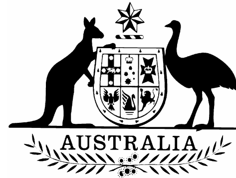

COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS

Reference: Child custody inquiry

THURSDAY, 25 SEPTEMBER 2003

DARWIN

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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS

Thursday, 25 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: Mrs Draper, Mr Dutton, Mrs Hull, Mrs Irwin and Mr Quick

Terms of reference for the inquiry:

To inquire into and report on:

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

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

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

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

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

WITNESSES

BRENNAN, Miss Patricia Daphne, Solicitor, Top End Women's Legal Service **34**

BROWNLEE, Ms Susan Joy, Coordinator, Dawn House Inc. **25**

DOWLING, Ms Angela, Coordinator, Top End Women's Legal Service **34**

HUGHES, Ms Camilla Jane, Principal Solicitor, Top End Women's Legal Service **34**

KENNEDY, Mr Robert, Coordinator, Lone Fathers' Association NT Inc. **15**

WITNESS 1, (Private capacity) **2**

WITNESS 2, (Private capacity) **8**

Committee met at 9.37 a.m.

CHAIR—I declare open this public hearing of the House of Representatives Family and Community Affairs References Committee and welcome everybody to today's proceedings. To date the committee has received over 1,500 submissions, a record for an inquiry by this committee and amongst the highest ever for a House of Representatives committee. We are grateful for the community's response as this is one important way in which the community can express its views.

I stress that the committee does not have preconceived views on the outcomes of the inquiry and takes all evidence with a view to ensure 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 of one set of views than of another, for example more from men than from women, by the end of the inquiry we will have heard from a diverse group and thus have received a balance over the range of views.

The public hearings that the committee is undertaking are focused on regional locations rather than just on capital cities. At these hearings the focus will be on individuals and locally based organisations, and later in the inquiry we will hear from the larger organisations, such as the Family Court and the Child Support Agency, in Canberra or via videoconferencing. Today we will hear from eight witnesses: two individuals and six 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 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—that is, not representing an organisation—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 which 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 witness with a number. The transcripts of public hearings that are currently on the committee's web site will be modified to reflect this recent decision. This is being done so that the committee can maximise the availability of public information whilst still protecting individuals and third parties.

I particularly ask any media that might be present not to report the names of individuals who appear publicly at the hearing in a private capacity. Around six hours has been set aside for the public hearing today. I will now proceed to formally call the first witness for the public hearing.

[9.40 a.m.]

WITNESS 1, (Private capacity)

CHAIR—Welcome. The evidence that you give at this public hearing this morning 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 that you do not refer to cases before the courts.

As you are appearing before the committee today in a private capacity, to ensure that your privacy and that of third parties is protected, while we will refer to you by name in the hearing, in the transcript record which goes onto the committee's web site we will refer to your evidence as being from a witness number. You will know your evidence but you will not be publicly identifiable to others. Would you like to make a short five-minute statement? I will then invite members to proceed with their questions.

Witness 1—To begin with, I would like to make comments with particular reference to the terms of reference. Term of reference (a)(i) refers to the factors that should be taken into account when deciding the amount of time that children should spend with their parents. I firmly believe that the child's best interest is the most important thing. My experience has led me to conclude that the factors that the court is required to consider often make it difficult for the court to focus on what is the best interest of the child. I believe that, where it is in the best interest of the child, they should have contact with persons other than their parents. As to whether or not the child support formula works fairly in respect of both parents in their care of and contact with their children, I believe in some circumstances it probably does. I think that in other circumstances it probably does not and that the system sometimes allows itself to be unfairly manipulated.

My submission attempts to focus primarily on children and what children should expect from a legal system that attempts to provide a substitute for a family with two parents. It is not necessarily my intention to focus on the concerns of mothers, fathers and grandparents, because I believe that the committee will probably hear from those people themselves. Having said that, though, I am not going to pretend that my submission will be completely impartial.

I firmly believe that the Family Court views itself, possibly incorrectly, as offering children the best. In my experience, the court imposes orders that assume a perfect world. If the court would first create a perfect world, then I would be more supportive of some of its decisions and those decisions would probably be in the best interests of children. However, the court is sending these children out to an imperfect world with imperfect people and the court cannot mandate people's behaviour. Therefore, the court must acknowledge that the world that these children must live in is not perfect and the people that these children will associate with are not perfect either. Only then can the court make orders that will ensure that the child's best interests are protected and promoted.

The court seems to have some difficulty balancing all the factors that it must consider, and I am not convinced that proposing additional factors will result in a better outcome. In fact, it may be appropriate to consider reducing those factors so the court can more appropriately consider what are the best interests of the child in that particular situation. I think that sometimes people need to acknowledge what is in the best interests of the child and not just what is in their own best interests. I understand that it would be difficult for the court to determine when people are trying to promote the child's best interests and when people are trying to promote their own interests.

I think a child has a right to contact with both parents and with other people that are influential in the child's life, but this is not an obligation. Children have a right, not an obligation, to have contact with people. However, I think the courts sometimes act as though there is an obligation to ensure that a child has contact with those people who have made application to have contact with that child, and sometimes it is not always in the child's best interests. The people who make applications have a right to make applications, and that right should not be removed either, but they do not necessarily have a right to contact when it is not in the child's best interests.

I understand that, when you consider the many rights of children both in the Geneva convention and under Australian law, it is difficult to balance all their rights. However, I do not believe that the rights should be promoted in such a way that these children are put under the additional stress that sometimes accompanies the court imposed arrangements. There is no value in forcing a child to spend a set amount a time with a person, knowing that they may be missing out on doing something that they really want to do. While I acknowledge that this is sometimes a deliberate ploy, this demonstrates again that most children do not live in a perfect world and that the courts must take these imperfections into consideration if a child's best interests are to be protected.

Many children are placed in situations where their best interests are not paramount. Notwithstanding some of the things that have happened to some children, I think that children sometimes learn to manipulate situations in order for them to be able to deal with the situations that the court has imposed on them. I think that children need love and attention and genuine interest in their lives.

CHAIR—Do you have some points that you would like to make? The committee would like to ask you some questions and we have a very short time in order to do that. You are quite welcome to table what you are reading from so the committee will get a copy of that. If you could just make your points, the committee could then proceed to ask questions.

Witness 1—Additionally, I think that the Family Court is sometimes viewed as a battlefield. Sometimes people will not approach the Family Court and instead will persist with intolerable family situations rather than put themselves through a battle. The current structure does not allow for people to be able to approach problems in appropriate ways, so sometimes the system fails children even when people do not necessarily approach the courts. I think that all children in all circumstances are different and, again, the children's best interests are paramount. Society is faced with many problems and I think both the Family Court and the people involved—the independent lawyers and the counsellors—need to acknowledge that society is not perfect and that the decisions they make may result in a more imperfect society.

CHAIR—Thank you. As I said, we are quite happy to take your document and, if you want us to, it will be distributed as an attachment to your submission. We will now move to questions.

Mrs IRWIN—Thank you for your submission. On page 2 of your submission you have stated:

There is too much reliance on ‘experts’ who may spend one hour with a child and then provide expert evidence to a Judge too make a decision that will substantially affect the child’s life.

Can you state the reasons why you made that statement and what changes you would like to see?

Witness 1—I think that experts have different tests and processes that they go through which are sometimes appropriate, but because the experts do not necessarily find out enough about the background of the child and the processes that the child has previously been through they do not gain a full understanding of how children view such processes and whether or not children have clued on to the way that these processes work. They then purport to give answers that they think will provide the outcome that the child is looking for.

Mrs IRWIN—You have one son?

Witness 1—Yes.

Mrs IRWIN—How old is that child?

Witness 1—He is now 10.

Mrs IRWIN—Were you referring to your son, who went for what I gather from your submission was counselling, when you state, ‘He spent one hour with my child’?

Witness 1—Yes.

Mrs IRWIN—How old was he then?

Witness 1—He was nine.

Mrs IRWIN—Did you feel that that was a qualified counsellor?

Witness 1—Yes.

Mrs IRWIN—Because of some of the changes we are hoping to make, or the recommendations we are going to put to the government, I need to clarify some things for the record. You have stated that the father of your son ‘does not want anything to do with him’. You have also stated your experience with a grandparent. A lot of grandparents have come before the inquiry because they are finding it very difficult to have access to their grandchildren. You stated that it has left a bad experience on your child and he has needed counselling. If you feel comfortable in doing so, can you explain the reasons why?

Witness 1—I think my child has grown up spending a lot of time with his grandparents, who do not have necessarily a good relationship and have since separated. During that time he was manipulated and used in order for parents to get what they wanted. He is now in a similar situation between me and the grandparent involved in this situation, where again he is being used and manipulated.

Mrs IRWIN—We have heard evidence from a lot of organisations, and from individuals like mums, dads, grandparents, aunts and uncles, but we have not really heard the voices of the children. I think it is important that this committee hear the voices of the children, so the question I put to you is: what do you think about giving children an opportunity to be involved in the decisions about post-separation parenting? If you sat your son, at 10 years of age, in a room with you and a counsellor and said, 'What do you want?' what do you think would happen?

Witness 1—My son was given that opportunity and, unfortunately, that did not make it to the court. He was given the opportunity and he said what he wanted; unfortunately, the expert counsellor did not take his view to the court.

Mrs IRWIN—So his voice was not heard?

Witness 1—No.

Mr QUICK—Thank you for appearing before us today. I guess it is not easy baring it all out here in public. I am interested in how the court works up here in Darwin. How many Family Court judges or magistrates are there in Darwin? Do you know?

Witness 1—I am sorry, I do not know.

CHAIR—You are not expected to know, either. I am not exactly sure why you were asked that.

Mr QUICK—The thing that worries me is that there seems to be a template, as I call it: every second weekend and half the school holidays. If it is all too hard, the judges roll that out, stamp the piece of paper and call, 'Next case!' It is like a sausage machine. As you said to Julia Irwin, it is like a production line. Your son's interests were not taken into consideration, the lawyers are reaping untold wealth and there is this adversarial, dog-eat-dog situation. Some of us are of the view that before it gets to that, before you start spending some money, there ought to be some sort of tribunal where parenting plans are put forward and all the people involved in the children's best interests are somehow coerced or forced to sit down and work out a parenting plan in the best interests of the children. Your submission mentions—and I am interested in this, as an ex-schoolteacher—the peer group support from the local school and local sporting activities and other things that the kids participate in while their world is falling apart. I am interested in your view of perhaps having a tribunal and a less adversarial position to start with.

Witness 1—I think a less adversarial system would offer benefits. I am also of the view that, in some circumstances, perhaps individual people need to be forced to go to counselling first to work out their issues. A lot of the time these issues are not about the children; these issues relate to other things, and people need to—for want of a better word—grow up, take responsibility for

their problems and then think about the child and what is in the best interests of the child, not what is in the best interests of themselves.

Mr DUTTON—I turn to your experience with the Family Court: how long the process took from start to finish, what sort of money was involved and what the outcomes were. You say in your submission that the outcomes were unsatisfactory. In what way were they unsatisfactory? What would you have liked to have seen out of the process?

Witness 1—The process took about six months from the time the application was lodged. My legal costs were in the realm of $3,000; I am sure that the opposing party's legal costs were substantially more, because I did a lot of the work myself. As far as outcomes go, I would much rather the outcome be a situation where my child feels comfortable, is willing to visit his grandmother and is going to have a long-term relationship with his grandmother. I really believe that, in the circumstances that my child is now in, he will not have a long-term relationship with his grandmother because he will get annoyed with the situation. He has been told that he has no choice in the matter; that he has to adhere to the court arrangements, and I do not think that that is going to lead to a productive relationship with his grandmother. I think that is sad. He does not have any contact with his biological grandparents on his biological father's side, which means that chances are he will end up with my father as the only grandparent in his life. I think that is very disappointing.

Mr DUTTON—What was the relationship with his grandparents on your former partner's side prior to separation?

Witness 1—We separated before the child was born. He did have contact with his biological father's mother for some time until that relationship unfortunately fell apart, which was largely due to circumstances beyond the control of both of us.

Mr DUTTON—In your submission you talk about the presumption that is part of the terms of reference of this inquiry not being appropriate except in some circumstances. What sorts of circumstances do you believe would have to exist before it would be appropriate?

Witness 1—Where it is going to be in the best interests of the child, where the child is going to be able to maintain family and friends and to have a childhood. I think it is most important that children have a childhood. Parents have had their childhood. They cannot go back and relive it through their children. Their children need to have a childhood where they can maintain friends, go to their sporting organisations, stay at the same school, have contact with the same group of people and not feel as though they have to live two separate lives.

Mr DUTTON—Thank you.

CHAIR—You separated prior to your child being born?

Witness 1—Yes.

CHAIR—Within your submission you really do not support a presumption of fifty-fifty residential care of children. In the circumstances you are in, I can understand that because you separated prior to your son being born. But what about for a child who is four, five, six, eight or

10—or whatever—who has had all of those years living with his dad and his mum in an intact family, who for every good reason would love to spend time with dad and with mum and really does not want to be in the position where he has to choose or be allocated to one parent or another? Would you not think that would be an option for a child to have a better quality of life in his or her best interest?

Witness 1—If the matter has got to court then I would have doubts as to whether it would be in the child's best interest to spend 50 per cent of the time with each parent. If the parents can get along to a point whereby they are going to be able to provide the child with an environment in which it is appropriate for them to grow up, where they are going to be able to grow, excel, maintain the same group of friends and so forth, then I think fifty-fifty is great and would be absolutely fantastic. Where I think it leads to the children being manipulated, having to lead two separate lives, being put under a lot of pressure, feeling as though they are favouring one parent or the other—which sometimes happens when they do spend all their time with one parent and not enough time with the other—where balance is not right and is not promoting the best interests of the child, then I do not think it is appropriate.

CHAIR—One gentleman who came before us said he paid $180,000 to be able to share his child's life—that is, the life he was sharing before when he was in an intact family. He spent $180,000 in court. Why would it not be the best circumstances if a person was willing and prepared to pay that amount of money to be able to share their child's life? Just because they have gone into a family law court to do it does not make it less likely to be good for the child. Do you think those parents could provide a very good quality of life—apart but united—for a child?

Witness 1—I think that for parents to be able to provide the best life for a child when a child is living in two separate homes with fifty-fifty custody then the parents need to be able to at least communicate on some level. I would hope that that communication would enable them to get to a point where they recognised what was in the best interests of that child and could agree within themselves. When it gets to court and it is beyond doubt that the child is going to get the best out of life by having contact with both parents then fifty-fifty would be appropriate because it would be in the best interests of the child.

CHAIR—Thank you. Can I just say that the majority of individuals who have come before us who have shared care have basically no relationship—they are unable to get on with each other as individuals—but they still have a successful shared care relationship. That has been the norm in the individuals who have come before us who have shared care. Thank you for coming along this morning. It takes a lot of courage to come before a public hearing, particularly on this emotional and sensitive issue, and we certainly do appreciate your taking that time to come forward this morning.

[10.01 a.m.]

WITNESS 2, (Private capacity)

CHAIR—Welcome. Thank you for taking the time to come this morning. The evidence that you give at this public hearing is considered to be part of the proceedings of parliament. I therefore remind you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. I remind you that the comments you make are on the public record. You should be cautious in what you say to ensure that you do not identify individuals and that you do not refer to cases currently before the courts.

As you are appearing before the committee today in a private capacity, to ensure your privacy and that of third parties is protected, while we will refer to you by name in the hearing, in the transcript record which goes onto the committee's web site we will refer to your evidence as being from a witness number. You will know your evidence but you will not be publicly identifiable to others. I now invite you to make a short, five-minute opening statement before I ask members to proceed with their questions.

Witness 2—Thank you for inviting me here. My submission to the inquiry was specifically in relation to the child support formula, from my personal experiences with it. I was married in 1989 and separated in 1992. I am the father of a 13-year-old son of that marriage, and we have shared the care of and responsibility for that child since separation, which for quite a number of years now has been a fifty-fifty routine, with the child spending the equivalent of seven days a fortnight between the two households, which are in the same suburb. Changes to that routine are made by prior mutual agreement, so there is a bit of flexibility. In 2002, I became a client of the Child Support Agency. I have no problem accepting that parents are responsible for their children and I am not in debt to the Child Support Agency.

There is, I think, a fundamental error in the formula they use with respect to a shared care child. My ex-wife has remarried, lives with her husband and has two subsequent children. The initial child support liability for me was $654 a year, or $55 a month, which was the difference between my income of $58,600 and his mother's income of $53,200 multiplied by the shared care percentage for one share-care child of 12 per cent. I consider that to be a reasonable liability, considering the shared care circumstances.

About two months after that initial assessment I received another assessment that increased the liability from $654 a year to $2,117 and that was backdated to the commencement of the child support case. I was advised that the increase was due to my ex-wife's two subsequent children with her husband. That came as a surprise to me, as both my ex-wife and her husband have well-paid jobs, and I did not see that their children were my financial responsibility.

The reason for the increase in the assessment was due to my ex-wife being allowed a higher exempt income amount in the formula. In addition to the extra exempt income amount for the shared care child, there was an extra exempt income amount for each of the two subsequent children, bringing the total exempt income amount to $26,900. My exempt income amount was

the lower amount plus the extra amount for one shared care child, totalling $14,765. The difference between those amounts is about $12,200. That equates to $122 a month.

I made an objection to the assessment because I could neither afford nor justify it. That liability increased because of an apparent decrease in my ex-wife's income after the financial year and an increase in mine. This put me in a negative cash flow situation. I made an application to the Child Support Agency for a change of assessment due to special circumstances. The outcome of that was that they determined that my ex-wife's income was not $52,000 a year but $63,000 and they reduced the liability to $1,169 a year or $97 a month. They also determined that, as that was in my capacity to pay, there would be no other modification to the formula assessment. I was advised that my earlier objection was dismissed because it lacked any merit.

I pursued my right of appeal to the Federal Magistrates Court on the basis that the lower exempted income amount for me did not reflect the basic living expenses for caring for the shared care child and that the higher exempted income amount should apply to both me and my ex-wife. In addition, my appeal was based on the fact that the child support formula for a shared care child is inconsistent with the objects of the act. Prior to going to court, the Child Support Agency said to me that they had asked the Government Solicitor to represent them and to seek costs from me for any involvement they had in the matter. I represented myself in court. I was just looking for a change of $78 a month and that did not justify engaging a lawyer. The result of my application to the court was that the application was dismissed. The judgment concluded that the Child Support Agency assessment was correct and that the payee in the assessment was entitled to the higher income amount and I was not.

To summarise: my most recent child support assessment is $774 a year, $64.50 a month, even though my ex-wife's income is $6,300 more than mine, my income being $63,200 and hers being $69,500; even though I share care of the child and responsibility for the child an equal amount of time; and even though I have got a single income household and my ex-wife's family income is probably in excess of $140,000 a year. Any extra income I might earn will be taxed at 47c in the dollar and child support is 12c in the dollar, leaving me with 41c in the dollar. I made complaints to the Human Rights and Equal Opportunity Commission and the Commonwealth Ombudsman and they both determined that no investigation was warranted.

Something else I would like to add is that the basis for the formula used by the Child Support Agency is different from the basis of the formula that the Family Court may use where they refer to some surveys, for example, the Lee expenditure survey. The Lee data shows that two children cost about 55 per cent more than one child and that three children cost about twice the cost of one.

CHAIR—Thank you very much.

Mr DUTTON—Thanks for having the guts to come and speak with us this morning. It is a screwed-up system, and I guess you do not need me to tell you that. The reason that we are here is to try and find some way forward for people who have been hit hardest. Can you tell me a little bit about the circumstances of your shared care arrangements, how you do changeovers and how things work practically in the split of days?

Witness 2—It works basically on three days at mum’s, three days at dad’s, three days at mum’s, three days at dad’s and then a day at mum’s and a day at dad’s. What that means is that my son is always at my place on Sundays and Mondays and he is always at his mum’s on Wednesdays and Thursdays, and the Tuesday, Friday and Saturday change each week. It gives us an opportunity to have a day, say a Monday, where you might do a specific activity, you each get time on the weekend and it is a Saturday one week and a Friday the next. The changeover is always at 5 o’clock. My son is 13, so he can catch the bus home from school to either household. If, let us say, there is a camping trip or fishing trip or something, we might swap a day with prior advice. It works well if there is prior notice. There are some exceptions to that that I have experienced, but for my part I always stick with the routine.

Mr DUTTON—Do you mind if I ask: was it a hostile situation for some time? How did you arrive at a shared care arrangement? People tell us that shared care cannot work where there is conflict between the two parties and where there is a low level of communication.

Witness 2—Initially, after separation, we had an informal shared arrangement. That moved to a situation where I had sole care of the child and the mother moved interstate. She then came back to the same city and the child remained in my care the majority of the time, about four days a week, and spent about three days with the mother. The weekends were alternate. The mother asked to change it around, because I had had time with the child for a number of years. She wanted four days a week and wanted me to have three. I disagreed with that, but I said, ‘I will come to fifty-fifty.’ That was not easy to negotiate, but it has worked as good sense.

Mr DUTTON—You said that you were first introduced to the Child Support Agency only in 2002. Is that correct?

Witness 2—Yes.

Mr DUTTON—So for the 10 years from the time of your separation in 1992 you were out of the system as such?

Witness 2—Yes.

Mr DUTTON—What changed in 2002 for you to come into the system?

Witness 2—I asked his mother if she would share half the costs in his orthodontic treatment—his braces. She disagreed with that and, in her words, took me to child support.

Mr DUTTON—To follow that up, can I ask: in the 10-year period prior to 2002 that you were out of the Child Support Agency—and for some of that period, as you say, you had sole care—what were the child support arrangements?

Witness 2—We agreed on separation that we would not get the Child Support Agency involved. Basically, I looked after the child when he was in my care and she looked after the child when he was in her care.

Mr DUTTON—So regardless of the amount of time, at different times, that you had responsibility, you just wore your own costs?

Witness 2—Basically, yes.

Mr QUICK—We hear ‘in the best interests of the child’ bandied about ad nauseam. If we got your son here and said to him, ‘How do you feel about the shared care arrangement?’ what do you think he would say?

Witness 2—I asked him that question and he said, ‘It’s good.’ He likes it as it is and he said that—in his words—he gets to go fishing twice as much.

Mr QUICK—People have also said that rather than, perhaps, having a formula, we could quantify in dollar terms what it costs to raise a child. There are differences. Your son obviously has different needs and peer group pressure—to have caps with ticks on them, a certain sort of running shoes and the like—from those of preschool children. Have you given any thought to this: what if we were to get rid of a formula and say, ‘It is going to cost $150 a week,’ or whatever? Can you quantify anything for us?

Witness 2—I think the amount of money spent on a child depends on the income of the parents. The formula has many merits but, as I described, there is a bias in the formula, which basically says that the subsequent children of my ex-wife are considered to be relevant dependants but my son is not. That gives the imbalance. But the formula could work and that is why I have made a recommendation in my submission.

I would add that, from what I have read, in the proposed changes to the Child Support (Assessment) Act in 1998 there was a recommendation from the Joint Select Committee on Certain Family Law Issues. Recommendation No. 140 proposed that parents sharing the care of a child should have ‘the same exempt income level as liable parents with a relevant dependant child’. That was not an amendment to the act.

Mr QUICK—Thanks very much for appearing before us.

Mrs IRWIN—Yes, thank you very much for allowing us to come into your life. Your coming before this inquiry with your concerns and the changes you would like to see will help us in our deliberations on the recommendations that we will put before the government. You have stated that you have a son who was born in 1990, who is now 13 years of age. I think he was two years of age when you and your partner separated. Is that right?

Witness 2—Yes.

Mrs IRWIN—You have also stated that you had sole care. How long did you have sole care before you went into the shared parenting arrangement?

Witness 2—His mother was in another state for about seven months.

Mrs IRWIN—So he would have been around two years of age at that stage. How did you and your ex-partner come to an agreement on shared care? Did you sit down and, through mediation, say, ‘We’ve got to consider our son and the best outcome for him’? Or did you have to go to the Family Court?

Witness 2—No, we did not go to the court, and I would not have wanted to go to the court. Obviously, initially she was happy for the child to live with me. However, she obviously did not like that and could not cope so she moved back to the same city.

Mrs IRWIN—So she could see her child.

Witness 2—Then it was clear to us that it was in the best interests of the child that he live in a shared arrangement between both parents.

Mrs IRWIN—You stated that shared care is working now and that your son is very happy with it.

Witness 2—Yes.

Mrs IRWIN—I gather he does not have to move schools. You are just around the corner so he still has his school friends, his sport and so forth?

Witness 2—We are not close to the school but he goes to the same school. We live in the same suburb, although we are about eight kilometres apart. His school is on my way to work, or he can take the bus. I would not expect that a child would have to change a school to satisfy a shared arrangement.

Mrs IRWIN—You do not have to answer my next question if you do not want to. We have heard from a lot of men whose marriages have broken down that they see their children only once a fortnight and they feel they are paying too much in child support. A lot of them state the reason as being that they have gone into another relationship. They have remarried and they have children. If you do not mind my asking, are you in this situation?

Witness 2—Not exactly. I have a girlfriend who has two children and she is the sole carer of those children. We do not live in the same house but there are times when I oblige by providing for both her two children and my own. But because they are not biologically my children or my responsibility that does not come into the formula.

Mrs IRWIN—My final question is in relation to the Child Support Agency. You stated that you had a verbal or written agreement with your ex-partner regarding maintenance, mainly because of the shared care arrangements, that had to do with braces—is that correct? Your ex-partner was not prepared to meet half the costs. Are you aware, and this information is for other people here today, that if you are paying child support through the Child Support Agency you can apply under section 5.13 ‘Prescribed payments’, which means that if you actually have to pay for braces, school uniforms or school fees you can get a credit off your child support?

CHAIR—He was not in the system; that is what sent him to the system.

Mrs IRWIN—I am just referring to a similar case that I have come across in my electorate where someone was forced to go into the system because of these circumstances. Even though they had paid half the fee prior to going into the system, they had the evidence there and they were credited with that amount. I would take it up with the Child Support Agency.

Witness 2—You could argue that was to my advantage when I became a client of the Child Support Agency, but I need to comment on that. Whilst you can get a 25 per cent reduction in your child support from the prescribed payments, if I were to pay private school fees of $3,000 a year and $4,300 for braces then 25 per cent of that off $100—

Mrs IRWIN—Exactly; I can see your point.

Witness 2—And just on that, it would make sense that school fees in a shared care arrangement would be fifty-fifty and prescribed payments for essential medical, dental et cetera should be fifty-fifty.

Mrs DRAPER—Thank you very much for coming before the committee. I just want to pick up on a point that Mr Dutton raised, and I will be brief. I understand you had your son for seven months when he was about two years of age.

Witness 2—Yes.

Mrs DRAPER—Sorry to be so pedantic on that but did you go straight to shared care from there? How long have you been in this shared care arrangement?

Witness 2—It is probably relevant for me to say that in that time when he was in my sole care he did spend some time with his mother's grandparents. I think it was about a day a week.

Mrs DRAPER—That is fine. I am just interested in when you actually started the process of shared care with your ex-wife.

Witness 2—It started almost straight away, when she came back to town—four days of the week with me and three days with her.

Mrs DRAPER—Okay—since he was a very young child. I picked up the amount of $64.50. Is that what you pay per week?

Witness 2—At the moment it is $129 a month.

Mrs DRAPER—Thank you.

Mr DUTTON—These figures get confusing sometimes, so can I just put a proposition to you and ask whether or not you agree with it. Can I summarise your case by saying that your arrangements are that you have a shared care arrangement between you and your former wife and that, with her new partner, your former wife now earns a family income of about $140,000?

Witness 2—In excess of $140,000, I would estimate.

Mr DUTTON—And you earn about—

Witness 2—$63,000.

Mr DUTTON—$63,000 a year and you are paying to that new family, to your ex-wife, $129 a month?

Witness 2—Right at this time I am, but that will change to $64.50 a month at the start of the next year.

Mr DUTTON—Thank you.

Mrs IRWIN—You have just stated that you are paying $129 per month. We have had a lot of men come before the inquiry who are in your circumstances. Some are involved in shared parenting, the wife has remarried so there is a new family and the income is a lot higher, but they are still paying a small amount such as the $129 per month that you stated. What they have suggested—and I just want to get your feelings on this—is a trust fund. They were saying that if the child support money they paid went into a trust fund it could be used for excursions, books et cetera, but they really want to know where that $129 a month is going. What would you say to that or to a savings account for when the child turned 18 and went on to university or got married?

Witness 2—We did have a joint bank account for the child and the family tax benefit that I was receiving went into that account, but my ex-wife would not give me the bankbook.

CHAIR—That answers that question. Thank you very much for appearing before the committee this morning; it is a very courageous thing to do. It is not easy to bare your emotional soul and your life in front of a packed audience of people you have not seen before, but it will help ensure that we get a good perspective and a good balance on the task ahead of us. We do appreciate you coming in this morning. Thank you very much.

Witness 2—I have some supplementary information, if I could provide that.

CHAIR—Absolutely. I will have that taken by the secretariat.

[10.32 a.m.]

KENNEDY, Mr Robert, Coordinator, Lone Fathers' Association NT Inc.

CHAIR—I now welcome to this morning's hearing the representative from the Lone Fathers' Association of the Northern Territory, Mr Robert Kennedy. Thank you very much for coming to today's public hearing. The evidence that you give at this public hearing is considered to be part of the proceedings of parliament. I therefore remind you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. I remind you that the comments that you make are on the public record. You should be cautious in what you say to ensure that you do not identify individuals and that you do not refer to cases currently before the courts. The Lone Fathers' Association NT have made a submission to the inquiry. You have an extensive submission here, which we have all read. A five-minute opening statement would be great, and then we can move on to questions.

Mr Kennedy—I wish to facilitate that further by handing out 12 copies of what I have here today, which I will outline. I have what I was intending to read, if I may hold that and take parts from it to top up and comment.

CHAIR—The reason I am a bit disciplined on this is that there is obviously a lot of reading there, and you have five minutes. The precise purpose of this is to ensure that the members get an opportunity to ask questions. You have provided an extensive submission, which we have all read. We would like to be able to ask questions about that, and we have a limited time frame, so if you could make a few points, I will pull you up when five minutes are up.

Mr Kennedy—I wanted to explain that I was going to avoid reading all of the material that I was handing out. I will pick a couple of points from it. I have attached the report from the Family Law Pathways Advisory Group, which I received from you. I have highlighted some areas of that that I will refer to. Attached to that should be a highlight from part 3 of the report: 'Pathways'. The second attachment is from the report where it mentions division 2, part 7 of the Family Law Act in relation to state and territory magistrates. On the other side of that I have is part of the report that states that child protection is constitutionally a matter for the states and territories. Behind that, there are also pulls from letters to the editor. There is one front page article from the *Sunday Territorian* on a Family Court outcome. Behind that is a letter to the federal magistrate who made that decision, congratulating him for that decision, and behind that is correspondence from our organisation and the Northern Territory government. That contains not all but a sample of the points I want to make.

If I may, I will start with updating the submission. There is an annexure on a gentleman and his son and he has also submitted privately on that. The child mentioned in that has since been hospitalised once more with a fractured skull from an assault in that mother's home. That is now the fourth time. The attached magistrate's orders say that that father is not to take his child to a doctor. There was another instance. I will read a note to the federal magistrate's orders: 'The father is prohibited from taking his son to a doctor. I wish to confirm I was present in a shopping centre when by chance I met Mr'—I will not mention his name—'and his son, and his son was hospitalised for the third time. He had only minutes before accepted changeover contact with his

son. His son presented with a limping and apelike gait and his father pointed to his son's very swollen leg. I suspected infection and drove them to hospital. The boy was immediately hospitalised on an intravenous drip for two days.' These are the kinds of orders that are coming out of the Family Court. I believe they are absolutely unconstitutional and they are intimidating these people into neglecting their children.

I will move on now to point 5. What is meant by the family law system? Simply it includes all service providers who help families to resolve parenting, financial, legal and emotional problems. I am saying this for the benefit of the audience and the NT government, which I am bringing into focus—not only the NT government but all states and territories are failing in this way. The second point is that a number of people are frustrated and discontented about the way the family law system currently operates. Some men in particular feel angry and frustrated and believe the system is biased against them. To step aside for a moment on that, I do not like using the terms 'men' and 'women' in these situations. They are a legal class of people by the legal relationship they are in and they are either husbands and wives or mothers and fathers, and the inquiry is really about parenting rather than motherhood or fatherhood.

The next point is from men—that is their word; I object. Some men and their mothers and current partners are angry with the system, particularly the law, lawyers, courts and Child Support Agency. Frustration and hopelessness arises from a lack of recognition of their ability to nurture their children and the difficulty of changing decisions. A number talked about their experiences. Out of this comes the highest suicide group in Australia. Forty-two males a week suicide: 31 of them are in separation; 21 are child support payers; and the age group is predominantly 24 to 44 but the highest is 24 to 34. When you look at that, they are child support payers—and they are payers, they do not pay the nominal $5 on the dole, they are working men—you see that we are losing at least 21 working men paying child support a week to the outcomes of a rotten system overall—I do not point just to the child support part of it.

There is concern about the rate of suicide in the men. Some suggest that the presumption in law should be that children live with each parent on an equal time basis. Our organisation supports that principle, but it is not new. Peter Duncan in 1996 sent a message from the Senate to the Family Court that that was to be the presumption in those years. It has been totally and absolutely ignored by both the Family Court and the workers in the system.

The next point is that the system does not deal well with violence. I am now coming into the states' and territories' jurisdiction of the family law pathways, which they generally deny they have any responsibility for. I am finding it very frustrating and I am looking to this committee to take this information and do something about the states and territories.

Family violence and allegations of violence affect other parenting issues in addition to residence and contact orders. The division of Commonwealth and state jurisdictions currently complicates the resolution of family law matters where violence is an issue. The way in which service providers in the family law system handle issues of violence, including untested allegations of violence and child abuse, is viewed by many as one of the system's major failings—and I cannot reiterate that enough. For example, in the states and territories, whether it comes from the government or from the top in the police, the police have a directive that when they are called to a domestic situation they are to remove the father or the man, whether he is a victim or not.

I had one report the other week where a victim was stabbed in the gut by a wife. He called the police, and one of the first things the police did was jump on him. In another case, a father was bashed on the head. He called the police, they ummed and ahed, tongue in cheek, and took him to the hospital, where he got numerous sutures in his head. Then they wheeled him into the police station on the way back and charged him. The mother must have had a pang of conscience or something and went to the police station in the afternoon and said, 'No, I did it.' This is the kind of thing that is happening in the states and territories. These are the things that set the space between motherhood and fatherhood and parenting which the committee is looking at. I am just touching on these issues because of the lack of time.

CHAIR—Mr Kennedy, I am going to ask you to hold up there so we can move on to questions. Have you got all your material there?

Mr Kennedy—Yes. There were 12 copies.

CHAIR—Yes, we have got that and we have already distributed it. Thank you very much. I will now move to questions.

Mr DUTTON—Thanks very much, Mr Kennedy, for providing us with your evidence this morning. On the subject of enforcement, which is a big problem, people can have difficulty living up to specific issues orders, for argument's sake. Some of the complaints I get in my electorate are about contact—for example, an arrangement might be made for contact at 9 a.m. on a Saturday, and one party turns up but the other does not. At the moment there is really nothing that the Family Court is able to do, practically, in relation to enforcement. Regardless of what changes we make, enforcement will still be an issue, because if people want to go around the orders then they will. What suggestions or advice would you have for us on that issue?

Mr Kennedy—That is one of the most contentious and sensitive issues, and I think it is one of the most important points the committee has to look at. You cannot take away people's rights and be unconstitutional and turn Hitler-like and force things. The Family Court makes the orders and it has no powers to enforce them—they are just like suggestions. But there is the contravention of an order, and that is where one parent has the option to take an action in the Family Court against the other one. The court hears that and may or may not decide. I think that is the most democratic way of doing it. It is cumbersome.

Mr DUTTON—It is cumbersome, it is costly, it takes time, and the problem is perpetuated in the meantime while you are waiting for 12 months—

Mr Kennedy—I want to come back to the recommendation we have put in—and I have heard it mentioned here—for a family tribunal. I think there has to be an interface in the community—prior to the Family Court—through a family tribunal that will work more openly, in a less court-like and legal way, to do these kinds of things. I think the outcome of that, when you get people talking to each other, will be that they are going to uphold those agreements a lot more. The enforcement characteristic could then be a lot less. I suggested for the pathways or at one of the inquiries that there perhaps should be some preformed things so if you got a witness to an order being disobeyed—for example, an order was not obeyed at the required time—then it could immediately be filed and that would kick in the counselling. The counselling could be done through the family tribunal, maybe with a referral to Relationships Australia or somebody like

that. I think when people know that it is not a fenceless and gateless plain they will start to comply.

Mr DUTTON—I accept all of that, but I suggest to you that there are some people who will deliberately go against these orders simply because of a vindictive nature and objective. What do we do, as the final point, with those people? Do you impose financial penalty? Do you have make-up time? Do you incarcerate people? What options are we left with?

Mr Kennedy—I think the tribunal should be given powers equal to the court for penalties for the contravention of orders—which came in in 1999—including counselling. If people become more obstinate then it would go on to the Family Court where the jail part comes in. Those penalties are there, but the Family Court has not been imposing them. That is one reason that the system has not been working.

Mr QUICK—Thank you for your very comprehensive submission and follow-up material. I am also interested in what Mr Dutton said, because, like most federal members of parliament, I get phone calls at weird hours saying that the child was supposed to back at 12 o'clock on Sunday and they are not there. For the police, it is all too hard and too difficult. There is nowhere for people to go. Do they go and file a missing person report? As I have said many times in this inquiry, it should be about the best interests of the children. But when you have two parents who, for whatever reason, are using the child as the pawn, we somehow need to hit either or both of those parents around the ears metaphorically and say, 'You are destroying this child, their persona and their self-esteem.'

I am interested in this idea of a tribunal but, as you said, it has to have teeth. There needs to be a realisation by the 1,800 people who have put submissions in—plus the hundreds of thousands of others that are impacted daily—and by all parties that the best interests of the child are underlined 1,000 times and that, if you are selfish and vindictive, you are destroying your child. How do we break down those barriers? Reading these submissions, there are separated parents, lone fathers who are alienated—and I will get to that in a moment—crisis shelters and domestic violence. As an ex-teacher, and many teachers will tell you this, you can see the impact of dysfunctional families in the classrooms and on the youth suicide rate and the like. How do we demystify and de-intensify it and say to people, 'For God's sake! Okay, you can't agree, but look at the child.' How do we get the sanctions in and say, 'You are going to have to sit down'?

Mr Kennedy—It is progressive. It got there progressively; it has to have a little time. The right things need to be in the right place—the tribunal. We need to have primary information going into the community about parents' responsibilities, not nappy changing but the legal framework: 'You now have an 18-year long contract. This is how you need to conduct yourselves, and this is expected and required of you as parents.' There is none of that. When 13-year-old girls can sit in front of their mothers and talk about getting pregnant and the single mum's pension and say, 'I'm going to pick one with a good sports car and that'll be my property settlement'—when they see six minutes of a relationship providing that—that notion has to be undone by primary information starting at perhaps schools and educational institutions. That is in my other submission, and I do not want to get too far into that.

Mr QUICK—I am interested as to where you got your statistics that, of the 42 males who suicide each week in Australia, 31 are in a family separation situation and 21 are child support

payers. That 21 is 1,092 annually. Hopefully, that has not been going on for very long. When I get back to Canberra, I am going to be saying to the Child Support Agency—

Mr Kennedy—It was research published in 1999 by Baume, Cantor and McTaggart.

Mr QUICK—Is it Australian evidence?

Mr Kennedy—Yes. We have given it to Relationships Australia and I understand they have applied for funding using those statistics. It is real; it is there; and it is on the Internet. I believe it is Australian.

Mr QUICK—It really worries me because, if that is the case—

Mr Kennedy—Without disrespect, I am glad it does, because it has been worrying a lot of people for a long time.

Mr QUICK—the system is stuffed. It really is, because not only are there the 1,092 who were contributing to the welfare and interests of their children—

Mr Kennedy—That 21 per week equals the death toll of Bali by the time our Prime Minister left here and got there.

Mrs IRWIN—In your submission you have made a number of recommendations. I want to refer to two of them. In recommendation 18 on page 13 of your submission, you have stated that fathers and children escaping abuse and violence by mothers must be supplied equal family crisis counselling and accommodation services. We have got some great women's refuges in Australia and it is a pity that we do not have a lot more. Are you suggesting that we should have men's refuges?

Mr Kennedy—No, I do not like to separate things on gender. They are family people; they got into bed, they made babies and, when they have to do their parenting, we should not put them in completely different categories. They are still the parents. I come back to the Territory: we have here at Palmerston the widely announced family crisis centre. I was at a community meeting and the new contractors raced in and said, 'We have got another women's refuge.' There is skulduggery going on in these refuges where fathers could and should be able to go equally, because they are separated houses. It does not matter whose bottom is in that house—whether it is a mother and children or a father and children, there are no barriers there.

Mrs IRWIN—I would like to say to you that women's refuges are places where women who have been in a violent situation and have nowhere to turn feel safe with their children. You have stated in here that men sometimes experience abuse and violence by their ex-wives or ex-partners. Don't you feel that they are just as entitled to a safe haven as women?

Mr Kennedy—I have not denied that; I have confirmed it. When it is a suburban house, it does not matter what occupant is in it one week or the next week. We should not have two systems.

Mrs IRWIN—On page 19 of your submission you have talked about ‘the corrupted role taken by the Family Court of Australia’. As you are aware, this submission you have tendered today will be on our web site, but for the record would you state why your organisation feels this way—that there is a corrupted role taken by the Family Court of Australia, the concerns you have about the Family Court of Australia and what changes you would like to see made.

Mr Kennedy—One has happened since we made our submission. The Institute of Family Studies, formed under the Family Law Act to research and advise the Family Court, has statistics that we have been quoting for a long time. The Family Court is going 180 degrees the opposite way. I know of a father who had 42 per cent contact with his child after separation. They had a private agreement. The mother was sleeping over with the boyfriend and sandwiching the other child in with his children, and he did not like that. It does not sound satisfactory. One of the days of the week she was putting the kid in a creche. He went to the court to ask if he could have that extra day and the extra night. The federal magistrate, without argument from the other side, said, ‘You’re going to get the fathers package,’ and he was cut back to 19 per cent. So the child spends another day and God knows how many more nights sardined in with other kids.

To me that is absolutely corrupt. They say it in the child’s best interests; that is not in the child’s best interests. At the seminar given by the Institute of Family Studies up here we have been saying statistically, the single mother’s home is the most dangerous place for a child for all forms of child abuse. Some of those statistics come from Community Services in New South Wales. The highest male abuser is the single male, then comes his honour’s pet name: ‘social fathers’. If you put those into the one new home—mum’s new boyfriend or her new guy—that is one of the most dangerous situations. Yet the court will behave, as I have just described in this other case, by putting the child in the most dangerous area. To me it is corrupt and hypocritical, considering what they allege they are.

Mrs IRWIN—What changes would you like to the family law court?

Mr Kennedy—They have ignored the message from Peter Duncan in 1996. It has to be in the black letter of the Family Law Act 1975 that at the beginning consideration is fifty-fifty and then the other circumstances are taken into account. The rebuttables should not be too easy, because we know which way that would go. We need more discussion on that to find out what those points are, but it should more closely resemble an intact family. In the newspaper article I gave you, the magistrate said that the children would stay in the house and the parents would rotate on a weekly basis or whatever they agreed. That is one of the best decisions you could possibly get. The property is preserved for all, the property is there for the best interests of the children, the children are only without one parent in their home one week about and grandparents and others can visit. We have been discussing that with some Greek families who are trying to get that to work in their separation.

Mrs IRWIN—The reason I asked this—I would just like this for the record and I will not be asking any more questions—was that you stated that the feminist movement infiltrated the Family Court of Australia. I found that a bit offensive because I am a feminist but I believe in equality. I wanted to get something on the record about what you stated.

Mr Kennedy—All feminists are not equal; some are very extreme. I am talking about the very extreme end that some of the traditional feminists are now rebelling against that defames their good reputation.

Mrs IRWIN—Women have come a long way but we still have a long way to go.

Mr Kennedy—It is not a gender thing as far as I am concerned. That is where it went wrong.

CHAIR—Can we get on with the inquiry? You keep pushing the envelope just one bit further.

Mrs DRAPER—This is a fairly quick question. It basically revolves around children having a voice within this process. Do you believe that the committee should have an opportunity to take on board the recommendations of the children? I believe there is provision for children from about the age of 12 to be heard, but it is my great concern that children are not listened to. Regardless of whether they have counsellors, mediators or whatever at the courts, I think it is important for this committee to have input so that the children's voices are heard.

Mr Kennedy—We are fully behind the children having a say. The first speaker this morning made a superb point on that. The children are the last people heard. I have had reports of people having taken their children to the Family Court counsellors and what the kids said having come out differently in the report. There has to also be a better way for the children to be heard.

CHAIR—As we go around to these inquiries—and lone fathers come along to a considerable amount of them—I hope that we will hear a local perspective, but we seem to get a national perspective every time. At every inquiry I go to, they will want another seat to offer a national perspective. Are the things that you are quoting from local issues? Is the person who went to get one night changed and ended up with the father's package a local that you are involved with?

Mr Kennedy—Those cases I quote are local.

CHAIR—Everything you are quoting is local statistics?

Mr Kennedy—I quote national statistics. This is a national forum—parenting and the Family Court—so you are likely to get something in common that way. I could overload you with local information. The difficulty, as I said, is to say, 'Here is a framework, this fits in here, it is consistent with the other and we can give you more.'

CHAIR—I am asking this because we would like to know how things vary. Things vary dramatically from state to state, and the way in which people are dealt with varies dramatically from state to state. The best way that we can get the best outcome from this is to understand how things are on the local scene, not how you network on a web site.

Mr Kennedy—I am not on the web. I do not like it.

CHAIR—Okay. That is a perspective I would like to ensure this committee hears when we have groups coming before us time and time again. Again, can I say there are some issues. You have put in an extensive submission. It never ceases to amaze me when I get to a position where I think I am clear with that and comfortable with this and then I meet a new witness who sends

me packing in the opposite direction. It is quite incredible. At no stage do you indicate in here that there is a perceived—or real—problem with people who avoid child support like the plague for no reason other than the fact that they do not want to pay for their children.

Mr Kennedy—Can I answer that?

CHAIR—Yes. It is not recognised within your submission—

Mr Kennedy—That is what you hear and that is what I hear.

CHAIR—Just let me finish now.

Mr Kennedy—Yes.

CHAIR—Thank you. Within your submission, it is recognised that there are a whole host of circumstances. Believe you me, I can identify with all of that because we hear a lot of evidence and we read a lot of submissions. But not everybody is badly dealt with and aggrieved and has a former partner who is married to a millionaire who is now paying for them. Not everyone is in that position. There are people who just do not want to pay and do not want to take responsibility for the children. Is there a recognition of that?

Mr Kennedy—Yes. Let me tell you more about that. With respect to what you said about millionaires, you have to blame the media for blowing these things out. That is rare and not true of the main. There are some men and women who absolutely refuse to pay child support. One reason is—and it is not that they want to harm their children or anything like that—that they have been gagged and pushed aside by what you have been hearing about here and it is the only protest they have. It is absolutely wrong that they do it but it is the only protest they have in the system and the only way they can make themselves known—although unfortunately not very well.

CHAIR—Did you say ‘most’ or ‘some’? Of the people out there who have this extraordinary child support debt—you are good on figures—what do you think would be the statistics on those who just do not want to pay? Aside from this being their voice of protest, they just do not want to pay.

Mr Kennedy—I have talked to a lot, and they are only a sample of the population. Very few refuse to pay. If I took a grab at a percentage of all that I have met, I would say that less than five per cent absolutely refuse. There are others who appear to be non-paying because of the behaviour of the Child Support Agency. The mother goes in and says, ‘He’s earning this and he’s doing that,’ and they are not the facts at all but he is pursued on those facts. That is a different kind of definition.

CHAIR—I will rest. I am very across the fact that most men in my electorate who come through my office door want to pay. I do, however, have a lot of women coming through my door whose partners, as I see when I look into the circumstances, will go to any lengths not to pay.

Mr Kennedy—That is a small minority.

CHAIR—It is starting to stack up pretty well. At the same time I just wanted to recognise that, because in your submission—

Mr Kennedy—May I give you some child support statistics? Statistics show that 86.7 per cent pay on time and about nine per cent of those payers are female.

CHAIR—Your submission is extremely comprehensive but—on my reading of it—I believe it falls down in one area. It is not an ideal world and there needs to be a realism and a realistic understanding that there are people who do not want to pay. Whether it is a non-custodial man or a non-custodial woman, there are people out there who simply do not want responsibility.

Mr Kennedy—But you cannot tar everybody else with the same brush.

CHAIR—No, and we are not. I agree with that, but at the same time there needs to be a recognition within your framework in here—

Mr Kennedy—There is in our written submission. We were saying there is; you are saying we are not.

CHAIR—I cannot see it in here.

Mr Kennedy—You are very limited in what you can do in many ways and in what you can perceive the committee will be interested in.

CHAIR—It is pretty comprehensive—

Mr Kennedy—We are not interested in the non-payers because there are methodologies for that. That is part of the Child Support Agency management.

CHAIR—Thank you. I wanted to make the point, because it is a very good submission. It is very intense and certainly covers a huge area. I was very interested in it, and it has an extraordinary amount of good information in it, but there are just some of those things. That is reality and we hardly hear any of that, at this point.

Mr QUICK—There must be some best practice somewhere in the states and territories.

Mr Kennedy—Yes, it is the Family Law Pathways/Child Support Agency management that is falling over; it is allowing these things to happen.

Mr QUICK—It would be good for this committee to say, ‘Look, the counselling at Katherine in the Family Court is better than the one in Darwin,’ or whatever. There must be some best practices somewhere so we can say, ‘Here is a lighthouse; they are doing the right thing.’ When we go back and make recommendations, talk to the Child Support Agency or the Attorney-General’s Department in Canberra and get the experts in, after having all this evidence presented to us, we can say, ‘Why don’t you replicate what is happening in Katherine?’ or ‘Darwin’s doing something that’s fantastic.’

Mr Kennedy—This will have to be my closing remark. The parenting ratio on which child support is paid is not set in the federal jurisdiction; it is set down in the states and territories. This is what I have been trying to get through, that what happens in this skulduggery in the states and territories puts these ratios up, mirror-like, to the Child Support Agency to enforce. There is a lot of falsehood in a lot of it.

CHAIR—And that is what we are trying to get to the bottom of—that is why I want the local perspective, not a national one. Thank you very much for your attendance this morning. We really appreciate you coming in.

[11.06 a.m.]

BROWNLEE, Ms Susan Joy, Coordinator, Dawn House Inc.

CHAIR—Welcome. Thank you very much for your attendance. 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. Dawn House has made a submission. I invite you to make a short, five-minute opening statement before I invite members to proceed with questions.

Ms Brownlee—Dawn House Inc. is a community based, non-profit organisation that provides crisis accommodation, information, advocacy and support to women with children experiencing and escaping domestic violence. Given the specialist area in which I work, I am proposing to the committee that the welfare of children with regard to child residency and contact matters be considered in conjunction with an analysis of violence against women and children. I am sure the committee is aware of the recent events in Wilberforce that saw the rape of a woman and the slaughter of her children and father. This story deeply touched many people but, sadly, it is not an uncommon one in our society.

Dawn House is opposed to the presumption that children will spend equal time with each parent. At first glance, such a presumption sounds fair. However, beyond practical considerations of housing, schooling and work commitments, if there is a history of domestic violence such a presumption places women and children at increased risk. The 18 months following separation are the most dangerous for women and children. An arrangement that imposes equal time with each parent will increase the number of contact changeovers and provide more opportunities for threats and violence. The recent Kaye, Stubbs and Tolmie research which I have referred to in my submission revealed that 86 per cent of resident mothers surveyed described violence during contact changeover or contact visits. There is one supervised contact changeover service in Darwin and, due to limited resources, it has restricted operating hours. Without a car, accessing the centre can be problematic, especially on weekends, when public transport services are reduced.

The establishment of a presumption that children will spend equal time with each parent will influence social assumptions that this is right or the norm. Most couples do make residence and contact arrangements without court intervention. However, a proportion of these are the result of coercion, and a social norm that assumes fifty-fifty contact will be used as a weapon by abusive men to continue to control their former partners.

Shared parenting is currently an option available to separated couples. The Family Court assesses the best interests of the child on a case-by-case basis and should continue to do so. However, the court is presently unable to determine matters of fact when making interim orders, so allegations of violence or abuse are not investigated. This occurs when final orders are being determined but that can be up to 18 months later. Witnessing violence towards a person with whom a child has a domestic relationship is a form of psychological abuse. The perpetrator has

not only failed to protect the child from abuse but has in fact exposed them to it, and this is therefore relevant to the perpetrator's capacity to parent.

Dawn House recommends to the committee that a national specialist child protection service for the family law system be established and funded to investigate allegations of violence or abuse at interim hearings and that the findings be taken into account when determining orders. Where violence is established, there should be a presumption of no contact, requiring the perpetrator to demonstrate how contact would not pose a threat to the safety of the child or other family members. The service should be able to investigate and review the outcomes for children that expose the child to risk of violence, abuse or other harm arising from the orders. A mandated statutory risk assessment should be incorporated into the Family Court reports to evaluate the likelihood of further violence and potential threat to the child or the child's primary caregiver. In the interests of justice and to prevent further abuse by a violent partner, no litigant in a Family Court case should be permitted to represent her or himself. Also, contact and changeover arrangements must be safe.

In conclusion, I wish to say that, although it runs counter to dearly held beliefs in our culture about families and parenting, the harsh reality is that some parents are dangerous and damaging to their children. When this is the case, a presumption that children, post separation, will spend equal time with each parent is absolutely not in the best interests of the child.

CHAIR—Thank you very much. I want to ask a quick question—this is the first time I have asked the first question in the whole inquiry. Do you think that there would be women who would run their ex-partner through the process of the courts with a false allegation of violence and abuse simply to break him? Under your proposal, if you do not have the capacity to represent yourself, would you have no representation?

Ms Brownlee—I am sorry, I do not understand the second part of the question.

CHAIR—Do you think it is a possibility that there are some women who would put their partner through the court process with perhaps a malicious allegation of abuse where there may not have been. If you put in place the recommendation just stated in your comments that you should not be able to represent yourself, it would leave that partner without any form of representation because they cannot afford representation.

Ms Brownlee—To answer the second part of the question first: I suppose the logical follow-up to that is that legal aid should be funded adequately so that all people attending court have legal representation. In answer to the first part of your question: my experience is that there are a minuscule number of women who do not want fathers to have contact with their children. They have a belief that their children are entitled to have contact with their father. They want their children to know their fathers. The whole court process is so traumatic that it is highly unlikely that women will vindictively take men to court and endeavour to deny them access to their children. There has been research done on that and I am happy to submit that information to the committee.

CHAIR—I would ask that you might do that, because the evidence that we have heard in front of this committee does not justify what you are saying. The fact that there has been

evidence of people who have taken people to court and those charges have been thrown out really does validate that.

Ms Brownlee—I am not saying that it does not happen; I am saying that I think it is very uncommon. I will certainly look up that information and submit it to the committee.

CHAIR—That would be very helpful.

Mrs IRWIN—Dawn House has been going for 20 years. Are you funded by the Territory?

Ms Brownlee—We are funded under the Supported Assistance Accommodation Program and it is administered through NT Department of Health and Community Services.

Mrs IRWIN—Just out of curiosity, where did you get the name 'Dawn House'?

Ms Brownlee—My understanding is that the women who established the service chose that particular name. It arose from the 1970s women's movement, when refuges were named after women's names. But that name, Dawn, does not relate to a specific person, to my knowledge. It represents a hope, a new day and a new beginning for women and children.

Mrs IRWIN—I just want to ask you some questions on rebutting the presumption. I do thank you for your submission. For the record, when would equal time be contrary to the best interest of the child?

Ms Brownlee—Where there is a history of domestic violence and where that has been established.

Mrs IRWIN—How would you see the rebuttal process working?

Ms Brownlee—I have spoken about an agency or unit within the court that would investigate allegations of violence. Once that is established, the person who is the violent parent would need to prove that the child was not at risk on contact visits.

Mrs IRWIN—With the women that you are working with or assisting, do their children sometimes see their fathers?

Ms Brownlee—They do.

Mrs IRWIN—Is the relationship fine? Are there any share parenting arrangements, do you know?

Ms Brownlee—I am not aware of shared parenting, no. We are a crisis service so, by the time women and children come to us, they are usually seeking safety. Family Court matters often arise shortly after they come to us. Sometimes—particularly in Darwin, given the high proportion of Indigenous families—if there is strong family support up here, arrangements can be made through other family members for contact with children. Mothers are—I speak in these terms because we work with women—sometimes happy with those arrangements. I am not

saying that that is the norm; I am simply saying that that is a possibility and may be different to other situations in other states.

Mrs IRWIN—Do you think the Family Court sufficiently emphasises shared parenting?

Ms Brownlee—I think the Family Court assesses each case individually. I think it fairly takes into account what is normal for that child: who the primary caregiver is and has been, what will create stability in that child's life—and that does not always mean shared parenting, if we are talking about equal time with a parent. In my experience and my reading, assuming that children reside with their mother, often after separation a father will spend more quality and better time with their child on contact visits than they would when they were living together.

Mrs IRWIN—I have heard that.

Mrs DRAPER—I just want to thank you very much, Sue, for coming here today to present to the committee your submission.

Mr QUICK—I would like some further detail. On the first page of your submission, it says:

Over the last two decades thousands of women and children have been clients of this service ...

Can you quantify that? Is it 3,000, 10,000 or what?

Ms Brownlee—No, I cannot, but I can check our records and give you those details.

Mr QUICK—Then you state:

... since 2001/2002 almost every woman who seeks support requests assistance with family court matters.

What do you mean by 'almost every'? Is it 80 per cent or 90 per cent? What we are trying to do is gather some forensic information.

Ms Brownlee—Us too. Because it has been an emerging issue, it is not necessarily something that we have kept a close track of, but we are doing so now. So we will be keeping data on those requests. I can look back through history. We do not have consolidated data; we have records over time.

Mr QUICK—I would appreciate it, and I am sure the committee would, if this is here. You are obviously doing the work of someone else and they are getting funded. We have community legal centres, and you have obviously got links with those and the like, and we are talking about recommendations about funding. The next thing I want to mention is that you stated that there is only one contact changeover service. Can you describe where it is in Darwin, what hours it runs, how many people are there and how it works?

Ms Brownlee—I can. It is in Stuart Park. It is accessible at the end of quite a long road from a bus stop. It is operated out of Centacare in Stuart Park. I rang it just before I came here because I thought you might ask me. It has different changeover and supervised hours. Changeover hours are Monday to Friday, 8.30 a.m. to 5.00 p.m.; on alternate Saturdays, 9.00 to 11.00; and every

Sunday, 12.30 p.m. to 5.30 p.m. Supervised contact hours are Wednesday to Friday, 8.30 a.m. to 5.00 p.m.; alternate Saturdays, 9.00 to 11.00; and every Sunday, 11.30 a.m. to 2.30 p.m. and 3.00 p.m. to 5.00 p.m.

Mr QUICK—So that is it—and if you do not arrange your changeovers there? Centacare have not presented us with any evidence but, anecdotally, how successful is it? How many people use it? Is it all too hard?

Ms Brownlee—We have had instances where the hours do not work—being able to access the centre at hours that suit people. If you do not have a car, it is problematic sticking kids on the bus. If there are other children in the family, it involves putting them on the bus and taking the pram as well. It is hot, and buses run infrequently on Sundays.

Mr QUICK—You also state here that Hungry Jack's is the favoured neutral public handover point.

Ms Brownlee—It is. In fact, courts have ordered that handover take place in a Hungry Jack's car park.

Mr QUICK—In most cases?

Ms Brownlee—No; but I am aware that it has happened. I need to say that that is not a safe handover point.

CHAIR—You indicate that in your submission.

Mr QUICK—I turn to the issue of AVOs. I would like some evidence about what is happening here, because in some states they are given out like lollies. It is first in, best dressed: being the partner in the conflict who gets an AVO first might influence what happens subsequently. You may not have the answer to this, but you may be able to help us: how many AVOs were issued in the last 12 months in the Northern Territory? How many were sustained?

Ms Brownlee—I am not able to give that information. Our clients may apply for them, but I do know how many have been issued.

Mr QUICK—So you do not gather that information?

Ms Brownlee—We have it on individual case files—whether a restraining order has been applied for and whether it has been successful or not.

Mr QUICK—I would be interested in that.

Ms Brownlee—I have to state that our experience has not been that they are handed out like lollies at all. In fact, they are often quite difficult to get. I think that the court requires evidence before issuing restraining orders. I certainly do not think that they are handed out willy-nilly.

Mr QUICK—So how does your organisation work if Jenny comes along and says, 'I want to take an AVO out against Harry'? Do you go along to the court or ring up the legal centre and say,

'We've got Jenny here. She wants to get an AVO; can you help her out?' How does the system work?

Ms Brownlee—We provide support to women who attend the domestic violence legal service, where there is a solicitor who will take instructions and apply for a restraining order for them.

Mr DUTTON—I turn to your client base. Could you give me the profile of a typical client who might come to you? You have dealt with thousands over the last two decades. What is the typical scenario of someone who turns up to seek your assistance?

Ms Brownlee—I think that it is very difficult to give you a typical scenario. Clients of our service vary across the social spectrum in terms of socioeconomic status and ethnic and racial background. It varies from year to year, but up to 45 per cent of our clients would be Indigenous women with children. Their profile in terms of family composition can be quite different from that of other women. They may have aunties or sisters, or children whom they have not given birth to but for whom they are responsible, so their profile can be different from that of other women. We also have a high proportion—up to 30 per cent—of women who come from diverse cultural and linguistic backgrounds.

Mr DUTTON—So the common thread between all of them is that either they have been a victim of domestic violence in the past or they are currently a victim. Is that fair to say?

Ms Brownlee—It is most likely to be current or in the recent past.

Mr DUTTON—You made a comment before—I am not sure whether I can quote you correctly—to the effect that most clients are happy for their children to have contact with their fathers.

Ms Brownlee—Most mothers feel an obligation—that their children should have contact with their fathers. That does not mean that they are happy about it. I may have said that, but I am modifying what I said if I did. It means that they feel that their children should have contact with their fathers, and they seem to bend over backwards to try to make that happen. It does not mean that they are happy about it—they are often fearful for their children—but they often feel that they have no choice either; that the court will require it and that they can be coerced into it. There is also lots of family pressure up here in Darwin. A woman can go to the local shopping centre and run into her former partner's family, who will apply pressure to her over access to children as well.

Mr DUTTON—I know that you have made it very clear in your submission that you are opposed to the presumption of a shared care arrangement. Obviously, you base that on your experience with your clients. Do you have any experience of people coming into your service in circumstances where there has been no domestic violence—I would suggest that that is the case in the majority of family breakdowns—and where there is a loving mum and dad who both want to have contact with the children of the relationship? Do you have experience with those people?

Ms Brownlee—No, we are a specialist service: we provide support to women and children escaping domestic violence.

Mr DUTTON—Would you have the expertise to be able to put to us that the presumption would not work in those cases?

Ms Brownlee—No, I have no experience in that area at all.

Mr DUTTON—Thank you.

CHAIR—Should we make rules for, say, two per cent of the population that would impact heavily on 98 per cent of the population?

Ms Brownlee—I think the system of the Family Court assessing each case works now. The terms of reference have asked under what circumstances should that presumption be rebutted, and I have given to this committee the circumstances under which I think it should be.

CHAIR—The reason that I ask this is that we seem to be looking at this five per cent of the more difficult cases that get to the Family Court.

Ms Brownlee—Exactly.

CHAIR—There is 95 per cent sitting out there in the never-never supposedly amicably solving their problems. I would suggest that the 95 per cent who are seen to be amicably solving their problems are not doing so. They have been through the process, they are broke, they cannot afford to go through the process any further or it is just too hard and they have accepted what they have to in order to get on with a life. Presumption is not just about the five per cent who go through the Family Court: presumption is about the other 95 per cent out there who have rights as well.

Ms Brownlee—Absolutely, and I think the 95 per cent who, in theory, are amicably coming to arrangements also use as a yardstick what they believe is happening in the Family Court.

CHAIR—They do.

Ms Brownlee—As it is generally assumed that children will reside with mum and every second weekend they will see dad and so forth, people will often come to those arrangements—they think that is what will happen if they go to court anyway.

CHAIR—That is right.

Ms Brownlee—If a presumption of fifty-fifty is put in place, that will affect what is considered to be normal: ‘If we go to court, it will happen anyway, so we will do it that way now.’ I think it is very unlikely to work in practice. If we are looking at stability for children, it means that we are requiring that parents remain co-located geographically and that there be enough money to fund two households for this to happen. There are all sorts of issues beyond the scope of my submission that I am sure you have heard in other states.

CHAIR—Time and time again we have people before us who are in a shared care arrangement who do not even talk to their former partner, but the arrangement works. Is there a presumption on the part of Dawn House that, because partners are violent toward each other—be

it a male violent toward a female or a female violent toward a male, because that happens—even though they have never been violent towards the children, that that child should not have a presumption of shared care with either partner simply because the two adults are not able to reconcile their differences? We talk about the impact on children of watching violence, but if they are not together they are not going to be ripping each other apart, so the child is not going to witness the violence. Could shared care work where parents were violent toward one another but not violent toward the child?

Ms Brownlee—In my experience and from my reading, violence does not end because of separation. In fact, in the first 18 months after separation violence is quite likely to continue.

CHAIR—As you have said in your submission. I am talking about violence towards a child.

Ms Brownlee—I thought you are talking about violence between a couple.

CHAIR—If a couple are violent towards each other when they are together, when they are separated and if they have different changeover points and are not actually meeting each other when they are doing the changeover, hopefully the violence may stop between the two adults. But should that preclude the child from being involved with its father or its mother when the father or the mother, who may be that violent or aggressive person, is never violent towards the child?

Ms Brownlee—There are a couple of issues there. I think violence between men and women varies. Men's violence is different from women's violence to start with. I have commented in my submission about the determination of a primary aggressor. Women's violence is often defensive rather than aggressive and also often a response to stress rather than about manipulation and control. We could probably get into a whole bunch of research on that. I have also commented that if in that ideal situation a couple has separated and violence is no longer continuing between them there is a responsibility for the court to follow up and be certain that the child is no longer at risk if it is has been proven that violence has occurred in the child's presence in the relationship. Parents have a responsibility to prove that the child is no longer at risk if violence has been evident in the relationship prior to separation.

CHAIR—Approximately how many clients would you have come through each year?

Ms Brownlee—I looked at the statistics the other day and we have 13 new contacts for assessment each month. We have from 30-50 non-residential families receiving outreach support at any one time.

CHAIR—Thirty different families. Would you have any idea of what how many separations of marriages and partnerships with families there might be in Darwin in the area that you deal with?

Ms Brownlee—No. I should also say that figures I was looking at yesterday in our annual report showed that we have accommodation at the shelter for six families and one night we had seven women and 19 children. On average we will have twice as many children as adults in the shelter.

CHAIR—Would your assessments all involve domestic violence and domestic abuse?

Ms Brownlee—Always. We screen at phone level: do you have children? Are you experiencing or are you escaping domestic violence? All those assessments have domestic violence as a factor.

Mr DUTTON—I want to follow up on the point I was trying to make before. I do not want to labour it, but I understand and agree with your suggestion that, if there was to be a presumption, the first rebuttable item would be where sexual abuse, for argument's sake, had taken place and in some cases domestic violence. You said that that was the basis of your submission. On page 2 of your submission you say:

The organisation is opposed to any presumed division of children of separated parents.

You do not make the qualification there that it only relates to clients atypical of what you might see. The point I was trying to make before is on the majority of clients with whom you have had experience where they are bad partners but not bad parents. You are saying that you oppose any presumed division. I just cannot understand that.

Ms Brownlee—That needs to be qualified in terms of where I am coming from. I am speaking on behalf of the domestic violence service.

Mr DUTTON—And I respect that, but I just want to clarify it, because otherwise we are getting into this debate that people are against it for anyone when in many circumstances, and I suggest the majority of circumstances, shared care may well work quite reasonably.

CHAIR—Thank you very much for coming before us this morning. Even though you get gruelling questions at times in this process, it is needed in order to come to some understanding because it is always a difficult area to look at. But we certainly thank you for the time that you spent this morning, as well as a Lone Fathers. We appreciate it.

[11.35 a.m.]

BRENNAN, Miss Patricia Daphne, Solicitor, Top End Women's Legal Service

DOWLING, Ms Angela, Coordinator, Top End Women's Legal Service

HUGHES, Ms Camilla Jane, Principal Solicitor, Top End Women's Legal Service

CHAIR—Welcome. The evidence that you give at this public hearing is considered to be part of the proceedings of parliament. I therefore remind you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of parliament. I also remind you that any comments you make are on the public record and that you should be cautious in what you say to ensure that you do not identify individuals and that you do not refer to cases before the courts. I invite you to make a short five-minute opening statement for the record and I will then invite members to proceed with their questions.

Ms Hughes—I would like to thank the committee for coming up to Darwin. I feel that there are some issues in the Top End that are fairly unique. I am sure you have read our submission and will have had submissions from other women's legal services around the country. I want to take the opportunity today to address a couple of issues that are particular to the Territory, but I want to talk very briefly about our service first. The Top End Women's Legal Service receives a small amount of funding from the Commonwealth Attorney-General to provide a women's legal service in the Top End of the Territory—that is, everywhere north of Katherine. We see people in Darwin and we also have a free-call number for women across the Territory. As I say, that funding is fairly small and funds, maybe, half a solicitor. I guess I want the committee to realise that we do not receive sufficient levels of funding to commence any proceedings in family law. So the extent of our service is to provide initial advice about family law and to refer people to legal aid, to the Aboriginal legal service or to private practitioners. We are not able to actually do any work at all in representation in family law.

We are also funded by ATSIC as a family violence prevention unit. For example, my position is funded by ATSIC and my clients are out at Port Keats, which is an Aboriginal community on the coast south-west of here. In fact, most of our funding is provided to assist Indigenous women in the remote communities and to work with them on issues of family violence. That means that probably 95 per cent of our clients are Indigenous people.

I want to make a point about access to justice. We certainly believe that there is inadequate access to advice and representation about family law, and that is for both men and women in the Top End. You will have seen this problem and these sorts of shortfalls in legal aid across the country, but we think there is a real problem in that there is not enough funding given to legal aid commissions, to Aboriginal legal services or to community legal centres. That means, and I think it is relevant to the work of this committee, that a lot of people are falling through the cracks. People just are not getting the advice and support they need. That means that we see, for example, disaffected fathers and we also see a lot of women who have no access to representation. I think it causes a lot of tension when people do not have access to even basic

information about family law, their rights and how they can pursue them. Inevitably it means that people are quite disaffected by the system. I am sure you would have seen that.

One of the things I want to talk about is one that I do not think we touched on in our submission at all. Our submission was fairly succinct because we have a fairly heavy caseload, so I apologise for that; we wanted to get something in front of you, but it is fairly short. I want to talk about how these suggestions before the committee might impact on Indigenous families because, as I said, most of our clients are Indigenous families. For them, family structures in general are very different. They are not your stereotyped family structures—we are not talking about a nuclear family with mum, dad and two kids; we are talking about very different family structures, and this is certainly what we are seeing in our work. They are generally extended families, there are very complex structures and there may be four generations of a family living in a house. It is absolutely expected and normal for grandparents and for aunties and uncles to care for and raise children. In families I work with—and I was just checking this with Angela my co-worker before I came here because her sister's children will call her 'mother'—that is what we see. The same thing happens with the father's siblings who may be called 'father'. So we are talking about a very different situation.

What I am concerned about with this presumption is that it focuses very much on mum and dad, and that is not going to work where there are grandparents on both sides and aunties and uncles and all this family. In terms of sharing time, I am not sure how that is going to work for those families—it is not really how those families would see things going. They would not see it in terms of 50 per cent to mum and 50 per cent to dad because there are a whole lot of other people involved. I want to make that point.

As you will also be aware, for Indigenous families there are very high levels of violence and of child abuse. Our service certainly applauds the recent high-level interventions and willingness to address these issues that we have seen from Aboriginal leaders and communities in recent years. We have certainly seen that up there. There is a lot of work being done to address that, but the reality is that there remain very high levels of violence. Violence towards Indigenous women is 45 times higher than towards non-Indigenous women in the Territory. We are dealing with very high levels, and what I am concerned about is that a lot of violence is either underreported or unreported and, particularly in the remote parts of the Territory, the levels of services and support are very low.

You have got Child Welfare trying to spread their services very thinly and we do not have the same levels of counselling or intervention or even prosecutions happening. In that kind of atmosphere, where there may well be violence and abuse towards children that has not ever been officially reported or recognised, how can we ensure the safety of children in those families? My general point is that sharing residency between mum and dad may not be appropriate where there are high levels of violence, and we cannot necessarily assume that we would know there is violence in a particular family.

The other issue that hits Indigenous families is where you have an Indigenous and a non-Indigenous parent. There are concerns that can be raised about this presumption of sharing time half and half. How is this going to sit with the Family Court's responsibility to ensure an Indigenous child's connection to culture? Do you know what I mean? I think it is another layer of complication that needs to be looked at. It does not mean that residency could not be shared

ever, but I think it means that each case needs to be considered and it may not be in the child's best interests to share residency in those circumstances. The other issue—and I know I am going on a bit—

CHAIR—I would like you to finish up quickly so that I can give the committee the opportunity to ask questions.

Ms Hughes—I will make my final point very quickly. The other issue seen in the Territory is that a lot of people are up here temporarily and there is a lot of relocation. Whether they are Defence Force families, mining families, people working on the railway or on the gas pipeline or professionals doing stints up here, when there is a family break-up it often is necessary for one or both partners to go back down south or elsewhere so that they can get adequate levels of family and other support. Every day when we give advice to people we are dealing with really complex issues, such as whether they will have to leave, and it is really difficult to work out how that child will then maintain contact with both parents, which is very important. I guess what I am saying is that, for a whole lot of reasons, when families break up often one party does have to leave the Territory and that working a shared residency is not necessarily going to be an adequate solution for them.

CHAIR—Thank you very much.

Mrs DRAPER—I really do not know where to start on this one; I guess all of us feel a bit that way. I picked up on your comments about the fact that domestic violence levels are sometimes unreported or underreported. I feel that as the committee has to look at all of the submissions and take these issues into account we will have to look at domestic violence cases in our deliberations and recommendations. We are not going to leave women—or men—in those circumstances just hanging out to dry, but we would be looking for some sort of mechanism to demonstrate that there has been violence so that that can be taken into consideration when we come to the rebuttable proposition. It has been my limited experience that, generally speaking, where there is domestic violence it is known at least by their legal representation. How do we go about the unreporting of domestic violence—in a nutshell?

Ms Hughes—I think no official would know about a lot of the violence that occurs, especially in the remote parts of the Territory. I do not know how it could be known about, especially in some of the remote communities. We go to only four of the 16 major communities in the Top End.

Mrs DRAPER—So there would be no-one to report it to?

Ms Hughes—That is right. There are certainly no legal representatives there. There is nobody to report it to. There might be visits on rare occasions from FaCS, from the child welfare authorities. I think there are significant problems there and really high levels of unreporting and underreporting of violence.

Mrs DRAPER—Thank you.

Mr DUTTON—What happens in these communities when there is a marriage breakdown and there is a decision to be made as to what proportion of the care will go to which party? How does that work practically now?

Ms Hughes—Are you talking about in Indigenous communities?

Mr DUTTON—Yes.

Ms Hughes—In the community generally, families come up with a whole range of different solutions and I do not think there is any kind of ‘one size fits all’. The communities are generally fairly small and both parents are there, and it is relatively easy for the child to maintain contact with both their parents. That is what I see. I can think of a recent example from Port Keats where mum stayed in town in Port Keats, dad moved out to an outstation and the children were basically moving between going out to stay with dad for periods of time and coming into town to stay with mum. That was one arrangement that I saw just recently.

Mr DUTTON—I am confused, if that is the case, as to why shared parenting would not work in some of those scenarios. I fear there is the misconception in some parts of the community when we talk about a presumption of fifty-fifty that people see it as a compulsion. My understanding of what is being suggested is that it is a starting point and that people can then put submissions. Either the mother or father could say, ‘We have separated, I now have to go Melbourne to work and I cannot be in Darwin, therefore that precludes me from that arrangement,’ or they might say, ‘It does work because we are going to remain in the same community.’ It is not a compulsory presumption; that is why it is a rebuttable presumption. So I am at a loss as to why it would not work in some of those situations you are talking about where parents separate but still remain in the same community, providing there is the constant that they are as good a mum or dad as they were pre separation and that there was no violence or sexual abuse. Why wouldn’t it work in those situations?

Ms Hughes—I think it could work. It is not an arrangement that I have ever seen in four years of working in Indigenous communities in the Top End. It is not an arrangement that I have ever seen anybody in Indigenous communities voluntarily choose. Under family law now, it is a very good option for some families and it is an option that people can choose.

Mr DUTTON—I read in your submission about that option that is available, but the reality is that it is very costly to go to the Family Court. We have taken evidence from people where it has cost them in excess of $100,000 and years out of their lives—and that is on both sides of the debate. There are not too many cases that get to trial: only five per cent, as we have heard in evidence. The reality, the pro forma, is for the non-custodial parent to have every second weekend and half the school holidays. I suggest to you that is the reason why that aspect of the act is not working. Sure, it is there and it is termed ‘shared parenting’, but it is not delivered in practical results to families, not just in Indigenous communities but right across Australia.

Ms Hughes—I am sorry, if that was a question I am not sure what the question is.

Mr DUTTON—What I am trying to say to you is that I know you are not aware of any circumstances where shared care now works in Indigenous communities, for argument’s sake, but I do not think you can draw the inference from that that people do not desire that or would

not try to achieve that if they thought it was achievable. And there are too many barriers at the moment to make it achievable.

Ms Hughes—As we all know, most parents reach arrangements about their families without any recourse to lawyers or to the Family Court. It is interesting to see that, and I do not think there has been adequate research about what the arrangements are that are chosen by families who have no involvement with the family law system.

Mr DUTTON—My point is: if they take any legal advice or they know the experience of their friends, they know that they are wasting their time and money going to the Family Court seeking shared care. The reality—and probably the legal advice that they have received—is that they are going to get every second weekend, they are going to get half the school holidays and to not waste their time and money going in. Therefore there seems to be a misconception that people amicably arrive at the situation of 80-20, for argument's sake, when that is not the reality. It is okay to say that people do not pursue it, but they do not pursue it for the reason—on the evidence that we have taken and from the many hundreds of constituents that I have spoken to—that they have got the advice that they are wasting their time. I am saying that if we had a presumption that it was fifty-fifty and that you worked back from there, it may well be that it works back to 80-20. But if we had an equal starting point, don't you think that would provide for a fairer scenario for both parents?

Miss Brennan—I do not think that is the conception that people from Indigenous communities have—that you get every second weekend. The structure is simply different in those families. I go out to Groote Eylandt. I do not think men on Groote Eylandt, when they separate, have any understanding that that is what they would get. I think the way families are organised is much more fluid. I do not know whether that is your experience too, Angela. I think that is very much a white, urban understanding of how families work and what you might end up with through Family Court proceedings. I do not think you can apply that to remote Indigenous communities.

Mr DUTTON—I appreciate that. That is why I asked Camilla before about what the outcomes are now and whether they differed from mainstream Australia, which is the term people like to use. The suggestion was made to me that it was not—that many of the outcomes are in fact similar and that they varied and obviously the circumstances change but there are similar circumstances.

Ms Hughes—I did not mean to say that they were similar. I said that there are varied solutions, as in the rest of Australia there are very varied solutions. I do not think they are similar solutions to what you might see in urban Australia.

Miss Brennan—When you talk about shared parenting in a remote context you are not talking about the mother having 50 per cent and the father having 50 per cent. You are talking about various members of extended families—grandparents, cousins, aunties and uncles—spending primary caring time with that child.

Mr DUTTON—I just do not understand how a presumption gets in the way, though, when there are parents, grandparents, aunties, uncles, cousins and whatnot on both sides.

Miss Brennan—It pretends that there are two primary care givers whose interests come above everyone else's.

Mr DUTTON—I thought a presumption would argue against that problem. If you had a scenario where, for argument's sake, it was only every second weekend, aren't you then precluding that child from the cultural significance it might be offered from, say, the biological father's parents—the grandparents of the child—or the aunties, uncles and cousins on the father's side? Doesn't a presumption provide, then, for a balance of contact between both sides of the family?

Ms Hughes—But how does, say, contact with a grandmother fit in?

Mrs DRAPER—That is what we are looking at.

Ms Hughes—How does that fit into the fifty-fifty arrangements?

CHAIR—That is exactly what the terms of reference are. How does that fit in now with what is happening in the family law court? I will pass over to Mr Quick.

Mr QUICK—How mindful of Indigenous needs are the Family Court and the Child Support Agency in the Northern Territory?

Ms Hughes—We are lucky in the Family Court in the Northern Territory to have two Indigenous family consultants who are excellent workers. They are based in Darwin and they do a lot of good work in the Family Court. As I have said before, I do not actually do any representation work in the Family Court and therefore I am not sitting in court on a day-to-day basis, so that would probably be the extent to which I can answer the question. The Child Support Agency have a difficult job. As far as I am aware, my remote Indigenous clients do not have high levels of contact with the Child Support Agency.

Mr QUICK—My other question—and I will ask the Child Support Agency this—is: how many cases involving Indigenous payers and payees are in the system? I ask that because I appreciate what you do and I have managed to visit some of the communities that you have mentioned.

Ms Hughes—I just do not know the answer to that question, I am afraid.

Mr QUICK—One of the questions that is being raised is whether we can quantify the relative cost of raising children. As you said, the cost of raising a child in communities at Oenpelli, Docker River, the Tiwi Islands or wherever bears no relationship to raising a child in Sydney or Melbourne. How mindful is the Child Support Agency—this great edifice—of the individual differences and needs not only of ethnic communities but of remote communities in Australia? Are you coming into contact with any members of families who are saying, 'I'm a mine worker at Groote Eylandt and I have to pay 27 per cent of my wages'? Do you hear of any complaints from Indigenous people about how unfair and insensitive that is?

Miss Brennan—I have never heard.

Ms Hughes—I have not dealt with such a complaint, no.

Mr QUICK—On page 3 of your submission you said:

The Child Support Agency frequently chooses to write off debts and ceases pursuing the payer, particularly after 12 months.

That sounds interesting. It must be a Northern Territory thing, is it?

Ms Hughes—No, it is a problem that is happening across the country. In fact, an enormous class action that you might have heard of has been instigated by a community legal centre in Illawarra, south of Sydney, against the Child Support Agency. They are alleging breaches of the international law relating to children, basically because they refuse to enforce child support orders against non-paying parents.

Mr QUICK—Are you aware of how many debts have been wiped in the Northern Territory?

Ms Hughes—I do not have that figure, sorry.

Mr QUICK—None of your clients has mentioned it?

Ms Hughes—I have certainly seen individual clients, a number of them in our general advice sessions, with problems in that regard, but I would not be able to give you an overall figure.

Mr QUICK—They have suddenly been told, 'Sorry, we can't chase your ex-partner; we've wiped it off.'

Ms Hughes—That is right. There are substantial debts and the Child Support Agency is doing nothing to assist pursuing them.

Mr QUICK—There is a difference between doing nothing and writing them off.

Ms Hughes—Yes, sure. I have heard of cases where they have said that they are now written off.

Mrs IRWIN—Thank you for your submission. Last night when I was going over it for today's hearings, I saw that you have stated that the presumption places emphasis on parents' rights rather than children's. Can you elaborate on that?

Ms Hughes—Where the overarching principle is the best interests of the child—which is where our agency thinks it should remain, as you have probably gathered—the court is able to look very much from the child's perspective. That allows the court to approve suggestions from parents for a range of different parenting orders and arrangements. Where you shift that to a presumption, it encourages parents, both mothers and fathers, to think that they have some kind of entitlement to half the time—split the time fifty-fifty for their children. Putting in place this presumption would tend to get parents to focus on their entitlements rather than on what I think the court should be focusing on, which is what is in the best interests of the child.

Mrs IRWIN—Do you think the courts, especially the family law court, are listening to the voices of the children? The reason I ask this is that a number of organisations and individuals who have come before the inquiry have stated that in mediation and in the court the tendency is to listen to the mum or the dad but the voices of the children are not heard. Do you think that sometimes the children should have individual representation, more mediation and more counselling, so that they can make up their own minds? They can decide who they want to be with; what they want their life to be.

Ms Hughes—More support could definitely be given to children through the family law process. Obviously children do sometimes have separate legal representation. There is probably a good argument to say that that is required in more cases.

CHAIR—When we were in Cairns we had the Indigenous family law court and they came to us with a pilot project. It was so good that a couple of comments from Mr Price and Mr Cadman indicated that they thought all Australia should be run like that. It is a process by which you go through a host of mediation and discussion and it is a family situation. You sit down as a family and work through these issues. The Indigenous issues come into play with uncles, aunts, grandparents et cetera. We thought that that was a very good system. It is not currently enshrined, I do not think, in family law. It is a project that is currently being undertaken.

The question I ask is: if the process that is currently being looked at were put in place—whereby you would still look at the cultural issues for Indigenous people and for people of any nationality where that family process is in place—and associated with a presumption, could that not work? You say joint residency requires a high degree of parental cooperation and good communication for the arrangement to work well for children. Everybody we have had in front of us who has shared parenting has had none of that, and it works very well. You have a specific issue in the Territory—and it is an issue in Queensland and in many other places—in how it would work with an Indigenous culture, but a project is currently looking at how you can mediate through this process so that all the family work together as a unit. Couldn’t that all go hand in hand with a presumption? Is there a real need to flatly indicate that joint presumption should not happen?

Ms Hughes—The project in Cairns sounds fantastic. No, I would not say flatly that they could never sit side by side or that it could never work. I do not know much about the Cairns project—only what you have just told me—but wouldn’t the whole idea of going through that process be to work out a solution for that particular family? I guess my question would be: how does that work? Why is it necessary to start with a presumption of one particular arrangement when, to me, there is a whole spectrum of arrangements that can work for families? This is what I keep getting stuck on. Why do you privilege one particular outcome?

CHAIR—It was a presumption that there could be an arrangement and there was not a perception that it could work only one way—80-20.

Ms Hughes—Okay.

CHAIR—Whether it is reality or whether it is perception, perception is reality to a significant number of people who go through separation. The perception is that a female generally will get

the children and the male will generally get a weekend visitation or something. Whether that is reality in the circumstances or whether it is perception, it is pretty predominant.

Ms Hughes—Could I say for the record that that is certainly not what I advise people.

CHAIR—No, and I am not attributing that to you. That is a perception; I am not saying whether or not it is reality. But it seems to be pretty much reality for the people we see.

Ms Hughes—You are almost saying that this would open up this as a possibility?

CHAIR—Yes. It is a family—that is what you are saying. You have not chosen percentages; you have not chosen winners and losers. You are looking at it more as a family or as a family outcome because you have treated everybody equally, unless there is a position whereby they should not be treated equally. You look at it that way unless there is a proven case that says, 'You can't treat that family like that because that can't work in that scenario.' You are not saying there is just fifty-fifty but it is a presumption that everyone gets an equal say, that you are talking about a family unit. Nobody is treated any differently from anybody else, unless they want to be treated differently or unless there is a reason to be treated differently. Then you start to negotiate on that basis. To me, it seems that that would take a lot of the conflict out of the issue.

Ms Hughes—I wonder whether one possibility is that there does need to be more community education about the different—

Mr QUICK—And support services.

Ms Hughes—Yes, but I wonder whether there does need to be more community education. I feel that there generally is not enough community education about people's rights and entitlements under family law and about the different options that are available. I agree with you: people should not be going into family law negotiations thinking, 'It's all set against me and it's all going to be 80-20.' I absolutely agree with you.

CHAIR—Thank you, Camilla. To wrap up, I would say—and there is absolutely no disrespect in this—that it seems to me that the more we can remove the legal process, solicitors and lawyers from the whole issue the more we can start working as families again. I meant no disrespect by that; it is just that it is the process that is coming up time and time again. Thank you again for your attendance this morning.

[12.10 p.m.]

CHAIR—We now move to community statements. I welcome everyone today. We have a maximum of an hour for community statements. Each person is given three minutes. That does not seem like a long time, but people have been adhering to that time frame very well in all of our hearings. We ask, again, that in making your comments you are mindful that they are on the public record. You should not identify individuals and you should not identify cases before the court. I would ask also that you only give your first name; you should not give your surname. If you feel that you would not like to give any name then you should not indicate a name at all.

Caitlin—I came to listen to the other speakers but, after listening to some of the questions and to the response in the room to some of the statements made, I feel that I want to make some statements. I am horrified at the very thought that anything other than the best interests of the children will be the guiding principle in determining matters after a family separation. When you talk about a presumption of fifty-fifty, you are talking about the parents' needs and having them met. Of course, parents' needs are very important in parenting, but I am just horrified that the basic principle of the best interests of the children is being attacked and undermined by the proposal that there should be a presumption of fifty-fifty residency with the children. I also wanted to make the point that shared parenting does not necessarily mean half-half. We have heard that a range of creative, appropriate and good shared parenting arrangements are made—and I think that that is fantastic—but shared parenting does not necessarily mean half-half. It can still be positive for both parents and for the children.

In summary, I think that it is a seemingly simple thing to say that both parents should have the children living with them half the time, but it completely ignores the realities and practicalities of the situation. We have heard about the impact of domestic violence on post-separation parenting. We have heard about the impact—for example, living in the Northern Territory—of geographic considerations. There is a whole range of other issues—economic and social issues; the family support that people already have—that should be taken into account when working out shared parenting arrangements. Finally, I just want to say that the law should be there to protect the vulnerable as well as to provide fair and just outcomes to every member of the community. You cannot provide a simple solution to a very complex matter.

Tony 1—Until December I ran a children's program in Palmerston for children between the ages of five and 15. I have close contact with those children. I have been doing children's welfare and things like that for the past 25 years. Particularly in Palmerston, one of the things we do during the program is ask the children, 'What would you like to pray for?' Week after week the children's hands would leap up and they would almost dislocate their arms to say, 'We want daddy back. We want daddy back.' Mayoress Burke attended our meetings and it reduced her to tears. The man I work with was made Australian of the Year for Palmerston, and I received a commendation, for what we have achieved in the community. Mrs Burke said that no two men have done so much for youth in this city. We have made inroads into the teenage problems. The problems we see in our youth come back to the family. I guarantee you that if this fifty-fifty comes in there will be a lot of happy children and they will not be saying, 'We want daddy back,' because they will have daddy back. That is half the problem: the children are angry, hurt and bitter inside. They know the lying that has gone on; they know who is abusing whom and they

are carrying a lot of hurtful secrets in their hearts. That is what is happening, and if you can bring this fifty-fifty in, it will relieve an enormous amount of pressure in the children.

CHAIR—Thank you, Tony.

Individual A—Harry, I go with your view on these violence orders. My woman left and went to Perth while I was at work and four months later was able to put a violence order on me. We finished up going to trial et cetera. I represented myself, she had a lawyer and, at the end of the day, Dawn House things came up. Things had been signed by Dawn House, but I did not know she had been to Dawn House. She is allowed to go and have a cup of tea, put her name down, get them to sign a paper to say that she has been there, and I have not even been told. I do not think that is fair.

CHAIR—Thank you.

Bob 1—First of all let me say that, while most people seem to think the Family Court functions very well, it does not function at all. Firstly, people tell lies and, while the magistrate says such things as ‘If the wife is proven to be telling lies, she will be severely punished’, the wife can be proven to be telling lies but there seems to be no punishment for perjury. Secondly, with regard to the sharing: there are problems when a wife moves interstate but, from the point of view of the children, I think it is a great idea. We have the problem where we have two grandchildren living in Sydney. We go to see them fairly frequently because, as grandparents, we are in the fortunate position of having a court order that allows us to see them three times a term. In Darwin, this is easy; in Sydney, it is very difficult and very expensive, but we do our best. They say to us, ‘We would like mummy and daddy back together.’ This is not practical, but they would like to see more of daddy. Fifty per cent may be an option, but interstate is difficult. However, I commend your actions and I hope you get some success from them.

CHAIR—Thank you, Bob.

Bob 2—I am involved in an area of management with staff numbers that vary from between 70 to 300 people. I am also involved at a management level with a community organisation that primarily deals with young people and youth, and I have been with that organisation for many years. That is some context in terms of who I am in the Darwin community. I have been through the family law process. I have two families: three children of my own and a stepchild. In my current situation, which is a family of seven years with a stepchild, the arrangements are working very well because we value all entities as a family unit—that is, my partner’s former husband, my role as stepfather and of course the mother—so, in terms of custody involvement, there are no issues. With my native family, if you like, I basically have not seen my three children for seven years except for my son, who has recently come back to the fold and with whom I have had a lot of involvement over the past 12 months—we are like a family again.

It is interesting that, on the one hand, I am seen to be a reliable father in my step relationship with my young girl yet I am not seen to be a fit father for my natural kids. I guess there is possibly a difference there between a bad parent and a bad husband—you can see the connotation. The point I want to make is that I think the presumption of the best interest of the child, whilst it sounds idyllic, is incorrect. The presumption should be what is in the best interest of that particular family unit. At the time that a person conceives with their partner and has a

child, a family unit is created. That is what the Family Court has to give some respect and dignity to.

If you look after, protect and respect the dynamics of the family unit, allowing it to live and breathe and recognising that there are problems, that will be in best interests of the child. But when the court just awards what they consider to be in the best interests of the child, more often than not it quashes the positive dynamics of that family unit. It is going to exist in some force, positive or negative, for the rest of their lives. The Family Court tends to quash the very good things about that family unit, and that is certainly not in the best interest of the child. The types of things that I have been party to in terms of loss of contact have been as a result of the Family Court having no respect for my family unit, which is still an entity today. That is very strong point I would like to make.

CHAIR—Thank you very much.

Maree—My husband and I are here as grandparents and representing our son. We come from an Indigenous/non-Indigenous family atmosphere. My husband and I have been married for 39 years, so the last 18 months of going through the Family Court when my son’s relationship broke down was totally alien to us. It has cost us a lot of money and a lot of pain. I believe parental contact should be a right, not a fight. The Family Court is the only system available to most people when you have a party to a relationship that will not compromise in any way. The only way that you can deal with getting contact with a child is through the Family Court. However, the person who sits in judgment is confronted by two people he has never seen in his life that he does not know from Adam, and he has to decide who is telling the truth or who is telling lies. Affidavits mean nothing in court. We have experienced that people can tell the most outrageous stories and put their hand on the Bible and say, ‘This is all the truth.’

The other thing is that relationship breakdowns are not normally as a result of children. It is the parents that are the problem but the children suffer. We have tried everything to make our grandchild, my son’s son, have a happy relationship with us. We were actually very lucky to have a very good family law solicitor. It cost us, but it was worth it. We got every second fortnight, the off Monday-Tuesday and half the school holidays. But we did not know any different; we have never been through this before.

Regarding child support, we have to help my son pay his child support because he had commitments when the relationship broke down—he had just become a first home owner—and the Child Support Agency gives no consideration to that. They say, ‘That is what you are going to pay on your gross wage.’ It does not matter that you have to pay a mortgage; it does not matter that you have to pay anything else. They would see you out on the street—this is what we have experienced. When you are a worker and taxpayer there is no way you can escape child support. That is why I could not understand why people were not paying child support, because my son’s tax cheque was commandeered before he even saw it. When you apply for child support you get three months retrospectively, so they just took his tax cheque and that was it. They did not even tell him about it.

In our experience, a lot of people are on the pension, so they get all the concessions. The party that pays the child support does not get any concessions whatsoever. They just have to pay and that is it; that is part of the way it goes. I just hope this inquiry gets it right. I really wish you

every success, because there are a lot of parents out there who just want to have the right to a normal, loving relationship with their children.

CHAIR—Thank you, Maree.

Jan—I am a grandparent. We have experienced a lot of the situation that I have heard about here this morning. We have been through this now for about six years. It started off with the separation of my son. We have a grandson, and for the first two years it was very difficult because the mother assumed custodianship. It did not go to the courts, but I think custodianship brings with it control, so we became the non-custodial grandparents. We have a big extended family here. As the last speaker said, it is a family situation; it is not just the mother and father. We felt we supported our grandchild as much as we could and we saw him when we were allowed to see him with my son. However, over time we avoided the courts because we knew of the 80-20 type outcomes and we tried to avoid that. Over time we worked towards shared care. It took two to three years and we have had now four years of shared care. It has been wonderful. We have been able to be a family again. Our little grandson is part of our family, part of our extended family. He is a happy little boy. He gets the best of both worlds. He loves his mum and his dad; we do not deny that and we support that. However, the situation may change, because the shared care will no longer satisfy the mother. I can see that coming to an end and I do not know what we can do about that. I do not know how much I can say, because it will go to court.

CHAIR—You should not.

Jan—I will not say any more. Moving on, I do think that the formula for the support is wrong. It does not take into account the realities of looking after a child and also supporting another family. I did hear somebody this morning—I cannot remember when—suggest opening a trust account where there is some accountability for where that money goes. I think that is really important, because as it is now there does not seem to be any accountability as to whether the money actually goes to the child. From our experience, shared care works. I do not know whether I can say much more. I think each case is different; I do accept that, but I do not think the courts are dealing with this. From past experience I have a feeling that often the male parent or the father perhaps does not always get the best hearing. That is all I want to say.

CHAIR—Thank you, Jan.

Bill—I have a prepared statement. My name is Bill, and I am here as a representative of the community organisation. Our organisation does not support the introduction of an equal time presumption. The Family Law Reform Act 1995 enhanced the principle of the best interests of the child and introduced changes to move away from simplistic notions of custody and access. It is critical that we do not lose this intent by returning to a situation in which parental rights take precedence over children's interests. The Family Law Act 1975 already contains the presumption of shared parental responsibility. All parents, whether married or not, have shared parental responsibility unless the court otherwise orders.

Despite this provision, some parents—primarily but not exclusively fathers—feel that the law or legal practices in some way restrict them from adequately exercising their current obligation of shared parental responsibility. This may be largely to do with the slow pace of change and the reliance on traditional, rather than contemporary, views of parenting. More emphasis is needed

on education and reform to give the existing provisions greater application and recognition. In my organisation's experience, the amount of time spent with each parent is not the critical issue for children. What is important for children is to have long-term, quality relationships with both parents.

One of the most robust findings in the research literature is that children's emotional adjustment to parental separation is not associated with custodial arrangements—rather, factors that are associated with children's emotional adjustment include the extent to which parents remain involved and responsible. Children do not need to spend equal time with each parent to have quality parental relationships. In fact, in intact families they do not spend equal time with each parent. Research has consistently demonstrated across various settings that the quality of interaction between children and their non-custodial—that is, non-residential—parents, rather than the quantity, is more important for the children and their relationship with their parents.

The characteristics of quality relationships are those that meet the needs of the child. These include strong bonds, regular contact, durability, open communication and the resilience to overcome problems. The research into parent-child relationships after separation tells us that some important factors in building quality relationships include the extent to which parents undertake meaningful activities with children and the nature of interaction between parents and children.

In Australia, 30 years of research on families and separation conflict indicates that the negative impact of separation on children is largely due to inter-parent conflict both before and after separation. This is particularly true when children are caught up in the conflict and/or they experience emotions such as stress, insecurity, agitation, fear for their own safety and unresponsiveness from parents. There is substantial evidence linking the degree of conflict and cooperation in the co-parental relationship to children's adjustment post separation.

Unresolved, enduring parental conflict can violate children's core development needs and threaten their psychological growth. Children in joint residential arrangements may be particularly vulnerable to conflicts of loyalty, which is exacerbated by enduring conflict. High-conflict separated parents have a relatively poor prognosis for developing cooperative parenting arrangements without a great deal of therapeutic and legal intervention. The psychological adjustment of their parents, particularly the parent with primary care of the child, is a central factor in the adjustment of children.

The nature of post separation arrangements that may be appropriate for an infant and the nature of those appropriate for a 10-year-old child or an adolescent are clearly very different. Contemporary research tells us that custodial orders should recognise and respond to the age and developmental stage of children. As children grow, they develop an increasing ability to tolerate change and lengthier separations from their parents. The Prime Minister has suggested that one of the driving forces behind the need for this inquiry is the lack of male role models in the lives of boys who have limited contact with their fathers post separation. There is some evidence that the gender of the child is significant in considering primary residential placement.

CHAIR—Bill, while we would like to have you read out your full statement we are quite happy to have it tabled as evidence for the committee's perusal. Would you like to make any pertinent points outside of your statement?

Bill—I think more needs to happen in community education. There needs to be more resources in the community for people to access information at a much earlier stage than they do now and to realise that there are alternatives to the legal framework in which we currently operate.

CHAIR—Thank you very much, Bill.

Fay—Hello, my name is Fay. I am speaking in the context of being a worker for an organisation that houses families escaping domestic and family violence, which includes males with children, females with children, families and couples escaping domestic and family violence. In our experience we find that most children, other than children who have been sexually or physically abused by a parent, want to have contact with the other parent. We have found that, where fifty-fifty access is given, children often end up with behaviour problems, they are traumatised and their loyalties are split. Because we do group work within schools, teachers give us the names of children who are having problems in school. Nine-tenths of the time the children are from families who have been escaping domestic violence.

CHAIR—Thank you, Fay.

Brett—My name is Brett and my submission is No. 170. I would like to touch on a few things—basically my own case and how I deal with my children and my ex-wife. I am paying for two children. One child, the eldest son, is not mine but I did the morally right thing and put my name on his birth certificate. I pay for him because I love my children dearly. My ex-wife stops me from seeing my children at whatever opportunity she can, even telephone contact. I have my court orders here, which is the 80-20 that I am really happy with—not! So it is a bit of a farce. There are that many loopholes in the court orders that she gets away with, and she knows that I cannot take her back to court because of the money that I am earning. I cannot do it by myself.

I am a full-time worker, so is she. Her partner is also a full-time worker. She is on about $100,000 a year but she still screams poverty to the Child Support Agency. She is always trying to get more money out of me and, at the same time, stop me from seeing the children. She takes the children away from me on holidays constantly in the time I am meant to have with them as per my court orders. She cuts my time in half.

I will give you an example of some other things. As I stated, she is on about $100,000 a year combined with her partner. I have just come back from being away for two months. During that time I received a change of assessment from the Child Support Agency. She submitted that she owes all this money. She has about $1,400 after tax and she spends $1,600 every fortnight. She has a $70,000 Ford F-250 car that she pays for as well as taking my children all over the countryside.

The fifty-fifty time share would be a very good thing because I only live a block or two away from my children. My children wish to see me more—they wish to spend more time with me. With fifty-fifty I would be able to do sporting activities and social events of the like that she does now with them. My children used to play soccer. She stopped them from playing soccer because in the court orders it said I could take them to soccer and do things with them. She has stopped them from playing soccer. Now I cannot attend any social sporting events with them at

all. I just have to hear about it, and I do not get the full effect of everything the children do. It is the little things that are taken away from me—the privileges of being a proper father.

There is a lot more that I could probably say—I am a little bit lost right now. I only have mobile phone contact to my children; I do not have a landline. My extended family—my parents, my sisters and everything like that—cannot call my children because I only have an allotted time to call them. They have no contact with my children at all, which is not fair as well.

I could move out of the Darwin area. I have basically put my career and my job on hold. I am staying in the Darwin area because of my children. So I have basically cut my own throat by saying, 'No, my children are more important to me.' I know the children would be a lot happier if I were to get the fifty-fifty. I intend to—because I have just been away—go back and see lawyers and try to get custody of the children or one of my children—that is, my natural child. I do not know if this is a good thing or a bad thing to do, but I will probably look at doing it.

If this committee makes up its mind and brings in the fifty-fifty, I know for a fact that it will be a lot better for me and other personnel that are in the same situation that I am. I constantly have to deal with the bickering from my ex-wife. It is just one of those things that I have to deal with. She knows that she has got me through a loophole. I cannot take her back to court to sort this out because of all the breach of orders that she has done, so I just have to live with it. Spending money on my children is more important than going back to a lawyer and wasting my time. As you have already mentioned, the 80-20 in the court basically is what I have got—the same as everyone else. I am wasting my time. Hopefully, the committee will see right, and do the right thing by me and other parents in my situation.

CHAIR—Thanks, Brett.

Tony 2—I agree with everything Brett said, by the way. I can relate so much. But rather than talk on that issue, I have read some of the submissions to this inquiry, which I have downloaded from *Hansard*. Extracts from Robert Bauserman's 'Child adjustment in joint-custody versus sole-custody arrangements' have been used in various submissions arguing that shared residence can only work in low-conflict situations. However, if you turn to Bauserman's studies, you actually find that he says:

In those studies that did examine conflict, joint-custody couples reported less conflict at the time of separation or divorce. This is consistent with the argument that joint-custody couples are self-selected for low conflict and that better adjustment for their children may reflect this lack of conflict ...

That is the bit that is not normally put in the report. He goes on:

However, some research that has controlled for preexisting levels of conflict continues to show an advantage for child adjustment in joint custody

He quotes Gunnoe and Braver, 2001. He continues:

The fact that joint custody couples also reported less current conflict is important because of the concern that joint custody can be harmful by exposing children to ongoing parental conflict. In fact, it was the sole-custody parents who reported higher levels of current conflict.

… … …

Conflict was highest at middle levels of visitation and lower when father contact was very high (as in joint physical custody) or very low.

Therefore, the proposal that shared residence can only work in low-conflict separations, as contended in these faulty submissions, is incorrect and would seem deliberately deceptive. In fact the opposite holds true, with higher contact, as in shared or joint physical custody, reducing the instance of conflict, which is really only to be expected as the children around whom such high emotional energies are spent are removed from the equation and are no longer regarded as property or as pawns or weapons, perceived or otherwise, in the hands of either parent.

I have also read through the report of the Attorney-General, Mr Duggan, of 15 September. Mr Chris Pearce asked him if there were any measures of how a judge was advised of changing community attitudes. Mr Duggan responded that the court provided a range of educational measures for judges. In fact, Mr Duggan would be struggling to substantiate his claim of the court having regular contact with fathers representative groups, particularly in comparison with the level of court involvement with organisations sympathetic to women. I would suggest he be put under scrutiny for that.

I would also like to refer the committee to the Family Law Practitioners Association of Western Australia and its 14th weekend conference in 2003. The conference report stated the following:

Kelly & Lamb—

two psychologists—

make a strong argument that current decision making in family law has not kept up with more recent research on child development. This emanated from an earlier paper in which they had suggested a presumption that infants form a single relationship that remains pre-eminent in a later paper Kelly & Lamb advise that this was never supported empirically and was in no way central to attachment theory. Never the less, they assert, the notion gained “credibility in popular mythology and has continued to mislead judges, clinicians and custody evaluators”. They point to the more contemporary research demonstrating that most children in two-parent families form attachments to both parents at roughly the same age, despite the fact that most infants spend much less time with their fathers than with their mothers.

Kelly & Lamb go on to argue forcefully that children “are more likely to attain their psychological potential when they are able to develop and maintain meaningful relationships with both of their parents, whether the two parents live together or not. They argue, therefore, that infants and toddlers should have multiple contacts each week with both parents to minimise separation anxiety and maintain continuity in the children’s attachments.

When you consider this and the current family law system in which only five per cent of children are blessed with a shared or joint residency lifestyle, the rest live under a Family Court—that is, every second fortnight et cetera, or worse—21 per cent of children live in lone parent, step or blended families, and 36 per cent of kids rarely or never see one of their biological parents. From that, I am firmly in favour of the rebuttable presumption of shared parenting. Can I leave those for you?

CHAIR—Yes, please feel free. Thank you very much, Tony, for coming forward.

Tony B—Just before I finish, you had a query on the Child Support Agency.

CHAIR—Yes.

Tony 2—The Child Support Agency figures show that 62 per cent of parents who are payers have no debts, 20 per cent have debts under $1,000, 16 per cent have debts between $1,000 and $10,000 and only four per cent have debts over $10,000. Most of us pay because we love our kids.

CHAIR—Absolutely. Is there anybody else who wishes to speak?

Individual B—I had not intended to speak, but as I have listened to others this morning I think I probably should. I am a grandmother and this about a son who married a person from another culture while overseas. He had not known her very long and he not only married the young woman but also, through goodwill if you like, changed his faith from Christianity to another. We had gone up as a family to show support for this marriage and its importance, and they came back to Australia after the marriage. My son had a two-bedroom unit in the city and they took up residence there. A child was born within about 15 months of the marriage.

His wife had become homesick, which is understandable, and she was able to return to her own country. Then, after probably about two years, whilst there were differences which all marriages probably have, she left him and took their daughter. My son did not know where she had gone to. They were going to go out for dinner that night, and there was some sort of disagreement. She became very angry, left and took the daughter of the marriage with her. My son believed that she had just gone off to visit friends and would return, but this did not happen over some days.

We all looked for the wife. After about five days we found out that she had gone to a women's refuge, which normally only takes people who are associated with domestic violence. It seemed very strange that she would be able to go there. She was also about six weeks away from having her second child, and we were very concerned. We did not know whether she was having some sort of stress breakdown or something like that. She stayed in this place. My son was able to have the Family Court request that she communicate with him, because he wanted to get communication with her and access to his daughter.

This was done. The first option that she offered was something like one hour a week. The Family Court people said, 'Please get some legal advice, because that would not be acceptable,' and she did. They went through a process whereby they went back to Family Court and my son requested that he care for his daughter whilst the mother was in hospital. I was not present, but that was denied him because the mother said, 'No, I have made arrangements for a carer.' This little girl is a child with a disability. We had always had a very, very close association, and we had been extremely supportive of the marriage to ensure that it got off to the best start. My son was told he could not care for her, even though he had made holiday arrangements to be able to. Then my son found out about the birth of his new son only when he was in the Family Court and the wife's solicitor said, 'Oh, you've had a son this morning at eight o'clock.' All of this is pretty devastating for a young man.

During the Family Court hearings—and they had to present papers about what was going on—she had never, ever made any reference to any domestic violence of any kind. She had spoken about how she did not think the two-bedroom unit was a suitable place to raise a child because it was noisy and there were stairs that presented problems, and how he had said that he was going to try to get a three-bedroom house but had not. When she left hospital and returned to Dawn House, the court order had increased our access to the children. She was back there for some six weeks, and then it became time—there is only a certain time you can remain in one of the refuges—to leave. She was told that basically she must move into some other accommodation, and my son was presented with a domestic violence order. He was then advised by his solicitor not to contest it. As a mother, I said, 'That's ridiculous: of course you'd contest this.' He said, 'No, I've been told that, if you do, you will make it more difficult for—and she will be a lot more difficult about—access to the children, because you want a lot more access than there currently is.' So he did not. He did not even attend court because the solicitor said, 'They are handed out like lollipops.' I do not know if these statements are made everywhere, but this was what was said, so he did not do it.

She then left the refuge, was given a home by the housing commission people here and was recognised as a single parent with the concessions and entitlements that go with that. She then began to be friendly with my son again. My son naturally hoped that he could save his marriage and all the rest of it—and his children, of course. They were quite close for some three or four months, which, of course, in actual fact is not in agreement with having a domestic violence order. She then met a new person and ceased the relationship and friendship with my son.

Over that time, my son had been able to have a lot more contact with the children and so had we, as grandparents. From mid-2000 the children have basically been living with us for five days a week, then they spend two days with their mother. I try to maintain a harmonious relationship in the interests of everyone. Someone was talking about suicides, and my son has been extremely depressed, even though he has had the children for this period, because he is still feeling as if he is controlled. What you are told is, 'If you don't do this, I won't let you have the children,' so there is a control factor which is debilitating in many ways.

As I say, I had not intended to speak. You can say, 'You've got nothing to complain about; you've got the children and that's all right,' but there is still this problem. Now the lady has moved into a new domestic situation in the last week. The thing I am concerned about—and someone else has mentioned this—is that the environment of the single mother can sometimes be the most dangerous for the children. I have a disabled grand-daughter who is four. She cannot walk; she cannot speak. We are the major carers. It is not a matter of money. I am not interested in the money business. People said, 'You should do this and you should do that about money.' No, I am not interested in that. I know the woman sends money overseas. I know my son has mentioned this to whoever he has gone and spoken to, and they have said it is not their business what she does with the money.

CHAIR—Thank you very much for coming before us this morning.

Dimitrius—I have been waiting for a moment like this. I need help. I need someone to help me report something that probably has never been done before. The Family Court needs to be sued by me for the destruction and the near crucifixion of the father of three children that nearly became nomads in this country that my parents brought me to, thinking it was a lucky country. I

will not waste your time but please, give me a reporter. Please, I need a reporter. I need my case to be put to rest.

I am sorry, but I am trying to keep my nerve. I am trying to become a youth worker and I am finding it very difficult because I cannot concentrate in learning how to compute. I have never been taught that as a Greek boy, as a little wog boy—but it does not matter; I am Australian. I just wish someone would help me, please, for my children's sake. They have nearly become nomads and they are living very close to destitution.

As far as I am concerned, as a person who did not come to Australia as a convict but who has come freely. What is happening? Our children are not being looked after properly because of the money making of lawyers from the remorse of the families. I want something to be done about this. I am very seriously concerned. Please, I need a reporter. If you are genuine in this country, give me a reporter. I want to state my case. I need to put my case forward.

CHAIR—Thank you, Dimitrius.

Tom—A number of people have mentioned how we live in an imperfect society. Of course, society can be changed, manipulated or whatever by the laws we have and the parliamentarians who make those laws. In the Territory, for example, the person who happens to be the minister for health is also the minister for community services. It makes it rather difficult when, as minister for health, that person has to oversee—or whatever the word is—the abortion of a thousand children per year in three hospitals. At the same time, as community services minister, she has to oversee the provision of protection of children from abuse and neglect. So you have one person wearing two hats which would make just about anybody schizoid.

We have this ambivalence. It is to do with the attitudes in general of the community in general. If a woman wants to have an abortion, the father has no say. I would like to commend the first lady who spoke today; apparently she continued with her pregnancy after the break up of her marriage and is doing the best she can for her child. As long as we have these inconsistencies in our attitudes and in our thinking, we are going to continue to have and create imperfections when, in fact, we should be aiming for a more idealistic situation.

Individual C—I have just a couple of issues. I suppose you are aware of the standard allocated amount of time a child or children get. It seems to be, when it is the father, the standard is two days a fortnight. It is actually not even two days. It is usually about 36 hours. I would like to know why the Family Court thinks two days a fortnight with a dad, or with any parent, is good enough. That is one issue I would like to see something done about.

In any other court if a lawyer acts outside his or her client's instructions, it is a crime. It is like us giving false or misleading information to a judge, knowing the facts are not true. In any other court—a magistrate's court, a supreme court, even a federal court, besides the Family Court—they could be convicted of committing perjury. Why isn't something done about it?

This happened in my case. I know why Dimitrius cracked up. A couple of years ago I probably would have done that here. I would like it to be known that I have documents at home that people left behind after a court case which prove that they committed perjury and did not follow their client's instructions. These people used a paedophilia allegation against me in a court,

based on a rumour about me. It turned out that the guy that the story came from was a rapist, convicted 30 years before this court case. The victim was a nine-year-old girl and she waited for six years in Darwin before this court case was won. He is still walking around. He never actually gave evidence in the courtroom against me and he never put it on paper. But the lawyers used that rumour as though there was some truth in it. They failed to tell the judge that the guy was a paedophile.

CHAIR—Ladies and gentlemen, as a committee we certainly appreciate the audience coming along. We would like to thank the witnesses, both the individuals and those from organisations, that appeared before the committee. We would like to thank the audience as well, simply because it is very difficult to sit and listen to an enormous amount of emotional angst from people and to be able to control your emotions at the same time. We appreciate that because we really do need a semblance of control in order to ultimately make some decisions on this inquiry. We thank you very much for being the audience that you have been today. It has assisted us no end.

For those people who are confused as to whether or not our intentions are for the best interests of the children, I indicate that they certainly are. For those people who look at a 50 per cent shared arrangement as being one that looks after parents without thought for the children, that is certainly not the aim of this committee. We hope that we can bring about some resolutions to an ongoing problem. If you think that some of the questions that have been posed today have been difficult or that our devil's advocate position has been difficult to deal with, please be aware that that is what our job is all about. It is about understanding and clearly challenging the perceptions and the currency that are out there in the community in order to achieve an end to this inquiry. Thank you very much on behalf on the committee.

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

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

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

That submissions Nos 1175, 1214, 1215, 1217 and 1220 be accepted.

Committee adjourned at 1.08 p.m.