fifty split in the first place, the parents would have the children 50 per cent of the time and would be quite happy to give one or two days or one day a fortnight of that contact time to the grandparents and have the children with their grandparents and continue that. But, if one of the partners gets the child only two days every fortnight, it is very hard to establish a relationship with the grandparents and others as well, because parents often like to use that little time to have contact with their children, rather than passing the children on to someone else.

Mrs IRWIN—With your shared parenting, fifty-fifty arrangement that you have at the moment, have the children had to change schools? Do you live very far from their school?

Witness 5—Yes, they are in the same school.

Mrs IRWIN—That is important.

Witness 5—I think it is, yes. Because Australia is a very urban society, most people live in one city. We have just heard from the previous witness whose partner moved to Queensland. That would make those arrangements very difficult, which I appreciate. But, again, I think that with the majority of split-ups both partners stay within the same city. If you live north or south of the river or have to drive 10 kilometres to drop off your child at school, that is the price you pay and is a worthwhile investment.

Mr PEARCE—I will go back to the issue of grandparents, which Mrs Irwin was just talking about. It is still not clear to me what you are saying. I thought you were saying that the decision about grandparents seeing the children should lie entirely with the parents and that any change to that should only be in the event of one parent dying

Witness 5—For example.

Mr PEARCE—But if you look at the words ‘grandparents’ and ‘parents’, the ‘grand’ is the only difference, if you like. I think it is very important for children to have a relationship with their grandparents. I appreciate the point you have just made about time availability and all of that, but isn’t that at the discretion of the parents, as opposed to saying, ‘You’re not going to see your grandparents, full stop, because I don’t want you to’?

Witness 5—Yes, but we are looking at separation versus non-separation. What happens in a family that is not separated? What happens with grandparents who want to have access to children in a family that is not separated? They have no rights to see the children. If both parents are living together and decide not to visit the grandmother or grandfather, the child is not going to see them. After separation there is no difference in principle; the parents can decide whether the child has access to a particular grandparent.

Mr PEARCE—But aren't you contradicting your earlier point in which you were saying that that is one of the changed circumstances? You were saying before that somebody in a relationship may not have worked but, post separation, one of the changed circumstances may be that they have to work.

Witness 5—That is correct.

Mr PEARCE—But now you are saying that everything should stay the same—as if they were still together.

Witness 5—No, I am not saying that everything would stay the same, but we do not have to change things only because it is different. There has to be a reason to change it. We have to ask why grandparents suddenly do not get access to a child, even though they had access before the family was separated.

Mr PEARCE—That largely comes down to the parents, generally. There is a lot of evidence that suggests that parents try to manipulate the emotions and the teachings involved by using the children against their grandparents in order to get back at their partner.

Witness 5—But it usually works in such a way that the wife does not want the child to have access to the father's parents and vice versa. If, for example, the mother has 50 per cent access to the child—not just two days a fortnight—she can use that time to continue the relationship between her parents and the child, and the same on the other side. The difficulty is when the parents do not have equal access to the child after separation, particularly when one parent gets only limited access—then it has an effect on the time that a particular grandparent spends with the child—or when one parent cannot represent the interests of the child anymore because they are deceased or not around. Then, as I said, a court ruling might be to the benefit of the child. The court might say that the grandparent who is not represented by their son or daughter gets access to the child. I think that, in most circumstances, a court ruling for the grandparents is not necessary and does not benefit the child.

Mr PEARCE—Do you think a court ruling in terms of joint residence is necessary?

Witness 5—Yes, I do.

Mr PEARCE—I want to go back to the first point you made in the additional information you gave us today so that I understand it completely. In the last paragraph under 'Point 1' you say:

Therefore it is important that the assumptions made by the court in relation to the time children spend with each parent be based on what takes place in the majority of satisfactorily and amicably negotiated separations, rather than on the results of the minority that make it to court and are often characterised by high levels of conflict.

Can you clarify exactly what you mean by that? Are you saying, given that 95 per cent of the cases are settled out of court, that the court should follow the general trend, whatever that 95 per cent are deciding, and that that is what the court should implement?

Witness 5—No, that is not what I am saying; rather, it is the other way around. Some of the submissions said that the court should not take the presumption of a fifty-fifty split because most of the cases that go to court are characterised by high conflict and domestic violence, that in those cases a fifty-fifty split should not be assumed. I am saying that the presumption that the court makes has a strong influence not only on the few cases that come to court but also on all the other out-of-court settlements. A lot of parents settle on arrangements that are not fifty-fifty. They assume that, if they went to court, they would get two weeks or weekend access anyway so they save themselves the cost, the hassle and the emotional drama of going through court and settle on those terms. If the court had the presumption of a fifty-fifty split then a lot of those out-of-court settlements would also settle on a fifty-fifty arrangement because that is the presumption that is there in the first place.

CHAIR—The difficulty for the committee is that there are enormous differences in the way in which people separate. Your submission is articulate and very good, but it is perhaps prefaced on the fact that people can separate in a reasonable manner. The problem I have is that this committee is faced with an enormous amount of difficulty in considering the differences in personal circumstances. There are issues of domestic violence and the abuse of children, so we have to take significant issues into consideration. If it were as simple as looking at all people being reasonable enough to determine a shared care outcome, perhaps there would be no need for this inquiry.

Witness 5—I am well aware of that.

CHAIR—The problem for the committee is that there appears to be a significant amount of domestic violence in the community and we are trying to come to terms with whether that is the case in the minority of separations or in the majority of separations, and there are varying factors. How do you think this process could be put together, and under what circumstances do you think a presumption could or should be rebutted in circumstances of violence and abuse? You have not covered that in your submission.

Witness 5—My experience, gained not only from my life and the lives of my friends but also from the reading I have done, is that violence is not represented in most of the separations that are happening in Australia and that it is still a minority occurrence. I appreciate that your committee and the courts have to deal with that issue and that it is a very important issue, but I am saying that whatever presumption the court makes has a strong influence on the many separations where incidents of domestic violence or whatever have not occurred. I think it is not healthy for the children to be exposed to a separation arrangement which is based on a presumption by the court which, again, is based on the minority of separations which have experienced this high level of conflict. Of course every separation has some level of conflict—

that is why the separation happens in the first place—but we are looking at really high-level conflict that affects the child such as domestic violence and child abuse.

CHAIR—Yesterday in Darwin, the evidence of a witness prompted me to raise the question: should we put in place laws to compensate the minority of the Australian people—the small percentage of, say, five per cent—that would impact on the majority of the Australian people? Should we put in place very rigorous and strict laws to ensure the protection of our children—which I am sure we must—but which might impact on, under certain circumstances, a majority of cases that do not have the problems of violence and abuse arising in their relationships? What is the most important thing? Is it to put in place a law that looks at the majority of Australians and hopefully enshrine in that law the capacity for those children in abusive situations to be removed—which we all want; no-one wants a child to remain in an abusive situation—or to put in place a stricter law which assumes that all people are going to be in that position, so they have to prove otherwise?

Witness 5—I understand your question. Where I am coming from is that at the moment, because the presumption is not on a fifty-fifty basis, thousands of children suffer irregular access to both partners. All those children who are in families that have separated, without ever having gone to court, suffer from the presumption that the court makes in those few cases that actually go to court and are characterised by a high level of violence. That is where I am coming from when I say it is in the best interests of the child if fifty-fifty access is presumed, because that is what happens in most of the cases of separation. However, the court must have the flexibility to rule on exceptional circumstances in a different way where it is not fifty-fifty. I would expect the outcome to be that most cases that go to court will represent such exceptions.

CHAIR—Would you support a third-tier structure that is an essential structure that you must go through—and anybody who was caught up in the violence issue went to a family law court or another adversarial process—that caught up with many of the basic separations: if you can have a basic separation?

Witness 5—If you have a process that deals with the large number of separations that never go to court and if that presumes a fifty-fifty split, I would agree with that.

CHAIR—Can I comment that it is the first time in the submissions—and I have not read all the submissions, although I have read a significant amount of them—that I have seen somebody take into consideration that, if you actually sat down and added up the time spent in an intact relationship, in the varying forms of which you spend with your children, it might come out—and we would be quite surprised to see this—in more times than not as a shared care prior to separation. I think you have made a very valid point that is not often made. If we looked at the 24 hours in a day, there would perhaps be more time in shared parenting than one might assume. We appreciate you coming in today, your submission and the attachment as well. We look forward to coming up an outcome at a later stage. Thank you very much for coming in.

[1.24 p.m.]

CHAIR—Ladies and gentlemen, that concludes the individual and organisational submissions. We will now move to the community statements process that will take place this afternoon. I welcome everyone to this community statements segment. We have just under one hour to achieve this. How it has worked before is that each person gets an opportunity to make a three-minute statement. It does not seem very long, but to date it has worked very well. People keep very succinct and determine what they are going to say prior to coming to the microphone. If we can keep to three minutes, it does give those people who may not have put in a submission, who may have just come as observers today and have heard evidence this morning and who would like to make sure that they put something on record an opportunity to do that. I ask that you be mindful of the fact that you should not identify individuals and you should not refer to cases currently before the court. I ask that you only refer to yourself by your first name and, if you prefer to not even do that, that is fine as well.

Brett—Thank you for this opportunity. I have sat here since the very first minute this morning and have taken a great many notes. I just wanted to pass comment on a number of things that I have heard. I do represent an organisation that helps men after separation. This organisation has existed since 1985. We have had extensive experience dealing with in excess of 1,000 individual members of the community each year, so I am commenting from accumulated knowledge of in excess of 15,000 people over the years. We have found that the current system does not work, even though the legislation is written in such a way as to imply no gender bias and to imply that all parents are treated equally. The problem with this is that the Family Court has established precedent which overrides the assumption that both parents are equal. In doing so, it has created a precedent whereby fathers in particular, and in situations where women are the non-custodial or non-residential parent, will not be viewed by the court in an equal manner.

In our experience, we have found that the majority of the people that approach us come to us having approached lawyers and sought legal advice. They have been told that seeking shared parenting is a fruitless exercise. They have been told that the only way they can achieve any reasonable amount of contact with their children is to show that the other parent is somehow deficient. This is the crux of the problem with the current system. It makes the system adversarial and it makes it so that the parties must fight each other—and the problem with this is that the children are the ones that lose in the long run.

A presumption of shared parenting which we wholeheartedly support changes the benchmark. It makes both people equal again and, more than that, it overrides the current precedent which governs the Family Court rulings at the moment. In doing so, as the last speaker said, in creating a presumption of shared parenting, it affects the vast majority of people in the community that do not have a decision handed down by the court. Our experience is that the vast majority of people either start court proceedings and do not proceed or seek legal advice and do not proceed past there or run out of money. The vast majority of people do have consent orders. I have consent orders that I do not consent to. That is the problem. I have legal advice which tells me that the order I have is the best I can hope for. I do not agree with them but I have consent orders. You will find that the vast majority of people out there would be in the same situation. They do not agree with what they have but they have accepted what they can get.

We have a problem with the way restraining orders are used. The status quo is a very dangerous precedent used by the Family Court and it encourages false accusations. The Auditor-General of Western Australia did a report recently into restraining orders and the most damning comment he made was that restraining orders do not work, because if a person is genuinely violent a piece of paper will not prevent them from committing a violent act. A restraining order is only effective at preventing non-violent people from committing violent acts. Although it is probably not within the terms of reference for this committee, I think that the Criminal Code—each state has its own Criminal Code—should be adjusted so that magistrates in interim hearings for restraining orders have the ability to deal with child contact issues so that restraining orders cannot be used as a weapon or a tool to establish precedence within the Family Court.

We have to have a situation where if the magistrate has doubt as to whether there is violence they can order supervised contact. They simply cannot allow the current situation to continue, whereby restraining orders are taken out based on a claim of fear—and the majority of restraining orders are taken out on a basis of fear without evidence or even a claim of actual violence—to be used to prevent contact between children and the other parent. If there is doubt then obviously supervised contact can be ordered but I think that magistrates in hearings for interim restraining orders need to be able to deal with child contact issues to prevent restraining orders from being used in this manner.

CHAIR—If you have a significant point you would like to make I ask that you come to it. If you have notes we would be happy to take your notes and go through them as well.

Brett—There are a couple of things but I will try to be as quick as possible. I think the Equal Opportunity Commission need to re-examine their role in society because I think there is a very common perception that they are the 'women's opportunity commission'. Half the problem that men face is that even today there is an expectation that they are the primary breadwinners and there is an expectation on them to go out and earn the money. There is still that expectation and consequently a sacrifice that they have to make. In being the primary breadwinner they sacrifice their role in the family providing primary care to their children and when separation occurs this is used against them to prevent them from having a proper and continuing relationship with their children. I think it is disastrous that the honourable sacrifice that a man makes in choosing to go out and work to provide for his partner and children can then be used against him in the event of separation so that he cannot continue to have a proper relationship with his children.

CHAIR—I ask that you make your final point, Brett. As I said, we would be happy to take your notes. We can decipher them. We are used to it now.

Brett—A lot of the problems that men face are due to a lack of access to information and assistance. The vast majority of social services are made available exclusively to women or are targeted exclusively to women. This places men at a disadvantage because they simply do not have the same access to information. When it comes to a situation like this they need genuine information. We believe that there should be greater education in schools to teach greater cooperation. There should be more premarital counselling to encourage people to communicate properly, and we encourage more counselling and mediation. We think there should be compulsory mediation before people are able to access the Family Court because when people can resolve these issues without involving lawyers everyone benefits.

CHAIR—Thank you, Brett. Would you like to give your notes to the secretary? I am happy for her to take them. We can have a look at them.

Brian—I strongly support shared parenting and I strongly support the comments of Brett, who spoke before me, regarding domestic violence and restraining orders. In a case which I have had very close connection with, a gentleman was effectively shared-parenting for three years after separation. Effectively, he had 40 per cent contact with the children because he was self-employed and he had the opportunity to do that. He took that opportunity up. He was actually parenting more after separation than he did before separation. Sadly, a year after that gentleman repartnered his ex-wife repartnered, and then property settlement became an issue. At that stage the couple had gone on for four years and had a reasonable working relationship. It worked well with the children, and the children were quite happy. When property settlement became an issue and the wife sought legal advice, things got very sticky very quickly. The point is that soon restraining orders were issued, contact was severed, false allegations were made of domestic violence at a very strategic point in Family Court proceedings, and that gentleman lost contact with his children for two years.

The current situation in the Family Court is that an allegation is almost as good as a conviction. Allegations are made at a very strategic point during proceedings. Family and Children's Services will determine that it is not an immediate priority, because it may be low-level violence that is being alleged. It will never be investigated, because Family and Children's Services are, quite simply, underresourced—as I am sure they will tell you—and going through the process the allegation remains. It is never investigated, it is never disproved and it immediately works against. Many people, once they are issued with a restraining order, wonder: 'What's happened? I've been a responsible citizen. I've never been in trouble with the law. Suddenly, a restraining order presumes that I am guilty.'

The restraining order is heard ex parte. The husband does not know about the proceedings until he is served with a restraining order. He is immediately judged guilty until he can prove himself innocent—if he can. It is a reversed onus of proof, and it may be three or four months before the ex parte restraining order is heard in court. Down the road here in Joondalup there is a domestic violence court, where a great number of restraining order hearings are held. Of those restraining orders that go through to a final hearing, less than 10 per cent—in fact, I think it is eight per cent—of orders are actually confirmed, which demonstrates that there is a very high level of strategic use of restraining orders within the context of family law proceedings.

The reason that restraining orders are so successful is that they need to alienate contact with one parent. It bumps up the property percentage. That, to my mind, is the saddest condemnation of our family law system as it stands. The children are used as pawns to gain a financial advantage. I think that that is something that really needs to be looked at. Madam Chair has suggested to a number of previous speakers that perhaps a third tier might be introduced between separation and getting involved in court proceedings. My submission would be simply to make that third tier very effective in investigating any allegations, on either side, of domestic violence or child abuse to make sure that they are investigated in a timely and thorough way, and that those things are dealt with before they go any further.

I would just like to close by mentioning that Dame Elizabeth Butler-Sloss, who is President of the Family Court Division of the High Court of the UK—and normally not a great friend of

men's groups in that country—issued a statement two or three days ago, where she said that one in four women will be subjected to domestic violence in her lifetime. She also said, in the same statement, that one in six men will be. We have heard a lot about domestic violence against women; we hear nothing about domestic violence against men. We have no support programs, we have no help lines for those people, and I really think that that is something the government needs to address. There is a very profound effort to deal with domestic violence—and that is to be applauded; domestic violence is something that affects our children for generations. I would suggest that the committee, in whatever capacity, might look at dealing with domestic violence—be it in a third-tier situation or in whatever capacity—such that it becomes as gender neutral in rhetoric as it is in reality.

Kevin—Thank you for giving me the opportunity and thank you for being here. I have been in and out of the court for five years. I have spent in excess of $40,000. I now represent myself, as I cannot afford it. I have had to borrow money against my inheritance. We have, and have had, fifty-fifty care. It works extremely well but both parties have to play by the rules. She does not like them and I do not like them, but it is best for the kids. My little girl, who is six, is top of her class and doing well.

The biggest thing, as I see it, is there has to be a level playing field within this system—and there is not. In the time that I have been representing myself, I have noticed there are more and more men representing themselves. The women have lawyers, because they get legal aid as they do not work. The men have jobs—most of the time—or have assets, so they do not get legal aid. So we are behind the eight ball right from the start. As has been said before, the custom is for men go out and work, so we are behind the eight ball again. A level playing field has to be developed.

It was mentioned earlier about a strategy for both parties to attend before lawyers become involved, and that is a really good idea. That is a key point I have picked up today. Another key point I have picked up relates to Mr Pearce's comment to somebody earlier regarding everybody being here for the kids and wanting fifty-fifty—the lawyers do not and the system does not. Why? It is their bread and butter. It has to be looked at. Lawyers need to find other ways to pay their mortgages—not using our emotions.

Lionel—I run a father's support group called Aussie Dads, which I started about five years ago in a small way in my little hamburger shop and it has grown to an Internet network that covers the globe. We have been helping fathers as self-represented litigants but, I have to say, we help mothers too. We acknowledge that some fathers are violent and are not good parents, and in those situations we like to help the mother. In other situations, I have observed that the number of false allegations is over the top. I was removed from the family home amidst allegations made to a magistrate that I was going to kill her, kill the kids and kill myself. That was a mile from any reality but still it effectively removed me from the property and created a status quo that I could never fight against.

I now have a situation where, of my three children, I have custody of one. He ran away at the age of 10—he is now 15—and he has been with me ever since. Regarding our two younger ones, we now have orders—after battling all the way—that they can come to me whenever they like outside the ordered contact time. I now have my daughter, who has just turned 14, more than half of the time. When she made that announcement about seven or eight months ago and turned

up one day for a midweek contact saying she was going to stay for a while. I said, 'What did your mother say?' She said, '—I don't care. She lied.' I do not want her under those circumstances but I am not going to send her away. I also have an 11-year-old son who has been quite badly alienated and brainwashed. Luckily, I am reasonably intelligent and found information through the Internet and other places. I made contact with a man who is no longer with us a Dr Gardner, who gave advice on parental alienation, and I found ways to minimise the effects. I am constantly trying to put those things into play.

I know I only have three minutes, but I would like to give a few moments of that to silence for the people who are not with us any more. We have a lot of fathers, children and mothers too who, either through suicide or not through their own doing, are not with us any more. I believe a lot of the time that is brought about by the system. I will not actually give you the silence, I will keep talking if I can. The situation has to change. I do not believe that shared parenting necessarily means equal time, but it means equal responsibility. If one has the bigger half and the other has the little half then, yes, child support should be paid to make up a balance. If one earns $1 million a year and the other earns $100 a year then, obviously, that has to be balanced out.

It is more to do with the responsibility of parenting. Unfortunately, as a few of the gentlemen before me have said, and some of the submissions I am sure you have seen have said, financial issues come into play and then the children get used as pawns. Extended families are removed and grandparents, particularly, are cut out of the scene. I have a letter that went out across our group this week. It was from the grandmother of a child who was given permission to go and live in America because the mother had met a new man through the Internet and she wanted to go to America. The father tried to keep the child in Perth, but the court awarded against him—it was in the child's best interests that the mother be happy. For the mother to be happy she had to take the child all the way to America.

We have one father in America whose child goes to East Fremantle School. He pays $US900 a month in child support. He has not seen the child for years. The order is that the child has to fly over there once a year for four weeks. The child developed an aversion to flying so he has not seen the child. Photographs get returned with scribble on the back, 'We don't want to know about you.' Fortunately, I know the student manager and I know the principal, because I was on the P&C there, so I am making a back road inroad for him to get information sent over. We cannot approach it through the mother, because she will only poison the child further.

Those are the main things I would like to say, other than supporting what has been said before, particularly about the false allegations. I do believe they need to be looked into much more carefully before a status quo can be established. Custody issues really should be from the point of the child. I am here from a fathers group and I am almost saying to you to ignore what I am saying. I am not saying that. But from the position of fathers groups and from what other people are saying from the mothers groups, I am saying that we really should not be listened to. It is with the children; that is really what it is about. Unfortunately, in my case the defence was, 'The children are lying. Their father told them what to say to fool the court counsellor.' It did fool the court counsellor, but the court still ruled against that.

CHAIR—Thank you, Lionel.

Dave—It is an honour to be here. I must thank the committee for their holistic understanding of the issues involved in this inquiry. It does provide us with a bit of faith that there could be benevolent change. The dates of 22 to 28 September will be internationally promoted as Equal Parents Week, with the focal theme being that the best parent is both parents. There is opposition from the Family Law Practitioners Association and the Family Law Foundation, for obvious commercial reasons. There are irrefutable reasons demonstrating the need for rebuttable presumption of shared parenting and a complete modernisation in family law reform.

Statistical research confirms an incredibly baneful social trend for children who have a biological parent absent through separation and divorce. Considering that the figures supplied by the Australian Bureau of Statistics show that this affects the situation of one-third of all children in divorce, the true figure may be a great deal more when citing children of separated de facto relationships. These children are shown as more likely to develop a vast array of behavioural and health problems, occupying and absorbing an already strained health department, having greater trouble in many facets of their education, with their overrepresentation in early school leaving, leading to the less attainment of qualifications and the greater likelihood of experiencing unemployment and homelessness. They have a greater likelihood of being involved in criminal activity, leading to juvenile detention and jail convictions. They are more likely to smoke and to become alcohol and substance abusers, and they are more likely experience sexual problems, including becoming more prone to teenage pregnancies, entering partnerships earlier and, more often, cohabiting. There is a greater chance they will have children outside of marriage and outside of any partnership. These cohabiting unions are more likely to lead to divorce or to be dissolved, and so this tragic cycle is repeated. It is safe to say that the best interests of the child lay with both parents. The social cost to the community and the monetary cost to our society abroad because of the dysfunctional repercussions of the present family law system would certainly run into astronomical figures.

In contrast, interpretations of institutionalised conservatives like Chief Justice Alistair Nicholson estimate that 95 per cent of separations which do not proceed through to Family Court judgments are certainly not coming to amicable arrangements with the best interest of the child at heart. The initial disadvantage against working parents is the lack of acknowledgement for their parental contributions, despite negotiating anti family friendly workplace contracts. It highlights the immediate compromise in the courts. The paramount consideration theory is being swept aside in favour of guarding the ATO's welfare.

The well-publicised exorbitant ongoing cost of legal proceedings in securing and retaining court orders automatically excludes people who do not have access to such funds—those who may just scrape in are easily succumb in time by the added pressure of the CSA. Cuts to legal aid and limited access to such legal resources do little to reassure faith in the justice system. The record of the courts awarding fortnightly contact, which barely maintains the ability of the non-residential parent and extended family to play an equally important and active role in the child's upbringing, is one of a few contributing factors deterring many disenfranchised parents from pursuing and retaining contact through legal avenues.

However, by far the greatest negligence of today's Family Court is the failure to address the insidious incidents of parental alienation—a prominent and destructive form of domestic violence. The non-residential parent and their families are continually obstructed, denied and quite often ostracised from their children because of the former spouse's selfish intention of

inflicting nothing short of emotional abuse and ultimately eliminating the absent parent from holding any significance in the children's lives.

CHAIR—Dave, I want to just tell you that we are happy to have you table your notes.

Dave—I have one more paragraph.

CHAIR—That is all right. I just wanted to let you know that we are happy to take those, if you wanted to make some personal points for yourself.

Dave—I have been denied access from my only child for over 3½ years. It is because of nothing other than malicious intentions. I have found the courts not to be accessible. It is very restrictive for the greater majority of society, and it pains me each time I watch reports or read editor's comments that take for granted that the courts will be there to resolve these issues. That is far from the truth.

CHAIR—Dave, we really appreciate that. We will distribute your notes to each member of the committee. We thank you for taking the time to put them together, because it is very valuable for us to have that to read as well. Thank you.

Steve—I have put a submission in already about the Child Support Agency and the way it deals with joint parenting. I am one of the three per cent of people who have joint residency in this country. That residency was by a court order as a result of a drawn out legal process. There are a couple of extra points I wanted to make. Firstly, there have been a lot of submissions about the safety of children and child abuse and domestic violence. I know all about that, I was a victim of domestic violence myself—my wife's psychiatrist confirmed that in court. My greatest concern though is the child, and the highest incidence of sexual assault of children, unfortunately, occurs in single parent households. Forty per cent of all reported incidents in this state—including my daughter, unfortunately—occur in those sorts of households. The occurrence of assaults has not been addressed in any of the submissions I have looked at. Luckily, because I had joint residency, I reported it. I felt I had a greater say in trying to protect my poor little daughter and to get her through the legal system.

You have heard a lot about problems; here are some solutions. I do not think one judge can make a decision about the welfare of a child. I think it needs what I saw in the criminal court with the perpetrator of my child's sexual assault—it needs a jury or a group of people. I think you would get more community standards coming into play if that were the case. I just alert the committee to the fact that putting children with men for 50 per cent of the time does not necessarily increase risk. The hard evidence is, unfortunately, that most child sexual assaults occur within single parent households.

Jennie George raised some concerns about the manipulation of children with the child support formula. As I have said in my submission, the CSA can quite happily go outside the child support formula and use its discretion. In my case, I have my child 51 per cent of the time, according to Centrelink, and I pay 20 per cent of my gross income—not 12 per cent but 20 per cent. That is the result of discretion by the Child Support Agency. Am I earning a better income than my ex-wife? Yes, I am, to some degree. Did my ex-wife choose not to work as a qualified real estate agent? Yes, she did. My child, by the way, is 10 years old. There is no insistence by

the CSA that equal responsibility applies, and I think that is what we are talking about for the children.

The way that those increased maintenance payments are met, ironically, is through the family tax benefit provided to my other child from another relationship, which the CSA have admitted to. They have said, 'You already receive this extra money for your second child from another relationship; we're going to take some of that money and put it over here.' That is not a just and equitable system. There is another solution. There is no overriding administrative body in the Child Support Agency. In the end, you go back to the Family Court and start again if you are unhappy with the outcome. It does not mean that any of the actions taken by the Child Support Agency are under any legislative oversight at all. They must be the only government department where this happens. Centrelink has a tribunal. The ATO has a tribunal. Why not the Child Support Agency?

CHAIR—Thank you very much, Steve.

Laars—I am a father of two sons, 10 and 13, and I strongly support the case for fifty-fifty shared parenting. I believe that one of the big problems is the Child Support Agency, and I believe in scrapping it completely because I see it as a major cause of divorce, which will come up a bit later. My story is long and painful, and part of that story I have put in a submission. But the end result is that I have now become what some would call a 'deadbeat dad' in reference to paying child support. I now refuse to pay it and I now owe around $7,000, but I am still a 110 per cent dad when my sons come around.

I feel that I would be better off in jail, locked away from the society which I can only view as I walk past, with my wallet never having any spare cash. Living like this I am on the edge of suicide. There is constant stress in not having enough money and not feeling or being able to start over again. What holds me back from becoming another statistic here in Australia is the support from my family in Sweden, which includes emotional and financial support. The erosion for me of a fair society is such that while my ethics and morals do not allow me to become involved in illegal activity they are slowly being eroded as this goes on. That is my personal story and it upsets me.

We are spending too much time on the effects of separation and divorce when we should be looking at what keeps families together and what drives them apart. However, the hardship for those paying child support and seeing their children only every second weekend or less is real and needs a major change. I have many ideas and suggestions, but I want to bring up one area—in particular, the forces of economics on a family unit and how the current system is destroying families as a vital unit of society. Our laws enacted to support children in fact have turned out to do the opposite: they are breaking up families. Child support, with asset division, can be quite a driving force in divorce. I will put this in a business sense: if you have a business partnership, you and your partner are going to have arguments and disagreements all the time, but if your partner finds out that she can get 70 per cent of the assets and have you pay the lease on the premises, how big does the argument have to be before she will kick you out? I have a longer version of this in my submission.

The motive of money—or child support, I should say—also affects people who are not in a relationship. I drove taxis for 15 years. I drove one young man into town and all of a sudden he

burst out, 'I'm thinking of having the snip.' He was thinking of getting sterilised. He was only 19 years old, he had no girlfriend, he was not married or anything, but a friend of his had had a one-night stand or his girlfriend had lied and got pregnant and his economic life was ruined. That experience was enough for this young man to think of getting sterilised, because he did not want to take that risk.

CHAIR—I am going to have to ask you to finish. Would you like to make any final points?

Laars—I will go through some quick points: emotional abuse by mothers towards fathers—and I consider myself as being emotionally abused—and also children after divorce. I had my eldest son turned against me, and he stuck his finger up at me and told me to '—off'. As a parent, I said, 'I still love you.' I came back, and he has turned around again. But he still does not come to visit me. Maybe we should have marriage courses once a year running over a weekend. By doing a course like that problems could be picked up. People do not really know each other when they get married, and they either grow into it or they start growing apart. If you picked that up, perhaps you could turn it around. Maybe doing that course should earn you a one per cent reduction in tax rates.

CHAIR—Laars, thank you very much.

Mrs IRWIN—We will pass that on to the Treasurer.

Bruce—I am a divorced dad with two children, one seven and one five. I do not envy you your task; it is a Pandora's box. It would not matter if you met until the end of this year or for five years out, there is not going to be one simple answer that satisfies everybody. There are a number of myths out there that I want to deal with in the three minutes that I have. One is the myth of best interests. What a wonderful sounding but a complete cop-out collection of words. I do not mean the intention of best interests; I just mean the thought, the belief, that that is actually reflected in the sorts of decisions and results that we get today. As people, we have only two parents—a mum and a dad. Nobody will ever love us to the depths that they do, and I find it astonishing to suggest that it is in the child's best interests to remove them from access to the love of one parent to the degree that does happens. It is such an absurd piece of logic. The thought that a judge who will never know, never meet, never even see my children and only be aware of their existence for one day can decide that it is in my children's best interests not to see me to the degree that they do not is quite astonishing. That is myth No.1—that best interests are actually being addressed right now.

Myth No. 2 is the myth that shared parenting cannot work unless parents are cooperating and getting on. I do not know where this line came from. It is a line that the Family Court put out but it is not based on any empirical evidence that I have ever heard. It is a play on words. It does not really matter whether the ratio is 80-20, 70-30 or 90-10, it is shared parenting and it happens already—it is just not equally shared parenting. We are just playing with words; all we are talking about is changing the percentage. We are not talking about changing the nuts and bolts; it is just a variation of what happens out there. If you have an 80-20 regime right now you have to have extra beds and clothes and everything for the kids. What is the difference between 50-50 and 80-20 from those practical points of view? There is none. So shared parenting will not solve all the problems that are out there, but it will get rid of a lot of the injustices that currently take place.

The final point I would like to make is that I am one of four children and I had what I reckon was the best dad in the whole wide world. My mum, who is still alive and in her eighties, would agree 100 per cent with that assessment. But my dad would probably not have changed one of our nappies and he certainly would not have been within cooee of a hospital when any of us were born. So he would not cut the mustard nowadays. The point I am making is that life has changed; child custody arrangements and the understanding of the court needs to change as well. It is an onerous task you have but change is needed and I urge you to take the opportunity and do it.

Edward—Thank you for this opportunity. I have driven up from Bunbury this morning. I am a share parent. I have joint shared residency with my former wife. It is a 60-40 arrangement. It is only 40 per cent by a whisker—by one night. It amounts to 146 nights a year. To get that arrangement cost me $150,000. It started with the discovery of an extramarital affair. On discovery of this extramarital affair my former wife bolted. She abducted the children and left for the city, which was two hours away from our home. She then tried to establish a status quo. She took out an ex parte restraining order which was malicious and false. It was shown to be so—so much so that the judge awarded me my house back and gave me sole occupancy. I had been kicked out of my home for about 10 weeks. My chooks were dying, my kitten was gone and my beautiful roses were shrivelled up. My life was on hold; I was in a hiatus. I found myself living at my parents' home. I found myself without my children. I was expected to work. Within a month I had a request for $1,800 in child support, based on an old tax return that was not accurate. I argued it but they would not change that.

I had to find $25,000 to fight an interim court battle to have my children returned and I was fortunate that because of the way she did it the judge saw fit to return the children. As soon as the children were returned—I had the house back and I was a complete mess—she went for final orders to do the same: to take the children away again. So we had to go back into the legal arena and I fought a very hard battle to prove my fitness and to present her depression and other problems for what they were—as impinging on her abilities and on our children. But I was naive enough to think that if I were to employ a court expert psychologist and psychiatrist within the Family Court, with the evidence and papers there, they would help my wife. I actually thought we would get some help. I thought they would see that she had depression problems underpinning her behaviours. I thought they would see that these things were affecting her ability to function and were underpinning what had happened. What happened was that the court expert gave a scathing report on me and my beautiful family; we learned nothing about her in the report that he did on her. So I was facing court at high risk of losing my children. My wife was also facing a high risk of losing the children because my boy was anaemic; he was technically underweight on his body-mass index and he was not thriving. She was abusing my boy because of her depression and inability to cope.

I really thought we would get some help. In the end, the court expert did a number on me, and I took that as far as the psychologists registration board who have told him to record his sessions, take better notes and improve his professional style. They fell short of saying he had unprofessional conduct or improper ethics—but that is what he had. He told me himself that he just had to give a result to the judge that found in favour of one and not the other, because that was the only useful thing that he could provide to the judge.

Under this duress and under this risk, we settled. It took a whole day and night, but we settled. I got court orders for 40 per cent, and that is a lot better than a lot of fathers get. But I am still not happy with that and I am not happy with the way that I had to agree it. Really what would have happened if we had gone to court was that I would have become a standard fortnightly dad. I can say from even the time that I have with my children now, which is less than half, that I pity the fathers who have fortnightly contact because an order for fortnightly contact must surely signal the end of parenting for most dads. Then the Family Court and its web site have the gall to say that by changing the language from 'custody' to 'residency' or from 'visitation' to 'contact' somehow fathers will be feeling sweet about this—that fathers will actually feel really happy that they have residency now! This is a lie, an insult and a red flag to fathers who are going through this.

I can say that judges do discriminate and they do it legally. They do it by making judgments and findings under colour of law down gender lines and stereotyped roles of 'mother nurturer' and 'father worker'. That is how they do it. They do it legally and they get away with it. I also want to say that the way the Family Court, the Child Support Agency, the family parenting payments and tax benefits and the whole system work now incentivises—that is an American term—women leaving the family fold, if there is any discord, and taking the children. It is funny, you know: when they get the children, the property settlement starts on a fifty-fifty basis and then it is 10 per cent per child. So if you have two children it is about 70 or 80 per cent. If the asset pool is small, it is 100 per cent. And then there is the ongoing child support. So there is a huge incentive to do it if you are done with the marriage.

Lastly, it really is a father removal industry. I know men who returned home to find the house stripped of all the contents and a lawyer's letter on the table saying that they have been summoned to court the next morning and that an interim order application has already been launched. In fact, the wife and her lawyer have already been to court and have already asked the judge for ex parte interim orders without the husband being there. Sometimes they rule that that happens and sometimes they do not. When he turns up the next day, usually unrepresented, the judge throws down the gauntlet and says, 'You will not leave unless we have some findings today.' The result is that he has to agree to the standard fortnightly contract, and maybe two hours on a Wednesday night if she is being really generous, and he leaves. If you think about what is happening, a father is summoned to court, his parental rights are removed and he has done nothing wrong.

CHAIR—Thank you very much.

Caroline—My husband left me 6½ years ago and I have four children—14, 12, 10 and eight years old. I would like to make the point that a lot of people are trying to avoid the issue that we have a moral decay in our society. This is what is causing a lot of the marriage breakdown. I have seen a lot of irresponsible people holding a lot of innocent people to ransom, and this goes for men and women. Like the man said before, you just have to have a woman who decides to run off and have an affair and all of a sudden you have a massive problem on your hands—you are fighting for your house, you are fighting for your children and you are fighting just to live a normal life.

In my case, I had a horrific situation and I would like to share a little bit about it. My husband went completely off the rails. He decided to sleep in the beach car parks and then he decided to

spend three months sleeping in Nangara pine plantation. I had four small children at that stage. I did not know what to do; no-one seemed to know what to do to help me. Everybody just said, 'Grin and bear it.' Then he decided to leave. We did not know where he was. He would come and go in this sort of hostile, very strange state. I did not know what to do, so I went to a lawyer and said to him, 'What do I do?' The lawyer gave me very good advice. He suggested not to do anything and to stay out of the family law court. And that is what I did. We were very frightened, and we stayed like this for a couple of years. He would come; he would go. This sort of thing would go on.

What I am saying is that, if the laws had been different, I should have been able to go to the family law court for protection and safety for myself and the children. Do you understand? Really, a woman in this situation should be able to automatically go to the court and say: 'My husband's off the rails. Can you help me? Can I be made the decision maker for these children? He's being irresponsible. I'm the only responsible person here.' We were living in appalling living conditions where my two boys only had this tiny space between their two beds and they had to get dressed in the dining room. Their cupboard was actually in the dining room. The living conditions were just appalling. The house was less than 100 square metres, and I had four children in there. My son had to study by the front door. You would walk in the front door, and there was his desk.

There was nowhere to put the children to play, and we could not get a property settlement. We dared not go for a property settlement because we were so scared. I would not have gone to the Family Court and said, 'Do you want a property settlement?' because I was so scared of what would happen to my children and me. For years we had to put up with these living conditions until he decided that he wanted access to the children and he went to the court. We blocked it and he was put on supervised access but, at the same time, we could not get a property settlement. From the point when he started sleeping in the beach car parks to the point we got a settlement it was six years. By that time my son, who is 14, was five foot 11 tall, and he was still living in these conditions, doing his study by the front door and getting dressed in the dining room.

Some men do not want to hand over the money, so they keep on manipulating the situation and just delaying. No-one really considered our living conditions at all. It is not like you could hold a photo up to the judge and say: 'Look, these are the living conditions we're living in. Are these suitable living conditions for four children?' No-one wanted to know. He had his rights. You had to wait for trial. He could just keep on delaying. For people in this situation, I feel as if irresponsible people sometimes are holding whole families to ransom.

My children are extremely intelligent. My oldest son has not seen his father for a year now. He decided not to see him. He was getting about 68 per cent for science, and in the recent Australia-wide science competition he beat 99 per cent of Western Australians. He has not seen his father for a year but to get out of contact with him was a major trauma for him. My next daughter down is also highly intelligent. She wants to be a vet. She has been out of contact with him for two years, but the trauma on the family has been absolutely enormous, and it has cost me $50,000 in the courts. Like I said, it took me six years to get the settlement, to move into better living conditions. I just feel that ordinary, responsible people are being held to ransom by irresponsible people.

I have sat in that family law court and spoken to people in a friendly way—just 'Hi, how are you?' and that sort of thing. You will see grandparents sitting there with a girl saying: 'We're just so worried. We've got a three-year-old granddaughter, and we're so worried. This man's a drug addict. We don't believe it's safe for him to be having contact.' I have seen the same thing in other cases. Another grandparent sat with another girl, and it was the same thing: 'We've got a four-year-old girl. Is it really safe? We're not sure he's safe to have the daughter. He's saying he wants access'—

CHAIR—Could I ask you to wind up please?

Caroline—Yes. I am just making the point that responsible people should be given far more say. The other thing is that the Family Court cannot decide everything for every family. We all know that we all live differently—that is, some people like sport, some people like music, some people like working; some people do not. We all live different ways. To expect the Family Court to make an overall decision for everybody is just inflexible. There definitely has to be that flexibility in there.

CHAIR—Thank you.

Jim—I currently have proceedings going through the Family Court so I will not go into those. I believe that joint parenting should be brought in so that we have an equal starting point. It is not going to make any difference in my situation but I do not want to see any fathers go through what I have been through in the last 11 years. I started off way behind the eight ball and it has been that way for 11 years. I have had to apply for access enforcement four times. I have been to three full trials in the Family Court. The next one will be the fourth. I have had allegations made against me. I have had restraining orders placed on me. The first one by my ex-wife did not proceed because, the day before the restraining order was due to be heard, she was caught breaking into the house. She then took a restraining order out on me from my little boy, who was one year old at the time. She alleged to the court that I had paranoid schizophrenia. Once again, she committed perjury to the court.

The whole problem with the courts is that I have access orders and the courts will not enforce those orders. I do not want to go into the current situation but it has been 11 months since I have seen my little boy. I have access orders from Western Australia and New South Wales, and it is just not happening. I think the courts needs to be able to expedite matters. In the past, there was a situation where I had access denied for a period of six months. False allegations were made. Once again, there was no punishment by the court. When people are not punished the first time, they think they can continue lying and committing perjury before the courts. So far, I have spent over $200,000 in legal fees. My last lawyer said to me that they wanted $73,000 in their trust account. When I told them I could not raise that kind of money they told me, 'If you want to see your son, that is what you have to come up with.' I do not think that is right, especially when I have done absolutely nothing wrong. I have been a great dad and my little boy was very happy the last day I saw him. I just think the system really needs to change and I believe changing the starting point is probably going to help things in the long run.

CHAIR—Thank you very much.

Diane—Thank you very much for having me. I feel that to have the equal time for both parents is unreasonable unless there is good communication and good organisation between both parties. Then it is possible to have the fifty-fifty split. But it has to be a practical working solution. When parents agree, it is obvious that they both care about the child and both want the best for the child and have put aside their differences for the child. Otherwise, I believe the focus has to be not so much on the rights of the parent but on what is best for the child. So there need to be guidelines for this.

The child's safety and care are paramount. A child is not a parcel that can be tossed around from one parent to the next. A child needs stability and routine and as little disruption as possible to really be happy and to really settle and do well. Who can care for the child the best? Who can provide for the child's daily needs and look after that child and supervise the child adequately? I have met many people who have had terrible problems with being a responsible adult. They are caring for their child and doing their very best, and then the other partner causes them to be totally dysfunctional in how they manage the situation.

We need to look at physical and mental safety. The child needs to be free from fear, stress or guilt. Each case, I believe, needs to be assessed individually. One parent may be better than the other at caring for the child. I think the responsibilities of the parents and how they perform their responsibilities are very important. One parent may have mental health problems, and I think that is a big issue in some cases because it cannot be brought forward. There may be reasons such as drugs—

CHAIR—Can you start to wind up? That would be helpful.

Diane—Okay. We need to cause the least possible disruption to the child and provide consistent boundaries so that the child can grow in a loving environment.

CHAIR—Thank you.

Pamela—I am the residential mother of three teenage children and I am here to represent them, which is a novel approach, from what I have heard today. I have heard some shocking stories, but I am here on a positive note. We do not have shared parenting in terms of equal time, but we do have shared parenting in terms of having two loving parents. We have the standard arrangement in which my children spend 12 days with me and two days with their father. But my children and I—and, I think, their father—believe that good parenting is not necessarily involved around time. We do the things that we are actually good at. Their father is good at earning money and I work part time, but I am good at looking after the children, helping them with their homework, running them around to their various sporting activities, which he does as well, and providing them with good nutritional meals, which he cannot do at all.

My children do not particularly like going to their father's place on the weekends. They love him but they do not enjoy it at all. They complain enormously about how they get fed and how he does not have boundaries. He does not know how to get them to go to bed on time and all sorts of things like that—he is a child himself in many ways. So my children have asked me to come to tell you that, from their point of view, rebuttable presumed equal parenting would have been disastrous. They are quite happy with the situation as it is. They have a good relationship with their father; they have an equally good relationship with me.

We could not have afforded two households, and he did not live close to me. The children hate having to pack up their clothes and stuff, and we always have trouble when homework is left in one place. But he goes backwards and forwards—sometimes two or three times a night—when each child individually remembers that they have forgotten something and left it at his place. The solution of rebuttable shared parenting is a really simplistic ideal. It is a one-size-fits-all solution, and I do not really believe it is going to work. It will just shift the problem somewhere else.

After hearing these stories, I am not sure what the answer is. The terms of reference did not actually ask us to look for other answers—if it had, I might have. I am very sorry I did not make a submission. I really believe that with joint residency you are just going to start another set of problems. You can only have joint residency where both people can parent effectively. In my case, although, as I said, my husband is a loving father I do not think he is an effective residential parent. The parents have to live close to each other, they have to be able to communicate regularly and easily and they have to be able to negotiate flexible working arrangements. I have given up my career. I started out earning more income than my husband. After I had children I became a part-time worker. My children would suffer if I did not get the child support he pays us. If I had to go back to work full-time they would not have me on tap. I might have a better life, in that I would have a social life every second week, but I do not think my children would be better off.

CHAIR—Thank you, Pamela.

Michael—I am here because I went through the mill, but I was very lucky to have support from some of the groups that were already established. My wife and I were married for 16 years. Over the years it became obvious that there were certain differences that were virtually irreconcilable. So we came to an agreement that a separation was going to have to take place. When that happened I managed to get support from other people. The information about the shared parenting and everything else was fairly prominent at the time.

With the help of Aussie Dads and some other people I knew, we were able to put together an outline of what I wanted as a father so that my wife could take it and deal with it accordingly. Basically we looked at it as fifty-fifty day-to-day care, fifty-fifty responsibility for the children, fifty-fifty on all of those aspects, so any decisions that are made are made as we would normally have made them if we were married and together. The main thing that it came up with was the fifty-fifty day-to-day responsibility, because where the kids are at the time does not really matter because that is going to change. So these fifty-fifty arrangements need to be very flexible and really need to be based on the time that the children are going to spend with each parent.

We are splitting the finances fifty-fifty as far as the major assets are concerned, but, because my wife is going to have the children for a longer period of time and because of the circumstances, I am going to give her a donation which is going to be a substantial deposit for her house. So she is happy, I am happy and everything seems to be balancing out quite nicely. As far as time is concerned, there are no real restrictions. I have to use commonsense when I am approaching the house. I ring before I come. If there is any situation where she says, 'No,' I do not ask her any questions about it. I say, 'Okay, thanks very much; we will deal with it later on,' because obviously there is a reason that she just cannot deal with at the time. She is very encouraging towards me. She wants me to be at the house on a fairly regular basis and she has

no problem with me taking the children overseas, interstate or anything like that. We both have an income, although mine is a full-time income and hers is a three-day income. We basically work out the costs and set a balance accordingly.

Shared parenting is a very fantastic concept. It just needs to be approached with a focus on the children. When finances are split up, they need to be useful. There is no point in having the husband become a pauper. He needs to have a sum of money to be able to make an income. Commonsense must prevail at all times, as situations that occur as the children are growing up will influence the balance. You just need to adjust accordingly. I have had a very good experience with separation and it is all thanks to support and the shared parenting concept.

CHAIR—Thank you. We might have to put you up as a model. Thank you for your comments.

Individual A—Thank you for the opportunity to speak. I know you are over time and I will be brief, because I do not think there is much I can add to what you have already heard. Julia, I do not think you are going to run out of cases; I do not think this issue is going to go away. Whatever the incremental value of the outcome this committee might arrive at, I think it is worth while if you achieve something and I think that is good. Jennie, you were interested in child support, and I have a suggestion. It occurs to me that child support makes a prize of children. And it is automatic. The issue of how to deal with parents who can end up more badly off occurred to me when you were asking questions about an earlier submission. I think child support should be automatic but, perhaps to take away that prize component that comes with child support, the Family Court might have some sort of power to modify it. At the moment, it is automatic. If you look at the child support formula, it actually promotes one parent taking children from the other parent. I do not know how you get around that problem, but that is the way it seems to work at the moment.

I would like to mention the subjects of false accusations, child abductions and so on. I think shared parenting—that is, shared parenting in itself and shared parental responsibility—is important. At the moment, if a child abduction occurs it is a very powerful legal tactic in court. I think it is to the detriment of children that parents use this as a mechanism to gain irreversible interim orders and that type of thing. The concept of shared parenting might help alleviate that little problem. The concept of shared parenting might be useful—and I know this is quite petty—in this instance. By the way, I have joint custody of my kid; that does not actually happen but that is the situation for me at the moment. I cannot even get my kid's school reports because of section 60B of the Family Law Act. I think you might be aware of what that is. Because of section 60B I cannot get my child's school reports. If shared parenting were in place, that ethic might appear in the schools and it might help schools to promote the concept of shared parenting. That is really all I have to say, because I do not know what I can add to that which you have already heard.

CHAIR—Thank you very much. We appreciate that. Ladies and gentlemen, we wish to thank all of those witnesses and organisations that appeared before the committee today in both the public hearing and the community statements segment. We really do appreciate you and the way in which you have conducted yourselves today. It is of great benefit to the committee if the audience is aware of the seriousness of the issue and the fact that we do have to tease out issues that may expand our knowledge but also refute some of the evidence that comes before us.

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

That this committee accepts as evidence and authorises for publication submission Nos 410, 571, 906, 1132, 1133, 1138, 1139, 1141, 1193 and 1253 as part of the inquiry.

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

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

Committee adjourned at 2.39 p.m.