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Official Committee Hansard

**HOUSE OF
REPRESENTATIVES**

STANDING COMMITTEE ON FAMILY AND COMMUNITY
AFFAIRS

Reference: Child custody inquiry

SUNDAY, 26 OCTOBER 2003

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HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS

Sunday, 26 October 2003

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

Members in attendance: Mr Cadman, Mrs Hull and Mr Cameron Thompson

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.**

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Committee met at 10.11 a.m.

CHAIR—I welcome Mr Ken Ticehurst, the local member, here this morning. Thank you for coming and for having us in your electorate. I declare open this 18th public hearing of the House of Representatives Family and Community Affairs inquiry into child custody arrangements in the event of family separation. This inquiry addresses a very important issue which touches the lives of all Australians. To date, the committee has received over 1,600 submissions, a record for any inquiry by this committee and amongst the highest ever for a House of Representatives committee. We are grateful for the community's response. This is one important way in which the community can express its views. I stress that the committee does not have any preconceived views on the outcomes of the inquiry and it takes all evidence with a view to ensure fairness and equity. Accordingly, throughout the inquiry we have sought, and will continue to be seeking, to hear a wide range of views on the terms of reference.

While at any one public hearing we may hear more from one set of views than another set—for example, more from women than from men—by the end of the inquiry we will have heard from a diverse group and thus received a balance over the range of views. I have been particularly cautious to ensure that we get a strong balance of both female and male views on the terms of reference. The public hearings the committee is undertaking are focused on regional locations rather than just capital cities. At these hearings the focus will be on individuals and locally based organisations. Today we will hear from six witnesses: three individuals and three organisations. Two of those organisations will not be locally based, but we will be looking at a wide range of views on the inquiry.

I remind everyone appearing as a witness today that the comments you make are on the public record. You should be cautious in what you say to ensure that you do not identify individuals and that you do not refer to cases which have been or are now before the courts. In recognition of the personal and sensitive nature of this inquiry, the committee has decided that, when individuals appear before the committee in a private capacity at a public hearing—that is, not representing an organisation—the committee will use an individual's name during the course of 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 numbered witness. This is being done so that the committee can maximise the availability of public information while still protecting individuals and third parties. I particularly ask any media present not to report the names of individual witnesses who appear publicly at this hearing.

About three and a half hours have been set aside for this public hearing, which will be followed by an hour of community statements, with each statement being of three minutes duration. There may be local media coverage, including radio stations, here today. If you are uncomfortable with this, would you please advise our secretariat.

WITNESS 1, (Private capacity)

CHAIR—I welcome our first witness 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 and that your comments before this committee will be on the public record. You should be very cautious in what you say to ensure that you do not identify individuals and that you do not refer to cases before the court.

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

Witness 1—I am here today to represent not only myself as an individual but also, I believe, an ever increasing number of females who are unfortunately in the position that I am in, which is that of a noncustodial parent. I have something to offer, I hope, from my experiences with the family law court and, subsequently, with the Child Support Agency. As a result of those experiences, hopefully other people will hear my input and gain something from it.

CHAIR—Do you wish to make a further statement?

Witness 1—My statement is basically that, as a result of my children living with their father, I am now not able to adequately share the parenting. This has arisen for a number of reasons. One is the constant breaking of court orders for which I believe there is no adequate enforcement, other than my returning to court to try to represent myself. This has been a costly exercise. Over the last five to six years that I have been involved in this, it has cost me in excess of \$200,000 with the legal profession to have orders put in place, then to go back to court to get orders reinforced, only to find at the end of the day that certainly the access orders are not adhered to.

This occurs with physical access and telephone access—for instance, on a stated day when I was to speak to my children, the fax machine was usually on. The children do not come up to visit me very often, because in our orders I should go down to the South Coast to collect them and the father should come to our area to return them. But he insists that, if the children wish to see me, they have to be placed on the train—which of course is a disincentive for them. So, if we want to access the children, this normally results in our having to go both directions. My last two children moved to their father's because I agreed that, to reduce the pressure on them, they should go and live with him and their older sibling.

Within a week of my children moving to the South Coast, my ex-husband put in an application against me to the Child Support Agency for child support. He refused to come to an agreement with me on the day of the court hearing for payment in an ongoing way. Therefore, I was left to be assessed by the Child Support Agency at a cap income because of my profession. But he had not put in his tax return for four years, so he submitted to the Child Support Agency that he was

in fact earning only \$35,000 per annum. Therefore, the Child Support Agency assessed him as having no child support income, and my child support income was assessed at the cap, which meant that I would have been paying \$36,000 after tax in that year.

There were no means for me to alter that decision, other than that I went for a formal change of assessment, which usually takes about three months. The onus is on me, the other parent, to provide all the relevant information to the agency. The custodial parent does not have to reply if they do not wish to, let alone provide documentary evidence. That is how we have continued for the last two years, until recently, when I managed to have a bit of a breakthrough. Therefore, basically, my concerns with the Child Support Agency are that it can be easily manipulated. It does not work in the cases of professional individuals like me where people have company structures and can leave part of their income in that structure or, alternatively, provide spouses with income in order to reduce their own gross income. It relies upon a formula that may well be more equitable to those who are wage earners, but in this instance, of course, it meant that one party was able to easily manipulate it.

This is also of concern to me with respect to the agency because, as far as legislation goes at the moment, it tends not to use a section 161 clause. That clause means that it does have the capacity to uplift information from the parties' accountants, but it rarely does. In fact, it says—and has said to me over the last two years—that it does not have to if it does not want to; that it can refer this back to the court. Of course, in the case of someone like me paying child support, that means time off work and increasing legal costs, when there is already an outstanding bill to the Child Support Agency. Therefore, I feel that that particular agency is very biased towards the custodial parent, and the custodial parent is never requested to give information as to how the money was spent.

In the case of my own children, based on the feedback I have had from them, they do not receive pocket money. My daughter often wears hand-me-down clothes from her girlfriends because she, in her own words, does not like to ask her father for money. I have understood from their comments that this money has probably gone into agendas for their father, not only essentials for themselves. Therefore, I feel that we probably need to address that, if possible, in legislative change. Obviously, my major concern was the way in which this occurred in the beginning. Going through the family law court, it appeared to me that the vicious litigant and the person who decided they were not going to comply with a judge's orders usually won the day in the end, because it was easier to say, 'This individual is not going to agree to our policies. Therefore, let him or her have the children.'

I was actually advised that by the legal profession along the way when they saw that my ex-husband was particularly intransigent in his position. The judge during our particular case actually asked him whether he would support orders that would return my oldest child to our home. He stated to the judge that he would not and that he would not comply with any order that encouraged him to be supportive of the children's relationship with me. Despite being sent out of the court with a potential notice of contempt, he continued in that vain. In the final judgement, the judge suggested that he would 'give him' our eldest son so that he would not be seen to be a resounding loser in the case and 'anyway the child would grow up to see through the antics of the father'. That judgement led to the splitting of three children because the younger two remained with me. It created considerable distress for them because shortly thereafter my ex-husband also moved from our country town to a South Coast area. This meant that the

children were widely spread geographically. Access visits were almost impossible. I needed to return to court again because he did not seek leave of the court to move. In order to try and obtain any access orders for us that again involved more legal expense. Again, they were not enforced and we continue in that today.

CHAIR—Thank you very much.

Mr CADMAN—Thanks for your evidence. I think there is a perception in the community that only men find themselves in your position. You have demonstrated that may not be the case. I was interested in your comments about the Child Support Agency and their perception of your tax as an individual. They understand corporations tax, they understand PAYE taxpayers, but not people who have been termed ‘sole traders’ or are taxed as individuals. Section 161 gives them access to your accountant to draw on your tax returns directly rather than going through a legal process. Is that right?

Witness 1—Yes. Section 161 allows them to speak to the accountants of both parties and find evidence of the true nature of the individual’s income. However, to justify their reason for not using that on my behalf for two years, they said to me, ‘Oh well, if we uplifted information from that accountant, he or she would probably falsify the records in support of their client.’ Now, that is concerning.

Mr CADMAN—That is very interesting. At that time, was the CSA part of the tax office?

Witness 1—No. This is recently. This is in the last two years.

Mr CADMAN—Okay. So they have a capacity to either look at your accounts or your former spouse’s accounts through section 161?

Witness 1—That is correct.

Mr CADMAN—Can they get the exact tax returns, do they rely on an extract or do they rely on verbal information?

Witness 1—No. They can basically access whatever they wish to access with that power.

Mr CADMAN—Okay.

Witness 1—As it transpired, the breakthrough that happened for me was that my ex-partner did something to his former partners that was not good and he left them in the lurch. They did not contact me; I contacted them because I am constantly having to prove to this department that my ex-spouse’s income is in fact that of a professional. They spoke to me, at that stage, because he had done the wrong thing by them and said to me, ‘If a court of law or if the Child Support Agency can uplift documents from us, we would have no option but to provide those and we will.’ So I went to the Child Support Agency who, by the way, initially did not want to hear this fourth variation of assessment and they said to me, ‘This is an old argument.’ I said, ‘No, it is not an old argument, this is new evidence that has never been able to be presented to you before.’

When the female senior case officer who I finally went to, because I insisted on a meeting in Sydney at this stage, heard this she was quite concerned and said, 'Look, fair enough; I think we should look into it.' I said, 'I have been asking you to use 161 for two years and I have provided you with a truckload of evidence,' which included subdivisions and all sorts of things that had been done by the other party, to try and indicate that he was a professional individual with a good income, good earning capacity and an asset base. Finally, she uplifted the information that I suggested would be of value from the former accountants of his former business and, notwithstanding that, once the judgment came down, he still put in an objection. He still lied and this time his objection was denied, because they had accessed the accountant and they knew absolutely what was going on. I understand that—

Mr CADMAN—Is that the breakthrough you referred to earlier?

Witness 1—That is correct. It does not mean much financially to me but, emotionally, it meant an enormous amount. It is bad enough losing one's children but it is even worse having to pay someone who is deliberately using an agency like the Child Support Agency as punishment, in my case as their former spouse, as a way of gaining tax free income. One of the things that I find very difficult is that this is money that I have paid tax on that goes to these people. There is no relief for us. We have to work enormously hard to restart our own lives and generate a level of income, particularly as it is subjected to a cap assessment, which is quite a lot of money per annum.

Mr CADMAN—Do you know how your payments are assessed in the hands of your former partner? Are they assessed as income?

Witness 1—Yes. The Child Support Agency's policy document says that child support income is based on gross income. A person who is a non-custodial person is given an exempted income of something very paltry like \$11,000 per annum. Anything over \$11,000 up to about \$114,000 is subject to a formula which is based on the number of children that are with the spouse and the ages of those children. In my case, there are three children with him, so it is 32 per cent of the gross income over and above \$11,000 and up to the cap of \$114,000. What that means and what happened during that period—

Mr CADMAN—I just need to clarify one point: originally there were three children with him.

Witness 1—Originally there was one child with him after our 1998 court. In 2001, he began again to put applications through the court and provide pressure on the two younger children to live with him. He denied the return of my oldest son so that the younger two children could only be together with their sibling if they were with their father. A court psychiatrist said to me: 'You're the only that can relieve the pressure on the children. You must let them go and one day they will grow up and see through this.' That nearly broke my heart. By consent orders—not with a judge this time—in June 2001 the other two children went to live with their brother and their father. Following that, I was applied against for child support for all three children. I might add that when the two younger children were with me for two years, I did not apply against him for child support. I never received money. I did not want to give him a reason to try and reverse this.

Mr CADMAN—What about the family tax benefit payments? When one child was with him and two were with you, how did the carer's payment and all of those sorts of things work out?

Witness 1—I did not get any payments when I had the two children.

Mr CADMAN—He collected the lot for the three children?

Witness 1—No. There was no payment made on either side. There should have been a liability from him to me, but I never requested it.

Mr CADMAN—Okay. That is really clear. I have your personal circumstances clear. Gender does not matter one little bit in this issue, does it?

Witness 1—No. I am seeing, in my professional capacity, an increasing number of professional women who are in my position. The perception is that, if you can get custody of the children, it is a great way to earn a bit of tax-free money through the Child Support Agency. It is a known fact by some of these professional men, as well, that that is a good game.

Mr CADMAN—Do you think this is both welfare and tax benefit driven to a fair degree? Or is it psychological warfare?

Witness 1—It is psychological warfare and, in addition to that, financial gain.

Mr CAMERON THOMPSON—There is criticism that if we go to a system that provides for greater sharing—whether it be the rebuttable presumption of fifty-fifty or something like that—that will lead to greater conflict. That is the claim that is constantly thrown up. What is your reaction to that?

Witness 1—I disagree with that. One of the things I have noticed is that, because I see my children so infrequently, they have one party in their ear all the time, basically. Their capacity to have balance and to understand the issues and to see the faults of both parents is reduced, and they become very one eyed—often inappropriately so. The example I use here is that I still have a very good relationship with my middle child, a male. He has spent the longest time with me as a result of the court battles that we have had. He was older when he went to live with his father. He maintains the capacity, above the others, to recognise the difficulties and the faults on both sides. The other two children, my oldest son and my young daughter, went to live with their father when they were 12—in different years, of course. Both of those children have had difficulty with hostility towards me, because they have been fed a lot of misinformation. They are at an age, at that age, when they have not got the powers to be logical and to dissect the truth and the rubbish. I am very concerned that if we have children in the sole custody of one parent, particularly at young ages, it will be extremely damaging to the relationship with the other parent. For the children, it means that for many years they are often estranged from the families of the other parent and are unable to get a good understanding and a feel.

Mr CAMERON THOMPSON—I can see that point, and I think it is a very good one; I really do appreciate it. What about your relationship with your ex and your ability to communicate? People say that greater sharing means you have to communicate more often. How will that survive? How could you maintain the necessary contact to conduct that greater sharing?

Witness 1—The difficulty in my situation—and we all have different situations—is that people who observed my ex-husband during the court case think he may well have a personality disorder that prevents him from being able to (a) share, (b) negotiate and (c) do anything other than accept his own view. I say that not as a criticism of him but as a matter of fact. We have not been able to in any way reach agreement. In a bizarre way, even if I comply with him, he wants to go the other way. One has to use reverse psychology for this man, which is ridiculous. I have to say, ‘I really don’t want them on this weekend,’ in order to see the children.

As I said, we all have different problems. But it has been very difficult. I asked for counselling, way back during our case in 1998. He did not want to go to counselling. The psychiatrist lectured him in the court about what he was doing to the children and asked him to please have insight. The psychiatrist subsequently spoke to me and said, ‘I can’t do anything about this. I’ve never seen anything to this degree. He will not see reason, and he will not have the insight to see that a lack of negotiation is hurting the children.’ That is why I was asked to do what I was asked to do—to take the pressure away.

Mr CAMERON THOMPSON—The criticism, as I gather from the way it has been presented, is that because you are going to be thrust together even more if you are going to be sharing the children more often—as opposed to a sole care model—there is going to have to be more negotiation, purely about the exchange of children and those sorts of things. In your particular case, and with the sorts of character traits you have outlined, how could that work? Wouldn’t it create more and more difficulty?

Witness 1—The point is that, if he knew he had to and there would be penalties if he did not, that would occur. Unfortunately, the issue for him is what hurts him, not what is good or bad for the children. The psychiatrist I referred to, whom I obviously cannot name, was an expert who saw us over three years, because this was such a protracted matter. His comment was: ‘Even though I’m asking you to give these children to him, he doesn’t love them, you know.’ That was very distressing for me. He added: ‘Other than the fact that he wants to be able to say, “This my son, the doctor,” or “This is my daughter, the whatever.”’ He said: ‘He cares about them, but he doesn’t have the capacity to act in a way that is good for them.’ I think that, if you are dealing with those problems, the only way you can deal with them is to legislate. Those people are not going to have the insight.

CHAIR—We have come under a lot of criticism because it is seen that this inquiry has been directed towards unfavourable results for particular men’s groups. More and more throughout this inquiry we have seen women in your position who are non-custodial parents. There is a feeling in the community that non-custodial parents are all men, not women. Thank you for coming along this morning and presenting your case. The fact that this is taking place more often, as you have indicated, with women as well as men is constantly within the submissions and before us. It is really not a gender issue, as Mr Cadman has stated; it is about the children.

Shared parenting is shared decision making on education, religious and medical issues. If you had a shared parenting role for your children with your ex-husband and one of your children were sick, could that work—if you were to take out that role, in the first place, before there was any consideration given to where the residence of the child would be? We sit down and do parenting orders and a parenting plan. If you had to take responsibility for the decisions borne on behalf of the best interests of the children, with a whole host of understandings of what their

needs might be—as I said, for schooling, medical and religious issues et cetera—would you see a shared parenting plan as being able to work, prior to the determination of where the child resides?

Witness 1—Certainly, if it were made prior to deciding where the children were going to reside. That becomes the electric moment—when children are then sent to this particular household or that particular household. Certainly, when they are living in one household only, the other parent—from my personal experience and from speaking to my clients at work—does not have an input into it at all, irrespective of orders.

CHAIR—You have indicated you have spent either in excess of, or somewhere around , \$200,000 in the family law court, which seems to be a pretty normal figure. When you were in that process, was the issue of shared parenting—I am not talking about residency—given considerable weight? Was that a high priority in the Family Court process you went through? Was how you were going to share the parenting of your children and the decision making with regard to them, outside of residency, given great weight?

Witness 1—No. In our case, it was not.

CHAIR—Do you think it was given any weight?

Witness 1—No.

CHAIR—Many of our submissions—and we have another today—indicate that the family law court plays a very important role and puts very strong emphasis on that role. But, each time I have somebody before me in a hearing, it does not come through that any emphasis was placed on the parenting responsibilities for children, outside of residency.

Witness 1—Certainly it was not. One of the things that I also found very alarming was that, when my ex wanted the younger two children to go down to live with him, it was put before the court, ‘Obviously, Sir, arrangements must have been made for the schooling of these children.’ My eldest child attended a school in that area. My ex presented to the court, ‘Yes, not a problem. I’ll get them into that school.’ As it transpired, he did not; he got them into another school. That other school only went to the year that my younger son was in at that stage. My children had separate representatives, at great cost to both parents, and yet alarmingly the separate representatives did not bother to look into the fact that the school they were supposedly going to attend when they moved only went up to year 7 or something at the time.

That, in my view, was not in the interests of my children, because I was paying for my younger two children to attend a private school on the Central Coast—not the school they subsequently went to. The children themselves expressed distress after they got down there that this was the school. To this day, my middle son says that he hates the school. So no attempt was made by the Family Court to actually look at what was in their interests. Had they done so, one wonders whether they would have allowed that to occur.

CHAIR—It is very interesting because, as I said, you will hear later today that all of this is supposed to be taken into consideration as being of paramount importance, but I reiterate that not one person has come before this committee and indicated that that is the way the courts actually

do work. Was shared parenting encouraged at all in the Family Court process when you were involved?

Witness 1—Never.

CHAIR—Could you cope with a shared residency role? Your case is a particularly good case study because your children are living away from you. Do you think shared residency—aside from the shared parenting decision making determinants—could work in your case?

Witness 1—In our case, obviously it is very difficult. Taking into consideration the needs of the children, you cannot split them school wise 50 per cent here and 50 per cent there. They are following a curriculum that is going through one school. I feel that perhaps there is an opportunity there to spend some holiday time or more holiday time with the other family member, rather than the couple of days or the week only. The opportunity would be, in my case, for the children to bring some of their friends from their place of residence now to the location where we are at so that they have an opportunity to enjoy their other home, share their friends with their mother and vice versa, and introduce some of these parts of their lives to us.

One thing that could occur involved something that recently came to light. My middle son rang me and said that he needed to do a week of careers opportunity. This will not happen because of the father—if my son were encouraged by the other parent it would happen—but I know that my son would like to do his careers week up here because I have a contact in a facility that he is interested in. That would be a marvellous opportunity to again cross-seed, if you like. If the other parent were cooperative, he would see the advantages I could provide to that child at this moment.

Obviously, being in the medical profession, I do have some contacts. I could provide a lot of help for them, and again that does not seem to occur. I do not know how one gets around this. For example, my eldest child was very sick 12 months ago, but I was not told about that until I was out of the country. He had cardiomyopathy. As soon as I learnt of this, I rang the cardiologist at the hospital. My ex-husband tried to threaten me. He told me, ‘Do not speak to him. Only speak through me.’ I have something to offer in that area.

CHAIR—Again, you are a parent. That is the sort of thing I am basically talking about: looking at the legal terms of being a parent and of the old term of guardianship. If you were able to share more equally in the guardianship parenting of your children, would you then be more satisfied? If you did not have more residency, so to speak—if your work did not permit you to have an equal residency and the distance did not allow you to have a shared residency—but if you were able to share more in the lives of and the determinations for your children, would you be more comfortable with the fact that you could not have a shared residency?

Witness 1—Definitely. One of the greatest griefs for me is that it feels like a death. I feel like each child has died. There is no relationship because I do not know their friends, I do not know their interests, I do not know their clothes size and I do not know their latest music. The way this is occurring for the non-custodial parents at the moment is incredibly damaging to relationships and also for the children, I might add. When my girl came home—she is 14—she spoke to me recently about the way it was when I gave her this object and I gave her that toy. There was a lot of regressive behaviour in the sense that she wanted to cuddle me and she wanted to go shopping

with me and did not want to let me go physically. It is almost as if she is arrested at that period of time when she left as well.

Every time we see each other there is inappropriate time to educate ourselves mutually about what has happened in that intervening period. In other words, she has started to menstruate so she wanted to tell me about all these things and then tried to ask me what my experiences had been. She has looked to a girlfriend—excuse the frankness of this—to teach her how to put in tampons because her mother was not available, she was not going to ask her father and the relationship with her de facto mother is not all that great.

There needs to be a lot more contact and a lot more legislation so that, irrespective of the agendas of either parent, for the sake of the child it happens. She has been caught in a situation whereby she was—I will not say tricked—seduced into moving somewhere on the basis of a lot of material possessions and a lot of promises that have subsequently not happened. She told me recently that her life was—excuse the expression—shit, and she said, ‘Oh well, I suppose you’re just getting on with your life, are you?’ looking to me. I said, ‘Darling, I miss you every day and I think of you every day.’ But because of this win-lose situation—because we are told, ‘You can have the children and you can be the accessing parent’—in my view the children are suffering.

CHAIR—In your submission you said:

No access to ones children should reduce one’s requirement to pay for that child, thus stopping this manipulation.

It has been put to us that withholding money would be detrimental to the child—it would see the child do without. Could you expand on that?

Witness 1—Certainly. I would love to see a position whereby we could provide for our children directly. By that I mean that I could elect to pay the school fees and know that that would happen. Do you know that with the Child Support Agency I cannot do that unless the other parent agrees? If the other parent’s agenda is to have money for themselves and then to put the children in cheaper education, they can do that under this current system. I also asked if I could set up an account for the children wherein I could put money directly. My teenagers have needs and requirements obviously—certain shoes and what have you. I cannot do that. It is only if the other parent agrees. The non-custodial parents have no power at the end of the day.

Mr CAMERON THOMPSON—Something has occurred to me about that particular issue of people who are denied access to their children. We are supposed to have a system where you have a 25 per cent mandate on how child support money is spent for particular requirements that the children might have. But it just occurred to me that, on occasions when people are being denied access, perhaps that percentage could go up—the amount which you can dictate will be spent on the children’s needs. If there are continued transgressions and continued denial of access, the way to respond to that is to give you greater control by being able to mandate how the money is spent. What is your reaction to that?

Witness 1—I think it is a good idea. I have spoken to parents who are in a similar position to me and it is not the issue of not providing for your children, it is the very important issue of knowing that it is going where it should be—which is to the children’s needs. When games are being played, it seems they are being played parent to parent and the children are left out of the

loop. That is the important thing for me. For example, I would have liked to have been able to provide some extra curricular activities for my daughter, who was playing the flute before she left to go down and live there. However, as soon as she goes down there, her perception—because she has been told—is that they do not have enough money. When I tried to talk to my eldest child recently about his lack of contact with me, he said, ‘Are you paying child support?’ I asked him, ‘Is that what you’re being told, that I’m not?’ He said, ‘No, no, no: just that you’re fighting so you don’t have to.’ I said, ‘No, I’m fighting so that the formulas are adequate and that we are both looking after our children.’ The issue about this money is not to not pay it; it is to pay it so that the children do understand that you are a part of their lives still, that you are contributing and that you do care.

CHAIR—Thank you very much for coming along this morning.

[10.57 a.m.]

WITNESS 2, (Private capacity)

CHAIR—Welcome. The evidence that you give at this public hearing is considered to be part of the proceedings of parliament. I therefore remind you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. I remind you that 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. You are appearing before the committee today in a private capacity. In order to ensure your privacy and that of a third party is protected, we will refer to you by name in the hearing. However, in the transcript record which goes onto the committee's web site, we will refer to your evidence as being from a numbered witness. You will know your evidence but you will not be publicly identifiable to others. If you would like to make an opening statement, I will ask the members to proceed with their questions afterwards.

Witness 2—Over a 13-year period, access to my child has been continually denied me by the custodial father. Over that time, due to lack of contact, I have been unable to explain the reasons behind my absence to my child. Consequently I no longer have what could be described as a good relationship with my child, who is now 15 years of age. Over the last 13 years, every effort I have made to have those original court orders enforced has been thwarted by the very court that instigated them in the first place. In these years, the father has received a social security pension and remains unemployed. I am at his mercy as he uses this situation to maximise his financial status through the welfare system. As a result of his actions, I have been ordered by the court to furnish all my financial and personal details, including bank account numbers. This is not only unfair; it is also dangerous. I have not adhered to these orders as that would allow this man to have access to my personal documents. Therefore, I am liable for prosecution. Also bear in mind that this man receives legal aid at the expense of the taxpayer.

I also have four other small children and I receive minimum wages. I am trying to keep my home business afloat to be around my family. I now have to work the graveyard shift while my children sleep as the financial burden for us is too much. On top of that, I cannot apply for legal aid and cannot afford a solicitor—I represent myself. I believe the Family Court system is a destructive system and is contrary to fostering good a relationship between a non-custodial parent and their child. It works to keep them apart by supporting a parent who prefers to use the child as a weapon. The current legal system offers no motivation for custodial parents to take some responsibilities for themselves and promotes welfare dependency with the assistance from the non-custodial parent through child support payments. How can I get on with my life when I have to face a family law system that actually promotes vindictive behaviour due to the biased way it supports the custodial parent in the quest for revenge through welfare dependency and the denial of access for the other parent? As a non-custodial mother, I believe in the child's rights to have equal contact with both parents as well as with grandparents.

In regard to divorce, I also believe property settlement and future child support should be taken into account at the same time as property and assets are being divided. Shared parenting and a divorce settlement that considers not only the distribution of combined assets but also the

future cost of raising children before settlement is decided would be a much fairer outcome. This way, at the time of divorce, it forces both parents to take equal responsibility for their children. A fairer settlement will offer some hope for non-custodial parents who often lose their family home at settlement, who are then faced with child support payments and associated access problems and who, ultimately, cannot get on with their lives.

Mr CAMERON THOMPSON—Thank you very much for attending today. I wonder what your thoughts are on whether shared care arrangements are going to increase friction between expartners?

Witness 2—I do not believe so. I actually have another ex-relationship and another child to that relationship. We also went through the Family Court system. While we were in that system for the two or three years, our lives were miserable—for both me and my ex-partner. My son had to go back in his schooling and had to repeat. The Family Court officers were of no help whatsoever. It was not until a year or two later—when both of us grew up as adults—that we put what our child wanted first, instead of what we wanted. We now share everything. We share his life, his schooling, his grandparents. I have other children to a relationship and they all get on with each other. We virtually share everything. When he is in his father's care, what he decides is up to him; when he is in my care, what I decide is up to me. We come half way between and that is only for him. We have had to do that so he could have a good life and a good future. But while we were in the Family Court system, it was horrible, especially for him. It does work but the parents have to grow up and be adults about what they want for their children—not what they want for each other—and it will work. I believe that anyway.

Mr CAMERON THOMPSON—One of the basic problems we heard about before concerns people being far apart and the arrangements on which shared care operates. How do you structure care in relation to that child? Is it a week about thing?

Witness 2—Yes, it is one week on and one week off, bar a couple of days. He has a weekend with him and I have a weekend with him. The schooling is half and half. We share all the notes, the excursions and all the costs of everything. It has got to the stage now that I would prefer to ring his father up if I want to do something and I cannot look after him, and he will go home to dad first off. It is at the stage where his parents are actually giving my children little presents and toys at the time of turnover.

Mr CAMERON THOMPSON—In your case, you basically have a good relationship with the father. What about in the case where the relationship is not good? What about if you transposed that same arrangement into the other situation?

Witness 2—It would have to be made, I believe, at the time of divorce. It would have to be so because, if they cannot work it out, it would have to be put into effect so that in the future these issues would not be raised. They must be raised at the time of divorce, settled and put down in a plan. Whether both parties like it or not, that is what settlement is and that is what they are going to have to live with. They really need to make sure that they know what they are doing when they divorce—that is the way I see it anyway.

Mr CAMERON THOMPSON—Do you think the increased contact you would have to go through would possibly exaggerate it? That is what is being put to us.

Witness 2—No, I do not see that if you have got it all planned out. I do not have contact besides once a fortnight, if that, with my ex-husband, yet we share everything. I am in my second relationship—not the one to do with this, of course, but one that is working. But my ex-husband and I share everything. I do not talk to him very much at all unless there is something like an excursion coming up and we are sorting out what needs to be taken and what does not. That is about the only time. He is dropped off and picked up, and that is it. It was worked out in the beginning. It took us a while, but we worked out what we were going to do over the next so many years of his life until he is 15 or 16 years old and he can go off and do his own thing. That is the way it is.

Mr CAMERON THOMPSON—How could it then accommodate changes that occur, like a change in your life or a change in your ex-partner's life, in something to do with their job, their own new relationship or whatever? These are things that come along and put stresses on those sorts of arrangements.

Witness 2—That is very hard. We would like to move out of this area, but because my son has only got a couple of years left in primary school we have decided that we cannot. We are going to have to wait until he is in high school. I feel that once he is in high school he will be old enough to stay with his dad, if he wants to, every month. I am hoping that at the end of the month through the education department I can bring his schooling up. He can have extra time over the holidays. In particular he wants to stay here to be with his friends, but I am not prepared to leave him now. I and my husband now have to stay here for another couple of years until we are ready for him, but that is what has happened through me and his father divorcing in the first place.

Mr CAMERON THOMPSON—Like you said, you are doing a week on and a week off and all that sort of stuff. Do you think that as the child gets older, for example, you might say, 'Okay, let's move to a six-month on and six-month off type of thing or something like that'?

Witness 2—If he wanted that and he was happy with that, yes, I would do that. But it would be at an age where he is actually old enough to say, 'Yes, Mum, this is what I want.' He can do that now. He is 11 years old now. He actually told me, when I wanted to take him with me, that he did not want to leave his friends and he is happy here with his dad. He has got grandparents up here. He is happy to come up every month and spend the holidays. His father is happy because my son is happy with it. That is why it is working.

Mr CAMERON THOMPSON—Do you think that change in the way the shared care was rationed out would be something that you could accept and implement, and your ex-partner would be able to do that too?

Witness 2—I think so come this stage of the game. Beforehand, no, I do not think we could have. But now that we have grown up a bit and are seeing to the interests of our child first, we can, yes.

Mr CADMAN—You had a very interesting submission; I thank you for that. I never cease to be amazed by what people in this situation go through and how they cope with it. You say that you are facing the prospect of going to jail for failing to provide material on your income to your former spouse. Is that the case, or is it that you do not want to supply it to the court?

Witness 2—I am quite happy to supply it to the court. In fact I have already claimed for privilege and sent some financial information in an envelope so that my ex-husband and his solicitors cannot read it. On my other appearance I asked for claim for privilege. I was not actually given it, which meant that when I handed over the orders, as directed, to the court he could see all my financial details and bank account numbers. I actually had to serve on him all my financial and bank account details. I have not been with this man for 13 years, so I have not done that. I have gone against two court directions. I am told that, yes, I am facing liable prosecution for contempt of court and being placed in jail because I am not going to do that.

I love my son and I will give him my world, but after not being with this man for 13 years—and I am in another relationship now—he does not have the right to my personal information. I would rather sit in jail than do this and let him have that. Plus, understand that he has kept my son from me in this 13-year period, and I have hardly ever seen him. I do not even know where he is at times. No court, no law, no police have ever stood up and said, ‘Right, we’re going to get him back or we’re going to see what’s going on.’ I am here today because he made the application to the court. I could not get an application in the court. I was always told that he was too old, that it had been too long or that he had moved and they did not have an address and could not find him. Otherwise, if he had not done this, I would not be here today.

Mr CADMAN—You present a very compelling case about why this system needs to change. It appears to us that there is no possible enforcement.

Witness 2—No, there is not. There is no enforcement at all.

Mr CADMAN—What would have been sensible for the authorities to do to make your former spouse comply with access?

Witness 2—I do not know. You could say, ‘Fine him,’ but half of them, if they are on welfare, cannot afford to pay the fines anyway. It is a very good question, and I would really like to have an answer to it.

Mr CADMAN—It would help us if you could find one. What about removing any sort of obligation for you to pay any maintenance?

Witness 2—I do not see why I should be paying for my son when I do not have him. I have never had anything to do with his schooling. At times I have been lucky enough to have him for maybe six months at a time of his life. I have never received a pension, a family payment or money for the times I have had him, but that is mainly due to the fact that I was too scared to have him taken away again. I just opted not to take money for him while he was in my care. I think maybe that that suggestion would work.

Mr CADMAN—Have you made any request to see the financial details of your former spouse so that you can be sure of them?

Witness 2—He has actually handed them all over.

Mr CADMAN—He has?

Witness 2—He has done that from the beginning. I do have his—

Mr CADMAN—But have you had them recently?

Witness 2—Yes. I have the financial details of what he has handed to the court for the case that is coming up.

Mr CADMAN—Did that include bank account numbers and all of that sort of stuff?

Witness 2—No. There were no bank account numbers.

Mr CADMAN—Can you get the same stuff from him that he is demanding from you?

Witness 2—I do not know. I have not received the same things. All I have received are the details of what he earns, but I am to give him my bank account numbers, business account numbers, cheque account numbers and things like that.

Mr CADMAN—Have you asked for that same sort of detail from him?

Witness 2—No, I have not asked for that.

Mr CADMAN—It might be a bargaining point that you could think about.

Witness 2—Yes. Understand, I do not have a solicitor, so at the moment I am hoping I am doing everything right.

Mr CADMAN—I do have not any more questions. I just think your evidence speaks for itself.

CHAIR—You articulate the issues very well. In one family unit you are basically experiencing all the points that we have to cover. It is a bit of a problem for you, isn't it?

Witness 2—Yes.

CHAIR—You are experiencing all of the issues. The committee have gone down the pathway of exploring the opportunities of perhaps a tribunal. The reason why we have spoken at length about tribunals is that, in our observation—after listening to all the witnesses who have come before us and certainly after reading over 1,600 submissions, most of which I have read, and I am sure most of which the committee have read—it has been indicated to us that the family law process, the adversarial process, creates animosity between partners. It can break down a fairly good relationship, rather than establish a better relationship. Once solicitors become involved in the issue of contact and residency orders, it tends to deteriorate significantly. As you have said, you can go through a family law court process, pay squillions of dollars, not get on at all and be unable to come to an agreement, and then come to some sort of sense after a lot of pain, expense and emotional trauma. You then sit down, grow up, and do the right thing and come to an agreement about your child. Yours is not the first case that has been brought before us that has indicated that this is the way in which it works.

We are examining and discussing what it would be like if we were to put in place a tribunal of maybe three people—including a psychologist and a person with legal experience—with the capacity to sit two parents down and try to come to an arrangement without any lawyers, solicitors or adversarial processes at all. We are exploring saying to parents that, if they did that, they would not be able to seek solicitors' advice until after they had been through the process.

You believe that property, settlement, contact, the cost of raising a child and child support should all be dealt with at the one time, and we have discussed alternatives to that. If you had had a tribunal to go to that spoke purely of the interests of your children, the parenting of your children, the residency of your children and all of the issues associated with the way in which your child's life was going to change from nought through to, say, 16, and that you could come back to deal with any changes—for example, if you wanted to move out of the area, you could go back and have a negotiation—would that have helped in the difficult case that you are currently facing? Do you think that that would have been of more benefit and assistance than being in the adversarial scenario of the court?

Witness 2—Yes, maybe. You would not really know until you had tried it, tested it and seen whether it was going to work. Obviously the court system is not working and they thought it would. Solicitors are not any good. I am not disrespecting anyone there.

CHAIR—That is all right. We are not saying solicitors are not any good. For any solicitors in the audience, we are saying that at times it does not work.

Witness 2—Yes, especially when it comes to children, what they feel, their rights, and emotional parents.

CHAIR—You have been through the family law court process, you have gone past it and you have come back to it. You have formed a mutual respectful arrangement with your ex-partner, even though you do not have a lot of contact with him, and you have a very good sharing arrangement with your child. You are currently in a very adversarial process that is not delivering you any relationship with your child. Adversely to what you have said in your submission, do you see separating the issues of the child's wellbeing and future from any monetary arrangements like property settlements as being counterproductive? You state in your submission that you think they should all be dealt with together.

Witness 2—I think it should all be done together at the same time. I do not believe you should go through property settlement and six months or two or three years later still be trying to sort out the children. Maybe if the tribunal was set up, the issues of the children could be sorted out in one room and the monetary arrangements in another, all at the same time. Then two or three years down the track, the parents and the kids would not still be going through it, like most people are. I believe that as soon as a relationship ends, the issues need to be sorted out. I believe that it is good for children to be brought up with two parents.

CHAIR—Do you think if you removed the issue—if you just had a pure Attorney-General's or legal process that looked at the future of the children and parents together—

Witness 2—I think it would work.

CHAIR—outside of legal issues such as what your household effects were et cetera—they would be a totally different issue—it would have helped your situation, particularly in this difficult case that I am talking about?

Witness 2—Yes, I feel that maybe it would have. It would cut out all the rigmarole and separate the money issues from what is going on with the children, I guess.

CHAIR—I am only asking you for an opinion; I am not asking you for a qualified answer.

Witness 2—That is good, because my opinion is not too good on that one.

CHAIR—Because you have been through all of the issues, your situation is a good testing case.

Mr CAMERON THOMPSON—In this difficult case that you are going through, are there grandparents, and do they get access to the boy?

Witness 2—As far as my family is concerned, my mum has now passed away, but she never really had access to him. My father has not seen him in so many years he probably cannot remember what he looks like. As far as my ex-partner's family is concerned, they have all the access in the world.

Mr CAMERON THOMPSON—You were saying that the relationship with the children has come good, with regard to having had the time to grow up. When you say that, what was going on that was causing you not to focus on the kid? I do not want to get into the personal aspects of it, but did you have false expectations? On both sides of the relationship did people have different expectations about how they could manage—

Witness 2—In any relationship we all have different thoughts about raising our children. I think the biggest thing was learning that he was not all mine—he was half his father's—and I had to learn to live with that fact. I do not have the right to say exactly what goes on in his life, and that was very hard to come to terms with. But as soon as I could come to terms with that I could agree to his father doing this and doing that without being horrible to him and saying, 'No, it's not going to happen,' or freaking out because of something that was happening to my son. I had to learn that it is his dad and he loves him as much as he loves me. If anything, it would be unfair of me to stop him having that relationship with him. It works for him; he is so good now.

Mr CAMERON THOMPSON—Trying to leap to the other side of the story, was it the same thing there? Do you think that he had the same kinds of feelings? Was that where the impasse was, initially?

Witness 2—Can you say that again?

CHAIR—Which one do you mean?

Mr CAMERON THOMPSON—We are talking about the one where the separated relationship has matured and you now have a grown-up view about how it should all work. You have said that, from your perspective, coming to grips with the fact that you had to share the

management of the whole thing was very important. I am just wondering whether you can go to his side of the argument. Did he have the same kind of view, in your mind? Was he in a position in which he wanted to be able to say what goes?

Witness 2—I think so. I think that most of the time he wanted to say what was going to happen with his son and how it was going to happen and that I should do as he said. But over time we have seen that that does not work. It only causes fights and arguments.

Mr CAMERON THOMPSON—Okay. Going to the difficult type of relationship in which there is animosity, have you learnt any lessons about how we should set things up so that people can come to a more mature understanding of what is in the child's interest? You do not have to answer that if you do not want to.

CHAIR—No, not if it is too difficult.

Witness 2—It is a very big question for me to answer.

CHAIR—That is fine; there are no problems at all. Answer only what you are comfortable with and leave the rest. In your submission you have talked about the responsibility of the custodial parent to abide by access orders in return for child support payments. You are basically saying that contact should be linked with child support payments—that if you do not present your child for contact, you should be penalised for not doing so.

Witness 2—I think that if they are not given contact they should be penalised in some way. I do not know whether that will work because half of them do not have money anyway, but I think that some sort of penalty should be imposed on the parent who is not giving the other parent access. It is just not fair.

CHAIR—Thank you. We congratulate you on coming in this morning. Coming before a public hearing and putting your private matters before that hearing is a very brave and courageous thing to do. We appreciate it and congratulate you on the way in which you have handled the situation this morning and particularly your submission. Well done.

[11.24 a.m.]

WITNESS 3, (Private capacity)

CHAIR—Welcome. 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 do not refer to cases before the courts. You are appearing before the committee today in a private capacity. In order to ensure that your privacy and that of third parties is protected, we will refer to you by name in the hearing. However, in the transcript record, which goes onto the committee's web site, we will refer to your evidence as being from a numbered witness. You will know your evidence but you will not be publicly identifiable to others. I now invite you to make an opening statement and then the committee will proceed with questions.

Witness 3—I have various concerns with the whole incidence of divorce and separation. It is more around the education of the parties involved. The child support formula is very biased against a non-custodial parent. As for housing after separation, I am left with no money to rent a house, let alone buy another house after putting 13 years into a house. The ease of separation is another issue. It was so easy for my ex-wife just to pack up and go and take everything out of the house—all our money, the lot. All I was left with were bills. This makes it so hard to start again.

Mr CADMAN—You have presented a very interesting outline of your personal arrangements and described a breakdown of relationships with your children, which you find distressing. Was any consideration given to your role or the joint role you may have in the future of the children separate from financial arrangements or separate from where they were going to live?

Witness 3—My ex-wife basically does not want me to have anything to do with them at all. She does not want me to know where they live, to have contact or to do anything. It is only through courts and solicitors that I have been able to get limited access. My daughter will still will not come to me or speak to me. My wife has told my eldest daughter some horrible things and she refuses to talk to me now.

Mr CADMAN—So from day 1 was it the 80-20 formula—every second weekend and half school holidays—for you? Was that the way it worked?

Witness 3—Yes. That again leads to problems. Being an employee I am only given four weeks leave a year. All my leave is taken up trying to arrange time to get together with my children. My son comes over and he and I have an absolutely fantastic time together. He says, 'I would rather live with you, Dad,' yet my daughter will not speak to me because of what she has been told.

Mr CADMAN—Yet they both live with their mother?

Witness 3—Yes.

Mr CADMAN—No consideration was given to your role in where they might go to school, or any of those arrangements, in the break-up process?

Witness 3—My wife indicated that they would go to the same school and I was happy with that. The less turmoil for them, the better it is going to be for them. They are still with their friends and all that. My daughter had one particular friend who was very helpful to her in the early stages of our separation. As soon as they had a falling-out, her mother indicated to my daughter that I was the cause of her not being friends with her anymore, that I had destroyed the child's friendship, which was not the case at all. She just comes up with all these silly things and makes it hard for them.

Mr CADMAN—Do you feel that your payments of maintenance should be linked with your role in, say, parenting rather than in custody?

Witness 3—There certainly needs to be a contribution from both parties. Whether it should be linked with custodial arrangements is another thing. My wife has used it as a lever to a degree—I do not pay; I should not see the kids. It is very hard to say yes or no.

Mr CADMAN—Would it have been better right at the beginning to have had some sort of parenting plan that you both agreed to?

Witness 3—It would certainly be better, yes. I think a lot of the troubles were due to the lack of education on both sides. The breakdown of the relationship—

Mr CADMAN—You did know what you were getting into in this process of separation—

Witness 3—I knew absolutely nothing about it. All of a sudden my wife said, 'I am going. You have destroyed our marriage. That's it, I'm off.' I think that education for both parties along the lines of communication and that sort of thing would benefit—

Mr CADMAN—Of course, we blokes don't do anything to bring it on ourselves, do we?

Witness 3—Two people contribute to it, of course.

Mr CADMAN—But if there had been a period to work out what would have been a good plan, you would have welcomed that—now, with hindsight?

Witness 3—Yes.

Mr CADMAN—Would you have been in a frame of mind that could have dealt with it?

Witness 3—Yes, I believe so.

Mr CADMAN—That could be enforceable. How do you enforce something?

Witness 3—Again, it is very hard. I really do not know how you enforce any of it.

Mr CADMAN—Your submission is a very thoughtful one because you develop ideas about how things could be improved, but the enforcement part is the hard part, isn't it?

Witness 3—It is very hard, yes.

Mr CADMAN—Would you think that a mother should go to jail if she consistently flouted court orders?

Witness 3—I would like nothing better than to see my ex-wife in jail, but that is of absolutely no benefit to my children. My children need their mother. It is of no benefit at all to the children.

Mr CADMAN—If the system forced parents to think about the children rather than themselves, that would probably get a better result, wouldn't it?

Witness 3—I do not know whether it should force them to think about the children; rather it should educate them about their roles.

Mr CADMAN—There could be some pressure, because the settlement of property and all that could come after you have decided what you are going to do with the children.

Witness 3—It has. I have given in on the property settlement. What little money I get from the settlement is going to be spent in legal fees. I have put 16 years into our relationship and I will walk away with nothing. I was working 12 hours a day, seven days a week, to pay for our house and I have nothing.

Mr CADMAN—Could you describe briefly the way the system could be improved from your perspective? The break-up is inevitable, say, and separation is going to occur. How could things be improved so that it will be beneficial to the children first of all and then to both partners equally and fairly? If you can, be objective about it.

Witness 3—Again, the main thing is education of the parties so that they can communicate with one another for the betterment of the children.

Mr CADMAN—Do you need somebody in the middle who says, 'If you do this, that will happen; if you on the other side follow this course of action, this will be the result,' to let you know the downside?

Witness 3—I guess that might help. My ex-wife has some very strange ideas. She believes that everything she says should be what happens and anything I say is completely irrelevant. It is an agreement as long as we agree to her terms.

Mr CADMAN—We are still married and my wife has those ideas.

Witness 3—It makes it very hard. It comes down to the individual. I guess it is very similar to an alcoholic or a drug addict; if they are not willing to change their ways, they are never going to.

Mr CADMAN—Thank you. I do not know how to pursue this matter. You have been analytical and careful in your submission. It contains good ideas. The education factor is something that we think is important and it is good to hear you endorse that. Enforcement continues to be a real concern to us—that is, how people comply with the decisions of the court.

Mr CAMERON THOMPSON—I am interested in your comments about ease of separation. I understand what you have said about it. I wonder whether the system seems to encourage people to be selfish. There is talk now that we are in the ‘me’ generation; everything is about ‘me’ and all that sort of thing. If you have a selfish attitude, perhaps there are aspects of the system that provide an attraction towards separation. Would you like to comment about any of that?

Witness 3—I think my ex-wife saw it as one of her lifelong goals to have children and have no-one else to direct them. She had an awful lot of girlfriends who were single mothers and I believe they hinted along the way and told her how rosy it is on the other side. My ex-wife works for one of her relations. She gets an awful lot of money, which may or may not be declared; I have no idea. She seems to be doing very well. On top of that, she is getting a pension; she is getting money from the government for the two kids.

CHAIR—The family tax benefit.

Witness 3—Yes, that is it. She is laughing all the way to the bank, as opposed to when we were married and I worked seven days a week and we were struggling just to get food on the table. Now all of a sudden she is out buying anything and everything.

Mr CAMERON THOMPSON—Outside your personal experience, do you think that there is a wider application of that in the community—that there is an attraction to kick over the traces and that aspects of this do appeal?

Witness 3—The main contact I had with single families was through my ex-wife’s friends, and they all seemed to be very happy in the way they were. Most of them complained about their ex-partners as being rotten and all of that. That may have just been their lack of education or understanding.

Mr CAMERON THOMPSON—Going forward, one thing that concerns me about this current system, just in the evidence we have heard today, is the effect that these sorts of mind games must have in the kids’ minds during these times. Do you have any insight into the impact on the kids in terms of their attitudes towards marriage and towards forming a relationship that is obviously perceived by everyone else as being the most supportive thing for a child? Are their attitudes towards marriage undermined by their experience?

Witness 3—I think so. My wife came from a broken family—an abused family—and I believe that was a contributing factor to my relationship breaking down. It concerns me that the same may happen for my children. My ex-wife never saw that I had spoken to her about it, and she disregarded that. Now that I have such limited contact with the children, I worry that that may happen to their relationships.

Mr CAMERON THOMPSON—Given your wife’s background, do you think that she might have had a bit of a mind-set? You said your perception was that she wanted to have the complete say about what was going on. I do not want to personalise it too much but I am just saying that, if someone comes from an abused background, that may be a natural reaction.

Witness 3—Back in the days when all that happened, the education and counselling for people in that situation were not as good as they are today. Maybe they could be better still.

Mr CAMERON THOMPSON—Back at the start of your marriage did you ever give any thought to doing some sort of counselling? Prior to getting married, would you have thought of having some counselling about children and about life at that time?

Witness 3—No. Being a male you laughed at anyone that went to things like that, but recently I have been able to see benefit from it. Again, it is like being an addict of some form: you have to want to do it. That is the hardest part: people wanting to do it.

Mr CAMERON THOMPSON—Thank you.

CHAIR—I have been really impressed with your submission. Mostly when we have these hearings, everyone comes forward with the best interests of the children and they then proceed to talk about themselves—and that is absolutely understandable. All the way through your submission you have talked about the children. You even say that you would love to see your ex-wife incarcerated but, because the children need her, you would not want that to happen. You talk a lot about relationship education—about understanding relationships and what it means to be in a marriage and sharing and taking responsibility for children within a marriage—and say that this would perhaps prevent breakdowns of marriages and relationships later on, which is a really good point. You indicate that the high incidence of separation urgently requires attention in order to salvage it.

When you were working seven days a week, you were not aware that you were floating into difficulty and that your marriage was going to break down. You were in a different frame of mind. The leaver is always quite a few steps ahead of the left. That is normal, because the leaver has been, in their mind, leaving for some time. They do not think that everything is rosy one day and the next day they decide to leave. It is like a grief, a divorce or a process that goes on for some time. The leaver may very well have gone through every emotion and every process—right to the death and the grief in their mind—before they are gone. That generally gets them ready, unless it is a domestic violence situation whereby there is a critical factor of abuse that sends them packing and scurrying out the door very quickly.

How do you get across the issue of parental responsibility and caring for children's needs when one partner, the leaving partner, has gone through all the emotional trauma a long time before the left partner does? How do you come to terms with what is best for your children when you are on different emotional levels? Do you see that as a problem in your situation?

Witness 3—I guess it could be. Had I been a violent person or something like that, and if my wife had already come to terms with leaving and all that, it would have been a problem in that sense. But I did not have a lot of problem with it. It hurt me deeply, yes, but I can see that it would present a lot of problems in a lot of cases.

CHAIR—The question that I am really wanting to find an answer to—and you are not going to be able to give it to me, because it is just life—is that because of the different mental and emotional capacities of the leaver and the left, it is difficult to try to get them together to make responsible decisions about the future of their children. I have raised this question before, so you

will have heard this during the hearing: if you were to have a shared parenting, decision-making and guardianship role, would you be happier with the fact that you do not have a shared residence, provided you could have a proper say in the lives and the raising of your children?

Witness 3—I see that it could work. In my instance it probably would not. I leave for work at 5 a.m. and get home at 6 p.m., just doing my ordinary eight-hour day. There is no way that I could have the children for a week or whatever, unless I had someone else living with me—and then I am not seeing the children and the children are not seeing their father, and that is the whole benefit of a shared parenting scheme.

CHAIR—That is exactly the point that I am making when I am talking about shared parenting. In the terms of reference of this committee, we come to a position of whether there should be a presumption. The perception in the community is that shared parenting means that each person has to take 50 per cent of the time of the children. That is not what we are speaking of. We are talking about a presumption as maybe a negotiating point as to where we start. For those people who have been in violent and abusive situations, commonsense prevails. It is proven. They do not get that time with their child. For those people like yourself, who leave for work at 5 a.m. and return at 6 p.m., it is obviously not going to offer a quality of life as a shared parent residency arrangement. What I am actually talking about is shared parenting not shared residency. I am talking about shared parenting responsibility and decision making—not the residence of the child. Would you be happier, in the circumstances that you are in, if you were able to have an equal say about where your child goes to school, its religious upbringing, its emotional wellbeing, its sporting activities, its music capacity or whatever? Would you be happier if you could have that sharing?

Witness 3—Of course. I would love to have more input. My eldest daughter has been in the school choir all year, and the only way I found out was when my neighbour's children came home and said, 'We saw your daughter in the concert.' I did not even know she was playing a musical instrument.

CHAIR—So your issue is not about shared residency but about shared parenting. You recognise that you cannot have a shared physical residency, because of the way in which you work.

Witness 3—Yes.

CHAIR—But a presumption of equal or shared parenting—not residency but parenting decisions—would be ideal for you?

Witness 3—I think it is nearly a must for the welfare of the children and for them to get a balanced view on life. At the moment, my children get all their information from my wife. They get very little input from me.

CHAIR—Have you been through the family law court process?

Witness 3—I have not made it to the Family Court yet, but it may well come to that.

CHAIR—Are you going through an adversarial process at the moment, with solicitors and lawyers?

Witness 3—Yes.

CHAIR—Is it a costly process for you?

Witness 3—Yes. I do not have a total amount yet, but it is going to be quite costly.

CHAIR—In that, what are you seeking to achieve?

Witness 3—Only that I can speak to my children and see my children every fortnight.

CHAIR—In the process, at this point in time—I am not sure what part of the process you have been through—do you believe there has been an emphasis placed upon the parenting of your children, as against the residency of your children? I am talking about shared parenting decisions for your children. Have you had emphasis placed on that perspective?

Witness 3—It is sort of tied in. The main emphasis has not really been on residency of the children.

CHAIR—Is it about contact?

Witness 3—It is more to do with contact. My wife does not want me to know where they live or their phone number. She does not want me to be able to ring them.

Mr CADMAN—Are you under an interim order of any sort? What is the arrangement?

Witness 3—There is an interim order in place, yes.

Mr CADMAN—Is the interim order an 80-20 order?

Witness 3—I have no idea.

CHAIR—Do you get the children every second weekend and part of the school holidays?

Witness 3—Yes.

CHAIR—You said you cannot have anything other than that, because of your work commitments. That is not what you are seeking; you are seeking to be able to parent your children.

Witness 3—Yes, that is right.

CHAIR—Thank you for coming in. As I said, the courage being displayed by the individual witnesses in coming before this committee, and the public gallery, is extraordinary. We certainly appreciate it. Your submission is tremendous.

[11.48 a.m.]

SMITH, Ms Christine, Regional Violence Prevention Specialist, Violence Against Women Strategy (New South Wales Attorney-General's Office), Central Coast Domestic Violence Committee

CHAIR—Thank you for coming in this morning. I welcome you to today's public hearing. The evidence you give at this public hearing is considered to be part of the proceedings of parliament. I therefore remind you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. I remind you that the comments you make are on the public record. You should be cautious in what you say to ensure that you do not identify individuals and that you do not refer to cases before the courts. I invite you to make an opening statement, and I will then ask the members to form their questions for you.

Ms Smith—The reason for the submission was twofold. One was our concern, as a number of organisations that work with victims of domestic violence, that fifty-fifty joint residency will be really detrimental if domestic violence and the safety and protection of women and children are not to the forefront when decisions are made. We certainly have a lot of evidence, as the law exists now, that children are in unsafe custody arrangements.

The other one is that we think that the existing legislation already adequately provides for parents to co-parent. After separation, a lot of parents actually make their own arrangements about custody and parenting. Possibly, what might need to happen is that, for fathers who are not taking advantage of that arrangement, there is some education to encourage them to do that and to support them in undertaking co-parenting or co-custody—although I am not sure about co-custody, but certainly co-parenting. It is certainly within the act now and is adopted by a lot of people. Our primary concern with the proposed changes is that children need to be foremost in the decision-making process about what happens with their lives.

Mr CAMERON THOMPSON—Thank you for coming along. If you have been following the developments of this committee and its inquiries you will know that there is a lot of empathy and agreement with the idea that, even in the case of a rebuttable fifty-fifty arrangement, the first thing that would rebut anything would be any evidence of domestic violence. You say that adequate provision exists in the Family Law Act to enable shared parenting arrangements, and yet 95 per cent is sole parenting. Apart from banging a drum and saying, 'Please share parenting,' what can we do to make it so that we do get more people willing to take the shared parenting path?

Ms Smith—In terms of shared parenting versus shared custody, for me it is about education. We live in a society in which we traditionally think that women are the carers of children—and that is what we traditionally reinforce in our society—and men are the breadwinners and go out to work. What the previous witness said was a perfect example of how it seems to be very difficult for a lot of men who are working five days a week to share the care of their very young children, because they are just not there. The same applies to women who are single parents who have to somehow care for their children plus remain financially viable. It requires a societal change. What is it that might encourage fathers to play more of a role, to take an active interest

and to actually think that it is part of their role as a father to make joint decisions in the best interests of their child?

Mr CAMERON THOMPSON—Perhaps this is a point on which I disagree a bit with my colleagues, but I am really interested in the custody issue. I am not an acolyte of the idea that you can separate the two things. I think either you take the responsibility or you do not. Everybody is saying that there should be more equal sharing of all aspects of care, custody, parenting or whatever you want to call it. What can be done to the act so that that desirable trend—which is seen as being desirable not only by non-custodial parents but by custodial parents, according to various research that has been done by NATSEM and others—is encouraged?

Ms Smith—I am not sure it is the act that needs changing. I think it is about community education and awareness raising—it is about what we do and what messages we send to parents or our children, who are becoming parents, about their role. Isn't it a traditional stereotypical role that we may need to be challenging a little bit more if we want men to co-parent more? We would be co-parented within a relationship, by and large, you would hope, so in separation why does that stop?

Mr CAMERON THOMPSON—It occurs to me that the current system encourages two things that I really worry about: one is a perception among some people that they can absolutely dodge their responsibilities and the other is at the other extreme, where people want to completely dominate and manipulate the lifestyles of their children. Both of those things to me seem to be like the bunkers on either side of the fairway: we should be trying to drive up the middle.

Ms Smith—I am not really up on the ins and outs of the legislation by any means, but my assumption is that if you are concentrating on the best interests of the child then surely there is a compelling reason in the legislation to compel parents to co-parent. If the judge is making decisions about where these children are going to live and who contributes to what, I do not know that the law can do anything more than make those decisions. It is then up to the people within that agreement to fulfil those decisions, and if you choose not to fulfil them—

Mr CAMERON THOMPSON—But isn't it the law? The Family Court, which is making these decisions, is setting aside 95 per cent of cases that will have sole arrangements.

Ms Smith—No, that is not the case. In fact, since the change in the act in 1995—

Mr CAMERON THOMPSON—The vast bulk.

Ms Smith—there has been a 20 per cent increase in custody going to men.

Mr CAMERON THOMPSON—What is it, Kay? You have the numbers, haven't you?

CHAIR—Sorry, Ms Smith, I could not hear what you just said.

Ms Smith—Since 1995, my understanding is there has been an increase in sole custody going to fathers. Twenty per cent of orders are in favour of the father. I have a reference here.

Mr CAMERON THOMPSON—I am not arguing gender.

Ms Smith—Sorry, but you just said 90 per cent—

Mr CAMERON THOMPSON—Sole arrangements.

Ms Smith—Sorry, that was my misunderstanding.

Mr CAMERON THOMPSON—I am trying to say that we want a co-arrangement, not a sole arrangement.

Ms Smith—But is co-arrangement in the best interests of the child? There is also research that says that children who live 50 per cent of the time with one parent and 50 per cent of the time with the other parent, say per week, have a whole lot of problems with adjusting attachments to their parents. Their loyalties are obviously to both their parents, no matter what happens in the relationship between the parents. Children love both their mum and dad and they are going to do whatever they have to do, or have been told to do, to make them happy. They are not going to choose between one and the other. When my 19-year-old daughter heard about this, her immediate reaction was to say, ‘Mum, imagine living four days in one house and four days in another house? And what if Dad moved down to Sydney and we are on the Central Coast? How can a child live a life like that?’ I think there are enormous practicalities that come into the issue of joint custody and co-residency that are very unrealistic for the child. That is where, I guess, I am coming back to thinking that if we start from the proviso, ‘What is in the best interests of the child?’ then it is probably up to the parents—

Mr CAMERON THOMPSON—Yes, but you do not want to see anything done specifically in the act to bring this about; you just want some—

Ms Smith—No—we have not even got to talk about the impact on families with domestic violence and the impact of domestic violence on children.

Mr CAMERON THOMPSON—I am not talking about that; I am just talking about the ones for which there is nothing like that.

Ms Smith—I think there are parents who do that—they might live three houses away and they have separated under conditions where they are able to communicate with each other. I know people who have done that and they do co-parent, but I think it is a really unrealistic expectation for probably the majority of families for all sorts of reasons, including financial—the cost of running two households. And where do children go to school if you live much further apart than up the road from each other? The other part is probably the emotional impact that it has on the children. I think evidence from research shows that it works in very few cases.

Mr CAMERON THOMPSON—Sorry, that what works?

Ms Smith—Co-residency—50-50 residency. I think the evidence from research papers shows that it does not work that well for children, whom I guess we are concerned about, aren’t we?

Mr CADMAN—Are you able to produce that evidence and research for us?

CHAIR—You do not have to do it now—you can take that on notice.

Ms Smith—Okay.

Mr CADMAN—This is a hard area. As it is state law, it is difficult for us to really delve into it too deeply. But evidence has been given to us that AVOs are sometimes issued as a form of weapon in the psychological war rather than for any real substance of violence. You are involved in this area all the time. I just wonder how we sort this out. The last thing anybody wants is for kids or women to be placed under violent threat. What is your experience in this area?

Ms Smith—My experience is that that is actually a myth. There is also evidence from the Family Court that—and again, I have this information with me on one of these pieces of paper—AVOs are taken out as a means to gain advantage in family law proceedings in only about three per cent of cases. So, whilst it seems to be a general impression that this could be used as a tool, the evidence does not show that at all.

Mr CADMAN—Would you describe for us what happens in New South Wales if an AVO has to be taken out? What is the process that must be gone through?

Ms Smith—It is done either through the police or the chamber magistrate at the local court.

Mr CADMAN—So somebody that feels that there is violence goes to the chamber magistrate or to the police?

Ms Smith—The onus is that you must actually be in fear for your safety. So you have to demonstrate that you are afraid and fearful for your and your children's safety.

Mr CADMAN—How is that done?

Ms Smith—It is on the story that people tell about their fear for their safety. I guess that when you work with victims of violence it is not that difficult to see that story. I do not know about elsewhere, but an AVO is not a criminal matter. So an AVO can be taken out against another person and it is not a criminal matter. It is not until that other person might breach that AVO that it then becomes a criminal matter. So, in terms of demonstrating fear, you do not have to give concrete evidence as that is difficult. You do not have to have somebody who has seen another person threatening you with a gun or a knife or saying, 'I'm going to kill you,' to demonstrate your fear. You can talk about those things. You can say, 'I've been beaten up 10 times and he's threatened to kill me if I leave' or that he will kill the animals or take the kids or a whole range of other things, and that that is a fairly normal process, and you are pretty well quite fearful about what is going to happen.

Mr CADMAN—So what you are saying is that, because there are no criminal implications of an AVO for the person against whom it is raised, the substance of the evidence from the person providing evidence of violence is not strong. You do not have to produce supporting evidence or bring a friend—it can be just on your statement?

Ms Smith—Yes. But that statement has to be reasonable. I could not just walk in and say, 'I want an AVO.'

Mr CADMAN—If it is not tested, why couldn't you? There is so much stuff out there on this issue. I need your help to get to the bottom of it.

Ms Smith—I would like to invite people to work in this area. On the Central Coast, one in four women and one in five children experiences domestic violence. We have had over the last few years a number of murders—

Mr CADMAN—Wait a minute—

Ms Smith—Can I just complete what I am saying.

CHAIR—Mr Cadman, let Ms Smith finish, please. She is the witness.

Mr CADMAN—I just want to ask whether those one-in-five and one-in-four figures are based on AVOs or whether they are documented through courts—that is all.

Ms Smith—The one-in-four figure is documented from the *ABS Women's Safety Survey* that was done in 1996. It was a huge survey in Australia and it was large enough that you can take those implications—

Mr CADMAN—That is Australia wide, not on the Central Coast?

Ms Smith—Could I finish my statement, please?

Mr CADMAN—Yes, okay.

Ms Smith—Thank you.

CHAIR—Please, Mr Cadman.

Mr CADMAN—I am just trying to understand as you go. I will save up my questions.

Ms Smith—This is fairly difficult for me.

CHAIR—Mr Cadman, please let Ms Smith finish and then you can ask your questions.

Ms Smith—That is the national survey. Statistically you can apply that across the board. On the Central Coast there are new police commands but until recently there were 80 police commands in New South Wales. Tuggerah Lakes Police and Brisbane Water Police commands have the second and third highest incidence of domestic violence in the state. The only evidence of domestic violence that we can collect on the Central Coast is based on police statistics, which are based on the incidents that police go to, and court statistics, which are not publicly available. Those statistics demonstrate that we have the second and third highest incidence of domestic violence out of 80 police commands in New South Wales. In DOCS we know that up to 80 per cent of the children that are notified as being at risk are so in relation to the impact of domestic violence. There is a lot of evidence about the really high incidence of domestic violence here on the coast. There is also evidence from the courts that the Central Coast courts are in the top 20 of the state in terms of the AVOs that are issued, assaults and breaches.

Mr CADMAN—I am pleased you interrupted because you did answer my questions on the way through. Thanks for that. You have taken your statements from police reports and it is very helpful for us to know that.

Ms Smith—The other thing you might like to know is that in other research it has been identified that women get to see police only 20 per cent of the time in domestic violence incidents and 10 per cent of the time for support services. If our official statistics are from one in four cases then that is only one in four that we have concrete evidence of. The incidence is really quite large and I would challenge—

Mr CADMAN—How can you dispel this myth? I do not know whether it is myth or truth. How do you make the AVO a more reliable instrument? Have you thought about that?

Ms Smith—We know it is reliable in some respects because it keeps 70 per cent of women and children safe. In some respects we know it is reliable and in some instances it is not. I have a paper here.

CHAIR—Thank you, Ms Smith, we will see you afterwards. Mr Cadman has unsettled you with his determined investigative questioning. I will get your paperwork after you have finished with the questioning.

Mr CADMAN—It is an area where we need some help.

CHAIR—We are certainly very keen, too. Christine has already taken that on notice; she is going to see you after you finish. I would like to have the evidence you are speaking of, as well. You indicate in your statement that coparenting is already available and that perhaps everything is covered under family law and is available now. Again we do not talk about the cost of accessing that. That is extraordinary, and you may not get a suitable outcome. I just indicate that you crossed the pathway when Mr Cameron was asking questions when you immediately assumed we were talking about males. Shouldn't a non-residential parent, either male or female, be entitled to coparent their children?

Ms Smith—Absolutely. I do not know a lot about the legislation. Isn't that within the legislation?

CHAIR—It does not seem to be happening. You say it is in the legislation but the questioning that we have had this morning is quite clearly articulating the fact that it is not being offered during that process. It is not being enhanced and it is not the experience of the people who have appeared before us—not just this morning but right across the nation. It is not being offered there. I know it is available in the law but it is not being offered.

Ms Smith—Who isn't it being offered by?

CHAIR—Obviously by the family courts and by solicitors. What I am saying is that, while you are putting a lot of weight on the fact that it is available, there is no emphasis being put on it, so I just make that comment to you. You say that maybe fathers need counselling to know what their rights are.

Ms Smith—I didn't say that.

CHAIR—You didn't say fathers needed counselling to know what their rights would be?

Ms Smith—I thought education would be more or less—

CHAIR—Yes, education. I am sorry; it was that maybe fathers needed further education to understand what their rights were.

Ms Smith—Yes.

CHAIR—Okay. If the intent to parent is not being offered, maybe it is those in the family law courts and adversarial processes that need educating, rather than fathers.

Ms Smith—Possibly. I would also encourage our family law processes to be far more aware of domestic violence, which is really the issue that I am more knowledgeable about.

CHAIR—We all recognise family domestic violence occurs. Nobody on this committee would even begin to advocate that we do not believe that domestic violence occurs. Every single one of us believes and knows that it occurs. Not one of us would want to put a child or a partner, whether it be female or male, affected by family violence—because males are affected by family violence as well—in a position whereby they are going to be in some danger. I find it difficult to be continually making this comment, because it is commonsense to me, but I say to you that you say from your statistics that one in four women experienced some form of violence. That means three out of four do not. You say one in five children witness or experience violence in their home. That means four out of five children do not. Should we be making laws for five per cent of the population that adversely impact on 95 per cent of the population?

Ms Smith—I do not think that is what you are proposing, and I am not proposing a law that totally caters to victims of domestic violence. The committee is proposing that any changes that are made fully consider the impact of domestic violence on children and the impact of custody arrangements and joint residency arrangements on children. If only you knew what the impact is on children having to live with a parent that has been extremely violent, emotionally or physically, in their household. They have to go and spend time with that parent because that has not been recognised by the Family Court, which is exactly what happens now in a number of cases. That is what the submission is about: that in any changes made to the law full consideration be given to the impact of violence on children in joint parenting and co-custody.

We know that does not happen now. We know that there is increasing violence with contact visits as the violence has not been recognised. So when the mother is having to hand the children over for contact there is increasing evidence of violence there. The child is again traumatised. They are again having to go and stay with a parent that has been violent. This is the basis of our concern. It is not about all the other issues that happen for three-quarters of the percentage of the population. We are saying that, in any changes that are to be made, full consideration of the impact of violence needs to be considered.

CHAIR—Absolutely.

Ms Smith—But it is not actually happening now to a great degree, so our concern is that we continue to advocate for that happening.

CHAIR—We certainly appreciate that because, as I said, the committee are very, very concerned about that and so we are taking that on board. But what you are basically saying is that in the areas where there is not domestic violence proven or demonstrated, which you have indicated with your own figures is fairly significant, then there really is—

Ms Smith—I really do not think that I can comment about that. Unlike other people, I have not come here because of my concern about that; I have come here really because of my concern about considering the impact of domestic violence on children.

CHAIR—So, in order that we make decisions, we should include and at no stage discount the real incidence of domestic violence; we should be cognisant of that fact.

Ms Smith—Also, the cases that are likely to go to family law courts are those really difficult ones that are unresolvable and therefore more likely to have violent backgrounds. We already know now that family law does not necessarily consider that.

CHAIR—We appreciate that but, again, we have a full inquiry to look at. I was trying to work out whether you are commenting only on those areas associated with domestic violence or generally on presumption issues. You are not commenting on that, which is fine.

Ms Smith, thank you very much for coming in this morning. We do appreciate it and we do apologise if you feel that it has been a traumatic experience; it was not meant to be. However, in order for us to be able to make the best decisions, we have to be investigative in our questioning to try to understand what the real issues are out there and perhaps we have to at times be devil's advocates to pull those out. We would appreciate getting your material in response to Mr Cadman's questions.

Proceedings suspended from 12.16 p.m. to 12.45 p.m.

SWINBOURNE, Ms Kathleen, President, Sole Parents Union

CHAIR—Mr Ticehurst, if you would like to sit up here, that is quite fine. Thank you very much, ladies and gentlemen—again, we appreciate you taking the time out to come in this afternoon. I welcome Ms Swinbourne 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. 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. If you would like to make an opening statement, I will then invite the members to proceed with their questions.

Ms Swinbourne—I will keep the statement brief. I would like to thank the committee for their time, and I would like to thank the three members of the committee who did turn up today for coming. I would, however, like to express my disappointment that the tight time frame means that hearings must be held on a Sunday, a very child unfriendly day—I have had to leave my three children at home—and that this inquiry could not be extended to somehow take these things into consideration. Sticking to the terms of reference, I would like to reiterate that in any Family Court proceeding to decide residence and access the overriding factor should be the best interests of the child—nothing else; not parents’ rights, not grandparents’ rights, but what is in each individual child’s interests.

There have been a number of inquiries in the last decade looking into the possibility of a rebuttable presumption of shared custody in family law. All of them have decided against it. There was one in Australia by the Family Law Council in 1992, there was a report to the US congress in America in 1996, and last year the Canadian Department of Justice had their ‘putting children first’ inquiry. All three of those found against a rebuttable presumption of joint custody.

Our submission sets out a number of things to be taken into account when deciding access arrangements, and there are already a number of things within the Family Law Act that we consider should remain there. The Canadian putting children first report actually has a very detailed list, and it is our contention that that should be taken into consideration by this committee when they are deciding anything. That includes who, other than non-parents, should have contact with children. On the matter of child support, NATSEM recently did a report finding that child support has been the biggest factor in lifting children out of poverty. Sole Parents Union would hate to see this reversed. We would like to, when considering child support, say that the child support must be assessed on people’s ability to pay and to care for their children. Payee income should not be considered at all; it is not relevant in how the other parent can care for their children.

CHAIR—Could I just say at the beginning that, even though Sunday is a most unfriendly day to be holding a hearing, if we were to hold the hearings on weekdays only it would prevent and preclude a lot of people from being able to attend, because of their work commitments. We find that, in order to enable as many people as possible to attend—and particularly to attend the community statements segment—it is beneficial if we can hold it on a day that they can come.

Ms Swinbourne—I work full time and I study full time. I would rather take a day off work than take a day out of being with my children. It appears that members of the committee feel the same. There are only three here today out of a nine- or 10-member committee.

CHAIR—I appreciate your comments but, as I say, it does enable a lot of members of the public to attend when they might not be able to attend on a weekday.

Mr CADMAN—In your comments about parenting arrangements, you make the statement that the court looks at these things. It is our evidence that—although it may be in the act—the court does not.

Ms Swinbourne—I am sorry, but where does that evidence come from?

Mr CADMAN—It does not look at parenting arrangements. It tends to go this way: it starts by looking at the custody arrangements or where the residential arrangements will fall, and the assumption is generally that it will be an 80-20 rule. The Chief Justice himself, in his evidence, recognised this as being a problem, so it is not a hearsay thing. It comes from the Chief Justice himself. He struggles with this process and the court struggles with this process. There is an assumption out there that the shared arrangements will be full residency to one parent, and every second weekend and half of school holidays to the other. After that arrangement has been settled, very little attention is given to parenting processes—the things that you mention here as being important, such as children's schooling, leisure activities, ability to foster relationships. In the court process, none of that seems to gain any attention. Have you got any suggestions about how that could be improved? We are worried about that aspect in particular.

Ms Swinbourne—There are a number of things that people can do to care for their children. One is when custody and access arrangements are made. Remember we are talking about the Family Court here; we are only talking about those cases that go to court, because what we are talking about is putting this into family law. We are not even looking at how parents who do make arrangements between themselves can best care for their children. I think that is a big failing, although not necessarily of this inquiry, because the terms of reference are about family law. If we are looking at parents' relationships with their children, we need to extend this far beyond family law and we need to be looking at all families, not just sole parent families. I think one of the misconceptions here is that sole parent families are necessarily fatherless. I know my children's father finds it an extremely insulting insinuation that, because he does not live with his children, he is somehow a deficient father. If we want fathers to be involved—and I assume that is what you are talking about here—

Mr CADMAN—We have had evidence this morning—I do not know whether you were here or not—about two cases where mothers are the non-custodial parent, and they are stressed out to the same degree that any male is. So it is a non-gender issue.

Ms Swinbourne—It is not a non-gender issue. I am frankly sick of hearing that this is not a gender issue. It is a gender issue. In most cases, sole parents are mothers. What we are talking here, and in the entire discourse surrounding this—and it was in the Prime Minister's first statement—is fatherlessness. Maybe we have a lack of communication here. Are we talking about fatherlessness or are we talking about how to care for children after divorce?

Mr CADMAN—I asked that question of you. Have you any idea how that process of parenting could be improved? I am waiting for an answer.

Ms Swinbourne—How can non-custodial parents stay in touch with their children—is that the question?

Mr CADMAN—No. It is about making decisions about the wellbeing of the children. It used to be called guardianship and it relates to where they go to school, what time they will stay out at night and all those sorts of things.

Ms Swinbourne—In order to improve those sorts of parenting practices you have to—

Mr CADMAN—It is about the input of both parents. I think every study I have seen indicates that the input of both parents very significantly improves the—

Ms Swinbourne—You have to improve the communications between both parents. I am not sure you can legislate to do that. It is not about who the children live with; it is about being able to communicate if you want to make decisions together. Quite frankly, I do not know how you are going to improve that. You are not going to improve it by bringing in a rebuttable presumption of shared custody. The research in the United States shows that that does not happen—not where it is court ordered. Where parents can agree on the best interests of their children—where they can work together—they do. They do not end up in front of the court. What we are talking about here are only those cases that go to court. They are parents who are very unlikely to agree on anything.

CHAIR—Could I just clarify something? On what basis do you make the statement that we are only looking at Family Court cases?

Ms Swinbourne—The terms of reference of the committee.

CHAIR—Explain to me what part of the terms of reference.

Ms Swinbourne—The terms of reference of the committee are—

CHAIR—I understand what they are. I have them in front of me but I am asking you to clarify on what basis you say, from the terms of reference, that we are only investigating the Family Court.

Ms Swinbourne—The terms of reference state:

(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;

CHAIR—That is right. It does not mention—

Ms Swinbourne—You do not need to rebut anything if you are not in front of the court.

CHAIR—I am sorry; could I just say to you that in no circumstances does it say those children in family law court cases. We are dealing with the respective time each parent should spend with their children post separation. There is no stipulation in there that we are only looking at family law court cases. So you have presumed that. In fact, all the hearings to date most clearly have indicated, from most of the committee members, that we are looking at the entire population. Most of the questions that have been raised and asked have been concerned with how the entire population is dealt with—not the five per cent of cases that go to the family law court. I would just like to clarify that as we go through because that is not the charter of the committee. I just want to put your mind at rest.

Ms Swinbourne—The people in cases that do not go to court actually work out the arrangements themselves.

CHAIR—We recognise that but the problem that we have is that they work them out generally under the auspices or the shadow of previous family law court decisions. The majority of the people who have come before us who have worked them out for themselves—we have had many witnesses before who have worked out their cases for themselves—are not happy with their arrangements. But they have done so because they did not have enough money to go to the family law court, they have used up all their money since going to the family law court or they just accepted something because they were told that that is what they would get or that they should not fight any further. I just wanted to clarify that because I think there is a misconception that we are dealing with five per cent when indeed we are dealing with 100 per cent.

Ms Swinbourne—So we are not looking at putting this into family law?

CHAIR—We are looking exactly as the terms of reference indicate: what other factors should be taken into account in deciding the respective time each parent should spend with their children post separation. That is what we are talking about. We are talking about children post separation, whether it be through a family law court process, an arbitrated process, a mediation process or whatever. We are talking about what is the best thing that works and what time they should spend and whether there should be a presumption. I just want to be very clear about what the committee is looking at. I will now move back to Mr Cadman.

Mr CADMAN—Thank you. I thought that you had started your questioning.

CHAIR—No. I am sorry; I cut in on you.

Mr CADMAN—I am happy for the time being, thank you.

Mr CAMERON THOMPSON—We have had an absolute tonne of stuff. We have got a pile of submissions higher than this desk, and we have been hearing about all the research and everything. One of the things that gets me in the research—I cannot remember if it was by NATSEM—and which I hear from the groups who are concerned with this issue goes back to your question about it being a gender issue. Kay was saying that it was not. You could argue backwards and forwards about which party plays a major role. But everyone associated with that research, including sole parent mothers, talked about fathers having more involvement. To take

your hypothesis for a moment that it is a gender issue, if we want to increase that involvement—and we have got an act that is consistently, according to all those people, failing to produce that kind of outcome—what kinds of things should we be doing to make it improve?

Ms Swinbourne—First of all, setting social policies that will help improve fathers' involvement with their children prior to separation, not just post separation. We should be looking at things like parental leave, specifically paternity leave, following the birth of a baby. We should not be paying family payments on the basis of keeping one member out of the work force. They should be divided more equally to allow both parents time in the work force and to allow both parents time with their children. We should be looking at working on the industrial relations in order to improve career paths for part-time workers so that families can be better off with two parents in the work force and two parents caring for their children. That way all contribute much more equally. The odds of having that relationship continue following separation are higher.

What happens now is that family payments, specifically family tax benefit part B and the baby bonus, are paid if one parent stays out of the work force. It sets a trend of one parent as a primary carer and the other parent in the work force. If the family needs more money, it then becomes more feasible for the parent who is already in the work force to work longer hours and, therefore, to have less time with their children. We should be looking at trying to reverse some of those trends. That is for a start; it is actually working on it prior to separation, not just post separation.

One of the things that the Family Court does, and it is one of the reasons you get this 80-20 split, is look at current arrangements. Quite often, it is in the best interests of the children to disrupt them as little as possible. No one is arguing that divorce is not traumatic, that it is not upsetting for everybody involved—it is. It is very a very difficult time. But the children are the ones that you should be concentrating on, to make things as easy as possible for them. Quite often 'as little disruption as possible' means trying to maintain the care arrangements that they already have. If the care arrangements are more equal, the odds are that that will continue following separation.

Mr CAMERON THOMPSON—I took on board what you said before about having three kids and having things to do. I have three kids and I have things to do. But the hypothesis here seems to be that, because I happen to be working and I am here, when it comes to allocating my ability to be involved with my kids—if we ever did separate—I am in the back seat.

Ms Swinbourne—Yes.

Mr CAMERON THOMPSON—Why should that be? Isn't that making a judgment about me and my relationship?

Ms Swinbourne—No, it is not. It is not putting you in the back seat; it is putting your children in the front seat, and that is the way it should be. What happens is that, if your children are used to this primary care arrangement and are happy with that, your children should have some say in allowing that to continue. Being a parent is hard work. It does mean giving things up; it does mean making certain arrangements. I am not going to judge your arrangement with your children. I work full-time and I am here too. I am not going to say that that makes me a bad

mother, any more than I am going to say that it makes you a bad father. But what it does, and what should happen, is put the children's best interests first.

One of the problems that should be looked at with residence and access arrangements is their flexibility, and maybe they should have a time limit or be reviewable. Children's needs change as they get older; their desires change as they get older. What suits a three-year-old is not necessarily going to suit a seven-year-old or a 13-year-old. There should be a possibility to review access arrangements as children get older.

Mr CAMERON THOMPSON—I strongly agree with that. There are two elements that really worry me, and everyone has heard me say this again and again. One is when the system encourages people, or makes it seem to them that it is very easy, to completely duck their responsibilities. That is one side of the equation. On the other side, as far as the children are concerned, the thing that really worries me is that people want to monopolise their time and love. Both of those things really concern me because they show just a complete obsession or self-concern. That is not the children first; that is the children last. From my perspective, the outcome of this has got to be that we get the people who are trying to duck and the people who are trying to monopolise and we bring them back towards a centre position where they are prepared to accommodate. The research, as you know, does show that the ideal is if the kids can have the love of both parents. Do you accept that there are problems with both of those things?

Ms Swinbourne—Definitely. No-one would say that there are not. But I am also saying that those problems usually start well before those couples split up, where you do have one parent who, while they cannot abrogate their entire responsibility, will take responsibility for earning income and will not contribute a lot to parenting. You might have the other parent who does not take responsibility for earning income but does everything for their children. That is often why those arrangements continue post separation. It is prior to separation that you need to start working on that.

Mr CAMERON THOMPSON—I understand that, but isn't that selling short the potential for the breadwinning parent to restructure their life to give the same sort of love? If you have been in a relationship where from day one, through the acquiescence of both parties, you have both agreed that this will be the arrangement you will have, the thing can go along and then perhaps things get rocky. If you are of a mind either to duck your responsibilities or to want to monopolise the children, doesn't that immediately create the situation where you say, 'Okay, we can set this up that way'? If you were the stay-at-home parent, that would be the last time you would actually want that guy—or that woman, to knock the gender thing out—to be more involved. Wouldn't they then tend to lock them out?

Ms Swinbourne—I guess it depends on the individuals. I would also say that in the circumstances where you had a parent saying, 'Well, now that we have separated I am going to change everything,' what we would need to remember is that we are not just talking about the parents, we are talking about the children. So maybe before you say, 'Okay, you are going to change everything; here's your kids, fix it up,' you could say, 'Fix it up; then come and talk to me about what access custody arrangements we can have.'

Mr CAMERON THOMPSON—But if you are talking about changing everything, even in those circumstances where you have got a breadwinner who is working 10 hours a day they are

still coming home and seeing those children most nights. They are not seeing them once every fortnight and half the school holidays. They are seeing them much more commonly than that, and the relationship with the children is much more developed. Isn't it a huge change to then basically scrub them out almost completely?

Ms Swinbourne—Again you are talking about the parent, not the child.

Mr CAMERON THOMPSON—No, I am talking about the child.

Ms Swinbourne—If the children are seeing their parents for an hour or so before they go to bed, who is caring for them? If you are working 10 hours a day and you have got your children 50 per cent of the time, who is caring for them?

Mr CAMERON THOMPSON—But, hang on, you were talking about the parent then.

Ms Swinbourne—No, I am talking about the children. Who is caring for the children?

Mr CAMERON THOMPSON—No, you are saying, 'Who is caring for the children?'

Ms Swinbourne—Yes, I am talking about the children. Who is caring for them?

Mr CAMERON THOMPSON—You are not saying: 'Who are the children with? Who are they enjoying their relationship with?'

Ms Swinbourne—But if you are at work they are not with you. Who are they with? That is a really good question: who are they with?

Mr CAMERON THOMPSON—I am saying the relationship is changing from one where they are seeing their parent, this breadwinning parent, for an hour or two every night—every single night. Well, maybe they miss a couple.

Ms Swinbourne—I think the better people to ask that of would be the children. What do they want?

Mr CAMERON THOMPSON—Yes. So why doesn't the system do that?

Ms Swinbourne—The system is supposed to do that; the system should be asking children. One of the problems is—and I would say it is the main problem with the Family Court—that children's views are not taken into consideration often enough. But it should be the children's views and not the views of the parents that are taken into consideration. From a parent's perspective, I would also say that just because children say they want something does not necessarily mean they get it. Children's views should be given greater credence in the Family Court; children's safety and children's needs should be paramount. But you cannot place children's best interests paramount by introducing one form of parenting as necessarily being the ideal; it is going to be different in each case.

Mr CAMERON THOMPSON—I think people have hung an awful lot on the fifty-fifty division. With that kind of vision our only choice will be between fifty-fifty or nothing. From my

perspective, shared arrangements where there is a better balance than there currently is are far more desirable.

Ms Swinbourne—I have to agree. I find weekend access far less than desirable. It needs to be addressed. I do not think it is in anybody's best interests. Saturday morning till Sunday afternoon is not parenting and does not encourage parenting. It encourages—and, I am sorry, I will use dads—a Disney dad mentality, where you are turned into an entertainment director rather than being a father. There is no need for you to be responsible. There is no need for you to be involved in your children's lives other than in taking them out. It is a terrible situation. I do not like it and I do not know very many people who do. This situation has come about not just through the Family Court but because it has been extremely convenient. When you are working five days a week and you have a parent at home full time, it becomes easier to take your children every second weekend from Saturday morning till Sunday afternoon. It does not interrupt your life, and that is how it came about.

I would like to see that changed. I would like to see a situation where fathers were taking not just more time with their children but more responsibility for them. And it is generally fathers who have these sorts of arrangements. Where it is mothers: yes, for them as well. But I would like to see a situation where non-resident parents are taking more responsibility. Weekend access needs to be addressed, most certainly. I suggest—and I have suggested this to many people and it just seems to be discarded every time—that weekend access should be in most circumstances an assumption of 3 o'clock Friday until 9 o'clock Monday. You then have to either change your work arrangements or organise child care for your children. You have to wash school uniforms over the weekend. You have to ensure that they get back to school on Monday morning. You have to pack lunches. You have to get them to sport and everywhere else. You have to involve their friends in their lives and in your life. It creates a situation where you need to be responsible rather than an entertainment director.

The idea of going from 24 hours every second weekend to 50 per cent is just ludicrous. Shared custody of 50 per cent does not suit most people, and that is why most people do not have it. An extension of the hours of weekend access would be a start.

Mr CAMERON THOMPSON—If that is your view, could you tell me what you think would be better? Is it just purely the weekend arrangement or would you like some other? What do you think should be more the norm? As I have said, across the board people have said that there should be some kind of greater involvement.

Ms Swinbourne—The reason we have across-the-board weekend access as the norm is that it suits most people, and that is how it has come about. I would not like to make any presumption about any one type of parenting necessarily being in children's best interests. I think we need the situation where parents can make their own decisions and that, where matters go to court, the court can decide each case on its merits, starting from the best interests of the child rather than: 'We'll go fifty-fifty unless you can show me why I shouldn't.' It has to take into consideration the best interests of the child but, where parents can agree, that they do.

Mr CAMERON THOMPSON—At the moment we have a list of things that supposedly account for how to think about the interests of the child. Do we need to look at that and change it if it is producing an outcome that is less than optimal?

Ms Swinbourne—Now we are talking about family law and the Family Court. If we are looking at that then we are talking about what the Family Court does and about family law. Maybe we need to put other things on that list to be taken into consideration but we do not need to start from a presumption that says: ‘This is where we will start,’ and move from there. That list must be the overriding factor in what courts look at, and that list must not contain any presumptions of what people think are the best parenting options.

Mr CAMERON THOMPSON—Do you subscribe to the idea of the ideal thing being both parents being involved with the child?

Ms Swinbourne—Most definitely. Another thing I would subscribe to is that, where there is evidence of violence, there should be a rebuttable presumption of no contact. Children’s safety must be paramount.

CHAIR—You have referred to gender and said that this is all about gender. What is the make-up of the Sole Parents Union?

Ms Swinbourne—It is predominantly women. We do have male members; we also have members who share custody. We have children of sole parents as members.

CHAIR—What would be the ratio of males to females in your membership?

Ms Swinbourne—It would be 96-4 maybe. There are not that many male sole parents out there.

CHAIR—I wanted to ask because I like to ensure that we get a good cross-section of views.

Ms Swinbourne—Most sole parents are female; it should be reflected in the membership of the organisation.

CHAIR—We have had a lot of female non-resident parents in front of us who experience exactly the same problems as male non-resident parents. The issues and concerns we have been speaking about here are not gender based. The people come before this committee all experiencing the same problems whether they are a non-residential female or a non-residential male. That was the point Mr Cadman was trying to make. If you look at the way in which a child grows up, say from 0 to 5, they may go to a preschool or to child care or whatever, and then at five years old they go to school. In your evidence you say, ‘Maybe if they get an hour before bedtime’—

Ms Swinbourne—No, that was in response to a question about someone who works 10 hours a day.

CHAIR—Yes, but if they do get an hour, it is not really caring for the child. Do you know what I mean? It is not really being the carer of the child. However, if you have a nine to five mother or father and you have a child in school from nine until 3.30, you start to even the odds about who has time with the child. You might have an arrangement until the child is five years old, but then when it goes to school between nine and 3.30 you are really starting to get a

balance in the amount of time that each parent could spend with the child. Would you agree with that?

Ms Swinbourne—It does not show up—

CHAIR—I just want you to answer the question.

Ms Swinbourne—I am answering the question. It does not show up in any of the evidence on time use. I would love that to be the case—that would be ideal. But it does not show up that that is what people are doing.

CHAIR—Why is it, do you think, that that is not showing up—that when we go back and look at residence orders when a child goes to school, consideration is not given to the fact that this child is now in educational care between nine and 3.30 in the afternoon? A father or a mother finishes work at 5 p.m. so they could have quite a significant amount of time with their child and could maybe be recognised as having primary carer status.

Ms Swinbourne—I am sorry, I thought I answered that one. It does not show up that that is what people are actually doing in their lives. None of the time use data and survey data from the ABS and the University of New South Wales actually shows that this is what people do. So, when they do go to court, the court looks at what they actually do rather than what they ideally should.

CHAIR—Again, I am asking why you think that, when a child starts school, the amount of time that then becomes available between each parent is not taken into consideration. You are saying that it does not show up, and I am asking why it isn't. It should be showing up.

Ms Swinbourne—But they are not doing it—that is, parents are not spending equal time with their children. That is what I am saying is not showing up in any of the data. You are taking an ideal hypothesis here where both parents are working nine to five, both parents can spend equal time with their children and both parents do. Those cases are very few and very far between. Most of those do not go to court; they decide things themselves and make the best arrangements. I am not going to comment on individual cases in court and how the courts make their decisions—

CHAIR—No, and I do not want you to and I am not asking you to.

Ms Swinbourne—but people are not doing that prior to separation—and really, they are not; very few of them are. If you think that those things will show up in court if people do that, we should be encouraging people to do that.

CHAIR—You say that they are not there prior to separation. Just say that a mother is home full time with a child. When that child goes to school, she does not hear from that child between nine and 3.30. But say a father has a nine to five job—and a lot of them do have a nine to five job. When that father comes home from work, if he spends an hour and a half or two or three hours with his children prior to bed or whatever, then they are really equal parenting.

Ms Swinbourne—No.

CHAIR—Okay, they are not equal parenting. I find it hard to understand why they are not equal parenting.

Ms Swinbourne—First of all, you are making a number of assumptions here. Assumption No. 1 is that while the children are at school their mother is not doing any parenting. That is not necessarily true. Secondly, you are making the assumption that, when the father comes home from work, even though the mother has actually had them for an extra two hours—and I do not how many more hours in the morning—that they do the same things. It does not happen. Mothers do the parenting and fathers do the playing.

CHAIR—I must have a very weird family.

Ms Swinbourne—I am sorry, you are taking your case as the usual.

CHAIR—You are categorically indicating that that does not happen. I am saying that I must have weird family.

Ms Swinbourne—No. What I am saying is that it does not happen in the majority of cases. You yourself said with the last witness that we are not setting policy for the minority; we are looking at what happens in the majority of cases.

CHAIR—But I am not so sure that the evidence is there that says that your reading of it is the majority.

Ms Swinbourne—I am speaking about the University of New South Wales and the ABS. I am sorry, but they are very reputable and credible sources.

CHAIR—You have a very extensive submission, and it does try to cover all the issues. If we go to the family law issue, a lot of people that have come before us have been through the Family Court process. They have spent in excess of \$200,000 and they have no more money left to spend. It has been an adversarial process, and they are getting further and further apart. When they have both run out of money and cannot pay any further, they then come to a conclusion on their own, without a Family Court process. So they then sit down and say, ‘We’ve run out of money, we’ve bashed ourselves and each other senseless, now let’s sit down and make an agreement.’ Time and time again, that comes before our committee. I am saying that they have settled outside the Family Court process. The Family Law Act provides that each parent has parental responsibility. It goes through the children’s right, as in your submission, to know and be cared for by both of their parents as well as decision making and parenting rather than residency. Do you know what I mean? I am talking about parenting decisions, not residency decisions.

If in fact that is all there and all that has been put into place, why is it that we have statistics saying that most parents would like their partner to have more time with their children, that most children want to have more time with each parent and that most people would like it to be different, yet we have this outcome that states that none of those statistics are adding up? If those practices are put into place, why is it that when people have exhausted all their money and they have not had an emphasis placed on a parenting role—not a residency role; the parenting decision role—they come out of the family law court process, finish with it and then go and

decide on it themselves? If it is working in the family law court scenario, why are people so dissatisfied?

Ms Swinbourne—My question would be: why could they not decide that before they spent \$200,000? Because you cannot legislate for people to get on. It does not matter what system you put in place, you are not going to get everybody liking it, you are not going to get everybody satisfied with the outcomes and you cannot do anything to make some people agree. Some people will go to court and spend \$50,000 on lawyers in order to stop their ex getting \$40,000. Do not ask me why, but they do it. They hate each other so much that they would rather see each other suffer. You are not going to fix that by putting a list in the Family Court. Apart from not taking children's views into consideration, the second biggest problem with the Family Court is the people who go to it. It is not the court, it is the people who turn up in front of it and will not agree regardless of what you do. You can mediate until the cows come home, and they are still not going to agree with each other.

CHAIR—I think that is very pertinent, because I am trying to find out where you have a principle like that in your submission, because it seems like you say that the family law court is the panacea, it does all of these good things and we should not be looking at any change.

Ms Swinbourne—I never said that the family law court should not look at any change. I said that we should not be introducing a rebuttable presumption of shared custody in family law.

CHAIR—If we were to look at a tribunal position, whereby we were removing the adversarial process out of the whole equation, and it dealt entirely with parents, children and family life—a unit of a family and how they were going to exist from, say, the birth of a child until it is 16 or 18 years old—would that be a positive role?

Ms Swinbourne—Ideally, yes. But look at the history of the Family Court. The Family Court was set up to be less adversarial, it was set up to mediate and it was set up so that people did not feel like they were going to court. Unfortunately, a couple of Family Court judges tended to change that. People who were adversarial turned up before the court. It is not just the system that is adversarial, the people who turn up are adversarial. They want justice. It is often seen as wanting justice. This person left me; they did the wrong thing; this person had an affair—whatever it is: this person did wrong by me, I want to see justice done. I think we can see that in some of the things that are coming out in the Family Court. The Centre for Independent Studies put out a report, and I know some groups are calling for a reintroduction of blame in family law. Family law introduced no-blame divorce in order to get over this adversarial process. It has not worked so far. I do not know. The Magistrate's Court was also set up to try and make things less adversarial, and they are now looking at setting up another tribunal to try and make things less adversarial. I really do not know the answer to that one. I wish I did.

CHAIR—Thank you very much. I thank you for coming in this afternoon and taking the time away from your family. I understand that it is an imposition, but we appreciate your coming in.

[1.29 p.m.]

GOWARD, Ms Prudence Jane, Sex Discrimination Commissioner, Human Rights and Equal Opportunity Commission

CHAIR—Welcome. Thank you very much for coming along this afternoon. The evidence that you give at this public hearing is considered to be part of the proceedings of parliament. Therefore, I remind you that any attempt to mislead the committee is a very serious matter and could amount to 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 court. I thank you again for taking the time and travelling to attend before the committee this afternoon. Would you like to make an opening statement, after which I will invite the members to proceed with questions?

Ms Goward—The Human Rights and Equal Opportunity Commission welcomes the notion and the interest in the idea of joint custody if it means equal involvement of both parents in the upbringing of their children. This is for the benefit of men and women and, particularly, of children so, when it comes to it, we are looking primarily at the interests of the child. As you have observed before, obviously it is in the interests of the child to have strong, loving and positive relationships with both parents, and it is obviously in the interests of men to be able to have a strong parenting role. It has been very sad historically to see how that has been undermined in the last 200 or 300 years to the point where fathers are so often absent fathers.

From the point of view of women, the 84c in the male dollar earning gap for full-time workers is primarily explained by the greater parenting responsibilities that women bear. This gap can really only be breached if we have a more equal sharing of parenting responsibilities, particularly post separation, where so often, as Kathleen Swinbourne has pointed out, it is the mother who ends up as the sole parent. A mother's capacity to earn an income, be financially independent and enjoy a decent, dignified retirement is necessarily compromised, so it is certainly in the interests of women to encourage joint custodial arrangements and joint parenting responsibilities.

Having said that, there are complications in imposing an assumption of fifty-fifty—some of which members of the committee have already referred to. For example, if we are talking about fifty-fifty parenting, do we mean somebody like a federal member of parliament wanting to be a fifty-fifty parent? If you impose that on a member of parliament, do they take their two or three children up to parliament for the week that it is sitting in Canberra when it is their week on? Is that what we mean by fifty-fifty parenting? Or do we say that they are entitled to hire a babysitter for the week they are in parliament and to see them on the weekend, when in fact there is another parent with whom they also have a strong and positive relationship who could have been there every night that that person was away?

Is it imposing a rule, as distinct from saying to a court—or, as you just suggested, another sort of tribunal: 'Let's assume this is what we want. How do we get there? If we can't get there, where can we get to'? Those are much better and easier questions to answer. But to start imposing a rule of fifty-fifty is going to be an incredible imposition on a lot of men, who, if they

wanted to do it properly, would have to give up work, or give up full-time work. As you have probably seen from the evidence from those with voluntary fifty-fifty arrangements, that is almost invariably what has to happen: both parents compromise on their job and on the amount of hours they have to themselves and they share that with their children instead. That is not easy to do, particularly, as our submission makes clear, in a society in which men are, really, still expected to be the primary breadwinners and to express their love for their family through their capacity to support them financially rather than their capacity to be with them. You can see from the figures how rare it is that men take unpaid parental leave, how little paid parental leave is available, how very few part-time fathers are in the work force, as distinct from part-time mothers at 57 per cent. So the example you gave earlier of the child being at school while 57 per cent of mothers can often be home—even though they are working—after school because they are only working part-time. They often go for school hours type jobs.

We do not really encourage that for men. A man who does that is seen by his employer, often, as being less committed. A man can say: 'Hang on, I'm going to be in the work force until I'm 70. What is wrong with me working part time or three-quarters time so I can be with my children for the five or 10 years that they need me to be in after school to go and do football training with them?' My father and our generation of fathers were very involved with their kids' scouts and football and that sort of thing. It does not happen anymore. A man that says, 'I want that,' is often put on the backburner, dismissed or discouraged in other ways from doing it. We have to change the whole way we see fathering. I think it is a bit late to start at divorce, because that man who genuinely wants fifty-fifty then has to go to a workplace and say, 'I want fifty-fifty parenting, so I want to stop this and I want to change my hours.' The employer says, 'If that is how you feel, get out.' So I think we have a lot of thinking to do about it. I take it that your committee is establishing that this is a very complex and sensitive cultural issue as well as a legal one.

Mr CAMERON THOMPSON—Thank you very much for your submission. When I look at this whole problem I am struck by the fact that so many people want to see more involvement by fathers. I do recognise that the women who have been along as non-custodial parents have also expressed the same kinds of concerns. Overall, people want to see their involvement lift. They are only talking about post separation. That is a survey about people talking about post separation. Many fathers would argue fairly strongly, I think—and many of them would probably want to front up the way you suggest to their boss, even knowing that they might lose their jobs—for the opportunity to have the kind of involvement that they seek with their children. I think there is a great need to look at issues prior to separation and, obviously, there are things on the table to do with that. We are looking at what happens after separation. That is the preoccupation of this committee. We have not set out to try to delve down too much into what happens prior to separation. I think we would have things that we would want to say about that, but our primary thing is: what happens after that? That is really when the rubber hits the road, I think. In your view, is there anything wrong with trying, in isolation, to lift that involvement of fathers after separation?

Ms Goward—Given all the usual provisos about violence, drug abuse and all the other things that either parent can be guilty of and are not good for kids to be around—and I do say 'either parent', for women are as capable of alcoholism, drug abuse and child abuse—of course not. The issue is: how do we get there? As I said at the outset, sometimes the difficulties in beginning with a fixed position like the one that the committee is being asked to address can actually take

you further away from it. For example, it might discourage marriage, because de facto arrangements would put children and parents beyond the reach of the Family Court, which is ultimately going to be the legal arbiter of this. You have to start with something that is actually doable in people's eyes, and inflexibility is the first thing that makes people jack up, because they cannot fit it. But I agree with you in principle that of course we should be having more fathers involved. The more hard-bitten feminists would say: 'The more, the merrier. The greater the involvement, the better.'

Mr CAMERON THOMPSON—I have a pet theory about all this—and this is my concern—which is about people who either think they can dodge all their responsibilities or want to manipulate or—

Ms Goward—Possess.

Mr CAMERON THOMPSON—Yes. These seem to be the two—

Ms Goward—Extremes.

Mr CAMERON THOMPSON—Yes. The system at the moment, in my humble perception, seems to give an inordinate amount of encouragement to both of those extremes. There seems to be myths that apply to both of those things that are really very retrograde. I am just wondering if you have any perceptions about how we might try and target those things.

Ms Goward—First of all, I think the fact that most agreements or arrangements are voluntary and are not imposed by the Family Court is a great sign. You might say that is because they are fearful that the Family Court opposes will impose a particular outcome and so they fit in with it, but that is not really how voluntary arrangements ever work. If that bloke accepts one weekend in two and half of the school holidays because he thinks the Family Court is going to impose that on him then he has really got very bad legal advice.

Mr CAMERON THOMPSON—What if he has run out of money and she has run out of money? What if they have both run out of money and they have got nowhere left to go?

Ms Goward—Then you can certainly work it through voluntarily, because she has got no more power and she cannot go to this court which you feel is biased in her favour and get an agreement that suits her and not him. So, if there is no money and they cannot go to the Family Court, really they are equal in power and they are more likely to enter an arrangement that actually does suit them. I think most men agree to the custody arrangements that you have described because it does suit them and because they do see their primary responsibility as financially supporting their families. With 55 per cent of graduates now female and earning potential now rising, this generation is going to change and you will find men feeling they can work part time or that they only have to have the secondary income earning job in a family, because the woman will be the primary income earner. But at the moment that is not where it is at. So I think that between those two extremes we have a lot of people who just do the commonsense thing that fits them.

The women at the extreme, who possess the children as revenge for all things they feel their former partners did to them, will make every access visit a trauma. I have heard all the stories—

and so have you, I know. We have all heard them; I have been involved in them. That is a terrible revenge to seek not just on that bloke but on your own children. I am not sure that imposing a fifty-fifty involuntary arrangement makes that any better. You all know how easy it is to wind a child up—you do not need a court order to do it; you just have to cry every morning when you think the bloke is going to come and make it very clear that daddy appearing makes mummy sick. Everybody in this room would know that story. They can all do that, and vice versa—men just have to make every appearance with mummy an event for their own personal distress. So this will not fix one parent possessing their children to take revenge on the other. What fixes that is something more towards a conciliation process, a talking process, that forces parents who want this course of action to actually talk through their anger and the way they are doing it.

Mr CAMERON THOMPSON—I suppose the theory I have come to is that having arrangements that require people to communicate—and communicate more regularly—is a more effective way of bringing things to a successful resolution and achieving a happy outcome for the kids than one that encourages them to hide from each other. What worries me about this thing now is that I think it builds up walls and spears with people in separate camps firing at each other over the parapets.

Ms Goward—I agree, but just having fifty-fifty access does not fix that.

Mr CAMERON THOMPSON—I am inviting you to suggest what does.

Ms Goward—I have just begun to describe what I think does. It has to be, first of all, confronting both parents with that possibility: that they are actually taking revenge on the other through money, access, the way they treat the child, whether they send the child back with dirty clothes every time they come back from an access visit or whatever it is they do. It is a matter of being involved in a tribunal or some sort of arrangement where they are forced to talk those things through instead of ringing the police or ringing for a court order of some sort, which, as you say, stops talking, does not force them to grow up—and they are supposed to be grown-ups here—but allows them to pursue their revenge on each other. Fifty-fifty access does not fix that, but better communication certainly would.

Mr CAMERON THOMPSON—Someone used the term ‘grow up’ this morning.

Mr CADMAN—What about the idea of fifty-fifty in decision making about the wellbeing of the child rather than residency?

Ms Goward—I think fifty-fifty in decision making is, again, a good idea. It is very difficult to define. As my husband once said, ‘How come you get to make all the little decisions and I get to make the big ones but we just haven’t had a big one for 20 years?’ What is a decision? Sometimes it is day to day. The child comes in after school with an earring in his ear, she has not made that decision.

Mr CADMAN—But we are told that the Family Court is already required to look at this but it does not.

Ms Goward—If the parliament has passed a law that requires the Family Court to look at it then the Family Court has to have that pointed out to them. I would not have thought that

necessarily justified further legislation; it just means that the Family Court's administrative arrangement has to be looked at.

Mr CADMAN—That was done in 1996 and the court so far has neglected to pay attention to those issues.

Ms Goward—You are the parliament. You run them. If you have not made them listen to you—

Mr CADMAN—There is a bit of a separation between the parliament and the courts though.

Ms Goward—Yes, but there are laws that you make.

Mr CADMAN—The law is there.

Ms Goward—Mr Cadman, what are you asking me to do?

Mr CADMAN—I am asking your opinion about the presumption of fifty-fifty rebuttable on the parenting.

Ms Goward—On decision making. I am saying it is difficult to decide what a decision is sometimes when you are looking after children every day. When that kid walks in at night—

Mr CADMAN—Perhaps you could go to the Family Court and ask them to decide.

Ms Goward—You have said that. But you know and I know that that is absolutely impractical and unworkable. You cannot ring the Family Court at six o'clock at night when she will not do her homework or she will not help you do the washing up because she says, 'Dad says I don't have to when I'm here' or vice versa.

Mr CADMAN—But you think that it is a good starting point?

Ms Goward—Or vice versa. It is just as possible that the other happens. I am saying you cannot get the Family Court involved and who would want to? It is not a Stalinist state.

Mr CADMAN—Okay, if it is a possible starting point for decision making on residency then I think most people would consider residency to be far more difficult and complex and believe that it relates to lifestyles. I wonder whether there would be a greater willingness to look at those practicalities if you were to say to people: 'Make your starting point fifty-fifty, but we know that that is not going to work. You work out for yourselves what is the best interest of the child.' Instead of getting the court or some authority acting as a de facto parent, ask the parents to look at this practical problem and work on this until they have a solution.

Ms Goward—As I think we all agree, most agreements are made without the Family Court. Parents do come to those agreements. Mr Cadman, if your theory is that if we just say, 'You have to go fifty-fifty,' and more fathers would put their hands up—

Mr CADMAN—No, I did not say that, you are putting words into my mouth.

Ms Goward—No, I do not mean to. I am trying to understand what you mean.

Mr CADMAN—I said let us make a starting point for your discussions as parents as to what is the best interest of the child and make your starting point in your discussion that you will share residency. I think we all understand that that is basically impractical. The presumption out there that people are working on at the moment, however, is an unwritten presumption that it is 80-20.

Ms Goward—That what is 80-20?

Mr CADMAN—That is every second weekend and half of the school holidays. That is what the whole community is acting on at the moment. People are not going to court. People are not confronting their responsibilities because the evidence we are getting says it is assumed that it is going to be 80-20.

Ms Goward—Again, if that is the concern, Mr Cadman, then the obvious answer is a major advertising program so that parents do know that they have the right to fifty-fifty. If you think everybody out there thinks it is 80-20, one answer is to change what they think and you have the money.

Mr CADMAN—I am suggesting as an alternative to that 80-20 unwritten presumption, a starting point of fifty-fifty, not mandated, because I am afraid you are presenting a case that it is going to be a mandated fifty-fifty. That is not, as I understand it; it is rebuttable. The word is rebuttable. That is, if it is impracticable then you can say: 'I can't do that. I'm working full time and the most I can accept is 20 per cent and I want to voluntarily decide it is going to be every second weekend and half the school holidays.' I think that is a better outcome than a forced outcome.

Ms Goward—I am sorry but I am not a lawyer, so maybe I do not understand. What do you mean by rebuttable if, in the end, what you are really saying is that we all understand that people have reasons why that cannot happen? That is the case now.

Mr CADMAN—No, it is not.

Ms Goward—The legal position now is that it is joint guardianship.

Mr CADMAN—I am sorry but that is not the way it is coming through in the evidence that people are giving us. That is not the assumption under which the community is working.

CHAIR—I think Mr Cadman is saying that that is not what is being offered to them and that is not what is being emphasised.

Ms Goward—By whom?

CHAIR—By the family law court system or by the legal profession. Even Chief Justice Alastair Nicholson indicated that there is difficulty in being able to define this very clearly.

Ms Goward—It is just obvious. If there is a false assumption that arrangements are supposed to be 80-20—and that is obviously and demonstrably false—then it is the responsibility of the government to ensure that the population knows that. But once you say, ‘We’ll do that by advertising a rebuttable presumption of fifty-fifty,’ the first question is, ‘What does that mean?’ You then have to say, ‘It means that, if there are practical reasons why you can’t do it, like she has gone interstate, it will not be fifty-fifty.’ That is basically what we have now in practice. In other words, I think—

Mr CADMAN—Exactly. We are trying to get to the same point.

Ms Goward—We are, but I think perhaps by a different route. I do not think saying to the public, ‘It’s fifty-fifty rebuttable,’ will help them understand that they have a right to seek joint custody arrangements. The first question they will ask is: ‘What does rebuttable mean? I can’t do it.’ Most men will say they cannot do fifty-fifty.

Mr CADMAN—That is very valid.

Ms Goward—All you will do is confuse them and anger them, and you have raised expectations.

Mr CADMAN—That is a very good comment.

Ms Goward—As for an advertising campaign that says, ‘We want more parents to believe that they have an equal share in this and that they should be seeking’—

Mr CADMAN—It sounds a bit like a weight loss program, doesn’t it?

Ms Goward—In a democracy you do not have a gun; you only have persuasion.

Mr CADMAN—My next questions are on detail. You mentioned the cost of raising a child.

Ms Goward—I raised it very vaguely in my submission.

Mr CADMAN—We have been trying to get to that, and that is the best that you are aware of?

Ms Goward—Yes. It varies, in other words. If you want to send your children to private schools and you earn a load of money, it can cost you a fortune. If you send them to public schools and public hospitals and do not provide any after-school care, you can get away with it for \$170 a week.

Mr CADMAN—Enforcement has become a matter of contention, where people in the psychological warfare use children as part of the weaponry and fail to live up to court orders. The courts have struggled with enforcing what they want done. We have given consideration as to what the difference might be between the cost of raising a child and the lifestyle expectation payment. I think you used the terms also in your submission. People ought to pay according to their capacity to support their children, which presumes a proportion of their income.

Ms Goward—Yes.

Mr CADMAN—That might be an amount way beyond the actual cost of raising a child or it might be a lot less. If it is beyond the cost of raising a child, it seems to me that there is an element there of money which is paid above the cost of raising the child that could be used by the legal processes to say, ‘If you’re not going to comply, you’re going to lose part of this money.’

Ms Goward—In the submissions to cabinet, we did make the point that we do not have a clear picture on people who breach court orders in terms of access or payments. It would be very useful for the committee to commission some research. Like you, I have held hearings into various things, and the submission evidence is very strong and confronting. I do think that broader research would be useful. When it comes to the cost of a child, I think that is a very difficult one. Yes, you can get away with it for \$170 a week. If you just pay the minimum, you can get away with it. But what sort of people are we? Aren’t we aspirational for our children? Don’t we want them to have as much as we can give them?

Mr CADMAN—Most of the evidence is along those lines.

Ms Goward—Yes. I cannot believe parents not wanting their kids to have after-school lessons of some sort—to go to Cubs or to a cricket camp if the kid is good at cricket. So, yes, we can get away with it cheaply, for as little as we can, but I would have thought that most parents do not want to do that.

Mr CADMAN—No, they do not.

Ms Goward—They want to get the buzz out of seeing their child grow, be happy and have an opportunity. So how much you give a child is a very difficult question.

Mr CADMAN—The evidence that we have had seems to indicate that children are least likely to be threatened with violence by their biological father. Yet constantly we hear about increased violence. My impression is that it can come from a number of quarters. It can come from non-biological relationships or established partners. Things become terribly messy and people get angry. It is not really the biological parents who are the trouble; it is others who come onto the scene. Is that the way you see things?

Ms Goward—The figures show that overwhelmingly the stepfather, the non-biological father, is the most violent, followed a long way behind by the biological mother, who obviously has a lot of time and opportunity. That is followed not far behind by the biological father. Last in the race, way back in the back streets, is the non-biological mother, the stepmother. I suspect that is because of the access issue, because they are usually not living with the custodial parent. I think the evidence is there that violence is a problem, particularly with stepfathers. I do not know that you can do anything about it legislatively except to make it very clear as a court and as a society that any man or woman who either is violent towards their children or enters into a relationship with somebody who is then violent towards that child has themselves been irresponsible as a parent.

Mr CADMAN—I am a little concerned that in our discussions—not this one, but in the whole affair—biological parents are being tagged as naturally aggressive towards their children.

Ms Goward—Are they? I thought it was the stepfather. That is the thing that hits the headlines.

Mr CADMAN—I agree. That is absolutely right.

CHAIR—Ms Goward, in the scenario that we have in front of us, from the evidence before this committee and in the 1,600-odd submissions that have been given to this committee, we have a problem in that people are unhappy. There are people who are currently in shared parenting arrangements who are unhappy about the amount of time and the cost that it took to get there. They are unhappy with the Family Court system. There are people who have been outside the Family Court system and who have come to arrangements where they do not get on at all, they do not even speak to one other, but their shared parenting arrangement works very well because they have the interests of the children at heart. It works very well, even though they do not get on and they do not share a lot of things. We have also heard people, whether it be the female or the male non-resident, complaining that contact is denied them. They turn up to collect their children, the children are not there and the child has been told that daddy or mummy did not come. It is manipulated dreadfully.

There has been concern and criticism about the Family Court, the adversarial process and the legal profession—that once they are involved it seems to go downhill and people move further and further apart. It is only when they leave that process that people finally come together. It is difficult not to say, ‘Why did you go down that pathway?’ It is hard to see why they go down the path to the Family Court and spend that much money when they go and sort it out. Why they did not do that in the initial stages is a question that really should be answered.

Where do you go when you break up? What is the first thing that comes to mind? Relationships Australia and all the relationship counselling services offer very good services, but the foremost thing in people’s minds when they are about to break up is that they have to get legal advice. So they tend to get directly into this system and they really do not know what else is available or how to get out of it. This is particularly so in country areas, where you may not have agency assistance available to you. Services may be a long way away, so you cannot really access them, but you might have a resident solicitor that you can go to. You may get a family law practitioner who says, ‘Go and have mediation,’ and do all those sorts of things; or you may have another solicitor who does not practise any of those cautionary guidelines and just starts on the pathway to extraction.

There is a perception out there that it is going to be 80-20 at best. Most people who have come before us have been given legal advice that ‘You’re not going to get it. You are only going to get 80-20, so accept it.’ There is a lot of misinformation out there. You say to Mr Cadman, ‘Well, if there is a perception out there that it is 80-20, then you, the Commonwealth, should get out and fix it and advertise it.’

Ms Goward—It sounds like a target audience might be the legal profession.

CHAIR—Exactly. I asked this question this morning of one of our witnesses: is it the dads that we should be educating or is it the legal profession and the Family Court that we should be educating? They have the tools—they have the legislation and the ability to be concerned about parenting issues rather than residency first off. Aside from residency, let us get the parenting

issues right. You say that it is hard to split decisions. We had one gentleman here this morning who knows he cannot have fifty-fifty residency, because he works from 5 a.m. till 6 p.m. He just wants to be involved with his children's schooling and be able to talk to them on the phone, but his ex-spouse does not want him to have contact with the children.

There are a lot of unhappy people out there. We are not just responding, as it has been put to us, to an aggrieved male audience who do not want to pay child support and who want to manipulate things. We do have a major problem: the children are unhappy because they want to see more of their individual parents; the women are unhappy because they want their children at times to be seeing more of their ex-partner; and the men are unhappy because they want to see more of their children. We have all these tools available to us. Why isn't that happening? The question that I want to ask you is this: do you see the current system as meeting the articles of the Convention on the Rights of the Child, about which you have alluded to throughout your submission? Do you see it as genuinely delivering outcomes—not just the written word that says, 'The Family Court must do this, this and this' or 'This is the system under which you should be operating outside of the Family Court'?

The last witness said that we were only talking about the Family Court—we are not; we are talking about the entire issue of parental separation here. Let us be realistic: any decisions regarding parental separation happen with an overshadowing of a family law court process. Those are the only guidelines available, basically—'If you go to the Family Court, this is what will take place.' A lot of that is taken into consideration. Are the articles of the Convention on the Rights of the Child being met in outcomes rather than in written form?

Ms Goward—That is a very big question, of course. I would say two things: firstly, obviously on the evidence being given to you by parents and interested lobby groups, there are grounds for concern; secondly, the voluntary outcomes that the Family Court does not have anything to do with presumably tell you that there are a lot of families that are making this work. If anybody is failing Australian children, it is their parents: it is people who would rather fight each other to the last cent—the mother who says 'Tell him that the kid has gone away for the weekend,' when they are out the back or the bloke who rings up at nine o'clock on Saturday morning and says, 'I can't make it.' For every one case of a woman who will not let her children speak to him on the phone, there is another one where he never rings up and never follows through. We all know that that there are two sides.

CHAIR—Absolutely.

Ms Goward—They are the ones who are breaching, if you like, the Convention on the Rights of the Child. As I said, I guess I am well known as a conservative, and I do not favour a system where the state intervenes more and more. I do not favour strengthening laws if you do not change people's hearts and minds. You can change all the laws you like. If you cannot get people to want to care about their kids and want to put their children first instead of taking revenge on their ex-partner, no amount of law is going to change that. They will just get cleverer at it and nastier. So I think we have to look at it from the end result, which is the child. Who are the two people who are imposing this ridiculous court system on everybody? Two grownups who cannot get along, who cannot be civil on the phone about when she is going to be allowed to see them or when he is going to be allowed to see them or whether he has an earring at 14 or whatever. You will not find any law, or police state even, that is able to change that.

CHAIR—I have just one final question, and I thank you for being patient. The committee is looking at a tribunal that is taken away from an adversarial process and the Attorney-General's office. Perhaps it could be a Family and Community Services issue that looks quite clearly only at the interests of families—the way in which families relate and interrelate with one another after separation or the way in which decisions are made. It would not include any decision making regarding money, because let me say that there are a lot of cases out there where it is better and easier to either not pay for your child—which is appalling—or demand payment for your child merely to enhance your own lifestyle. It is a really difficult situation where a price is put on the head of a kid, but it is happening out there whether we like it or not. So you could use a tribunal and go through a process of mediation and then arbitration—so you would have a place to go back and forward to, rather than being adversarial. The mere fact that lawyers, solicitors et cetera are involved makes it a win-lose situation. Do you think there is a possibility that could work?

Ms Goward—As you know, our submission did not address that issue, and that absolutely concerns what I would say. I would point out, as Kathleen has pointed out, that the family law and the Family Court were set up to be less adversarial. That is why they do not wear wigs and so on. I know this government has always sought to strengthen the counselling and the nonlegal aspect of the Family Court since it came to office. So there is some recognition that what you are talking about might be the way to go. I can also say that in India, for example, the family courts do not have lawyers representing people. They have again recognised that there is an adversarial tone to negotiations involving lawyers which can sometimes produce unnecessarily aggressive and unpleasant outcomes. Other than that, I cannot comment.

CHAIR—The mere fact that it is called a 'court' is probably a similar sort of thing.

Ms Goward—Yes, and I think it is a bit naive to think that just because somebody knows the law he or she knows how to help people fix their lives.

CHAIR—Thank you, Ms Goward. We appreciate your time.

[2.09 p.m.]

CHAIR—We will now proceed with community statements, and I apologise again for running late. One of our members will leave partway through the statements because he has to catch a plane, not because he is not interested in what you have to say. We have just under one hour for these statements. Each person will be allowed about three minutes so we can give as many people as possible the opportunity to speak. I will advise you when three minutes has finished. There will be no questions from the members. I ask that you say only your first name, not your surname; if you do not want to say your first name, then you do not have to say that either. I invite someone to come to the microphone.

Andrew—I apologise for making some sweeping generalisations in my statement, but three minutes does not give me time to give a lot of examples. My daughter and I have not been able to spend the minimum two nights per week together recommended by the Family Court counsellor. The mother says we will spend more time together only when a judge orders it. She knows that the court policy, shall we call it, is 80-20 and uses it to her advantage. She considers the child her daughter, not our daughter. The consent order is not in our daughter's best interest, nor is it the shared parenting I prefer. I was advised I did not have a hope in hell of getting a court order to order shared parenting by a competent solicitor and barrister who, incidentally, is now a Family Court judge. The mother makes veiled threats of obtaining an AVO when I disagree with her and she starts yelling.

The child support and government support systems financially encourage parents to covet their children. For years I paid the mother directly far above the child support assessment. I recently discovered that Centrelink does not consider these payments when calculating the amount of government subsidies and thus she was paid more than she might otherwise be entitled to. CSA decisions have been biased and discriminatory. They rabidly pursue parents who wish to contribute to raising their children, enforcing their arbitrary decisions which we cannot afford to fight. Yet I have female friends whose ex-partners do not contribute any time or money to raising their children and the CSA does not go after them because it is just too hard. My daughter has started to manifest the welfare mentality of her mother. I have concerns that the present system is breeding our daughter to become a dole bludger rather than a responsible, contributing member of society.

Shared parenting needs to be accompanied with AVO and child support reform. The present system is appropriate only when a parent is unfit or unwilling to raise children. It is subject to abuse when both parents are fit and willing to raise children yet one parent covets the children. Children are treated as chattels or income sources. Taxpayers support the coveting parent. Instead, public policy should reinforce the view that there are many non-monetary rewards when raising children. If a parent insists upon coveting children more than half the time when the other parent is responsible, in my opinion the coveting parent should not qualify for government subsidies or child support. A lot of parents fighting to have their children more than half the time would cease doing this when they found out that they would no longer be financially rewarded.

In my opinion, having a policy that a coveting parent does not get financially rewarded would result in an increase in both parents raising their children, resulting in greater pleasure and

benefit to the children; a decrease in government subsidies because it would be more likely both parents would work; and fewer cases for the CSA to attend to, which would permit them to concentrate their efforts on parents who do not contribute anything to raising their children monetarily or in terms of their personal time. These benefits would improve the quality of life of our children, parents and the community. When child support payments are made directly to the payee, my opinion is that payments which exceed the child support assessments should be taken into account and that the payments made by Centrelink should be reduced as a result.

CHAIR—Thank you very much.

Alex—I have three children. I have two girls, aged 10 and 11, and one son, aged 29, who is from a previous marriage. I have had standard contact for eight years—each fortnight and half of the school holidays. But for eight years it has been continuously sabotaged. I never know when I will get my children and whether they are coming or not. I cannot make any plans—for example, to go away anywhere—because I simply do not know anything. To go to the court and show contempt of the court orders costs a fortune and is just impractical. That is my situation. I am not sure how it will be regarded by the committee—whether it is done in the best interests of the children or not—but I think it is against the interests of the children. I feel that it is in the best interests of the children that two parents look after them and physically spend time with them. I am not talking about financial arrangements. Face-to-face contact is worth a lot more than \$1,000—that is my view.

I have seen today's hearing and I have seen a lot of submissions, particularly from the people who are funded by the taxpayer. For some reason, these people just do not want to have to change any existing arrangements. They are happy with the sole parenting concept, where the father has to go away, do the work and pay and sometimes gets to see the children. I do not find that very satisfactory, and again I stress that it is not designed in the best interests of the children.

The money which the mother receives through the Child Support Agency does not go directly to the children. More often than not it just goes to support her lifestyle rather than the children's interests. Of course, the lawyers also have a vested interest, because they like their revenue to be maintained—not the children's but their own revenue. During this inquiry I had a conversation with my eldest daughter, who is 11. My daughter said, 'Hey Dad, why don't you go and talk to Mum and agree? Why don't we make an arrangement so we will be one month with you and one month with mum and so on, and that would continue through the year? We would go to the same school and have the same friends and the same lifestyle, but we would just avoid all that continuous uncertainty and pushing from one place to another.'

I forgot to mention that we are separated geographically by about 82 kilometres geographically between my place of residence and the residence of the children. So that is the children's wish. And never go through the Family Court—if you go to the Family Court it will go through a very corrupt process and the outcome will be antifather and antichildren. So where do we go after that? I really love to see your committee doing such fantastic work. Find a way to actually get feedback from actual children and hear their voices and what they think. I think most of the children would say, 'We would like to see Mum and we would like to see Dad.'

CHAIR—Alex, thank you very much.

Gary—I am a non-custodial parent. I have court orders in place for access to my young daughter. These orders have been breached some 47 times to date. I am about to go through the court process—something that I am a bit reluctant to do, but it has to be done. Due to what I earn I am unable to get legal aid, and because of my commitments I cannot get a solicitor, so I have to represent myself in court. This is very unfair because the court system is very complex and affects normal people in a way that they should not be affected.

I have had a lot of dealings with the CSA in regard to hardship and trying to make ends meet. I have tried to provide a place for my daughter to come and stay. I have bought my own home. My mortgage and my child support payments account for more than 50 per cent of my take-home pay every month, so I am living on the breadline. I cannot afford to take holidays, and there are a lot of things I cannot do, so I feel penalised by the Child Support Agency. They are not interested in a reduction. They say: ‘You can afford the commitment. It is your responsibility.’ I understand that, but—as has been said today—every case is individual but they treat everybody the same way with the same formula. I think that is very unfair. The Child Support Agency have said to me that my mortgage is too high. They have asked me why I bought a house as opposed to renting, which is outrageous. At that point in time, renting a property similar to what I have would have been equivalent to the mortgage I pay anyway, so I find that a very strange statement for them to make.

I think the system in its current form encourages non-custodial parents who are overcommitted in a lot of areas to go on the dole, to be dishonest and to work for cash, which they do not pay tax on. The system in its current form is letting a lot of people down—both parents and children—and it sets the wrong example for everybody in the community. The system needs to be fairer. I think if there was a fairer system available to everybody involved, you would find more men back in the work force, fewer people on the dole and more men facing up to their commitment of paying their child support and looking after their kids’ needs. A fairer system would make it better for everybody involved. It might even stop some of the bitterness that the courts and the child support system produce.

CHAIR—Thank you very much, Gary.

Wally—I am a grandparent to two beautiful little kiddies. One of them has cerebral palsy. Both my son and his ex-wife have a lot of hurt, but they seem to be able to take it out on each other through the kids. We have to fight and argue to get to see the kids. We have been involved with both of them since they were born. We have not seen one of them for six months, because their mother has the power. We have said to her, ‘We don’t want full custody of the kids; we want access. We’re too old to rear kids.’ But she says that we cannot see them. We mean nothing. Because she is the biological mother, we have no right as grandparents to help, especially with the young boy who has cerebral palsy. We try to do what we can for him and at every turn she tries to stop us.

As I said, we are hurt because the accusations that she has levelled at me and my wife are unsubstantiated. She can get an AVO at the drop of a hat. We go to court, she does not turn up, the case is thrown out of court, we go home and the next week she has another AVO out against us. There is hurt on both sides—on hers and ours—but all we want is to help her with the two kiddies. We are not allowed to do that and we cannot afford a solicitor. We have got an AVO out against us at the moment. What little money I have I will spend on legal fees next week to try

and clear my name because of the unsubstantiated allegations that she has made. Do you know how embarrassing it is to have police come to your place once a week? It is not very nice. My wife and I are only grandparents, just normal family people who want to get on with our lives and look after our grandkids. We do not want full access; we just want access to them.

CHAIR—Thank you very much, Wally.

Dick—The rebuttal issue is probably the first point I want to discuss. In a lot of cases it has been glossed over, turned around and twisted to the way people want to perceive it or put it out to the general public. My impression of that situation is simple: if and where it is possible, that should be the first port of call. If the father can be in the child's company, then that should be in the interests of the child. I have heard a lot of people talk about the interests of the children, but it seems to convert back to the adults' interests. A lot of fathers out there obviously would not be able to spend half the time with their children, but they certainly might be able to take a lot more than every second weekend and half the holidays.

Somebody touched upon the point that a 20 per cent to 80 per cent ratio was accepted as reasonable and that was a perception in the community. In my case, I spent \$53,000 on legal fees only to walk out of the courtroom with exactly that scenario. I could have walked in without a lawyer and simply said that I wanted to see my child and that would have been the final outcome anyway without a lot of heartbreak. It has put me in a bankruptcy situation. I am finding it very difficult to survive now. My occupation is a sole-trading operator. That cost situation really needs to be looked at seriously; it is one of the reasons that there is so much animosity between parents. There is no excuse for a lot of the bad behaviour that goes on in these circumstances, but there is a reason for it. That reason can be changed with family law reform.

I would like to quickly read my submission to the committee; it is fairly brief and to the point. Point one: in a situation where both parents have a desire and capability to share equal residency and are considered fit and proper persons, equal joint residency should be the first point of law. If, however, this is not feasible or practical due to the lifestyle readjustments of separated parents, then those parents, if possible, should make mutually agreed arrangements that take into consideration the children's best interests. These should be signed off by family law courts so that they are recognised as agreements. Alternatively, where conflict exists resolution should be determined by a family law body—not necessarily a court—in the interests of the children.

Point two deals with the welfare of children. It is not often spoken about as it always seems to be put in the too-hard basket. In the interests of children's welfare, new partners of parents—who may be in residence or trusted company or full-time carers of the children—should be vetted in a similar way that fathers normally always are in a court, and they should remember that we are the biological fathers. There seems to be a presumption that we are the monsters we are quite often portrayed to be. Yet, if I can use an analogy, the residential parent may bring home a new partner and move them into the house after a very short period of contact time. That person is not going to disclose their history; they may have just been released from prison on child pornography offences or a violent crime or something like that. Do you understand what I mean? It is an important issue that should be looked at.

That can be dealt with through a system that is in the family law court at the moment. The judge can make an order that that person not be allowed to be left alone with the child. So

whereas we cannot, under human rights, control the other biological parent's relationship, we can ask that the children not be allowed to be left alone with that person who may be of danger to the child. I made some notes from paperwork from DOCS and other departments.

CHAIR—We are very happy to take your notes as well.

Dick—The highest rates of abuse to children are from non-biological residential parents. The other thing I would quickly like to touch on, if I may, is the issue of child support. A lot of people are not paying child support now. It is my personal belief that the system is wrong, and it should be based on, as with all other Australian citizens and residents, a set figure. Every other Australian citizen who is on the dole—whether they are single or married with children—has a figure set for them. It is the same if you are an invalid pensioner or aged pensioner—whether you are married or single. Children are not. In some circumstances these figures are astronomical. A normal working man in Australia takes home approximately \$400 a week. In some cases a non-residential parent is asked to pay that amount in the form of child support. It is not realistic.

I think non-residential parents that can afford to pay for their children would contribute in lots of other ways. I would be suggesting something along the lines of \$100 per week for one child, supported by the government. If the non-residential paying parent could only afford \$70 a week, for argument's sake, then the other \$30 would be topped up by the government. A lot of people would say, 'Why should we dig into the taxpayers' coffers?' We already do. For what we call a nuclear family—where we have a husband, a wife and two children—on a low-income, there is already a government top-up. In this circumstance what I would suggest is that for fathers that could only afford to pay a small amount—say, \$70—that should be topped up by the government by \$30, and a credit to his name would then stay in the work force.

That way, he is not paying \$21.50 a month for his children—which is insufficient, of course—out of taxpayers' coffers and his income is not from taxpayers' coffers. It is all self-generated funds. We currently have an awful percentage of east coast Australian fathers who reside in Queensland, including Queensland men. They cannot afford to see their children and their children cannot afford to see them. If these fathers have their dignity back, they may well stay in the work force with self-generated funds instead of being a burden to the community.

CHAIR—Thank you.

Richard—I will be going away from here today feeling very lucky compared with people in other circumstances. I am 40, university educated and a professional in the communications field. I have worked with the same employer for almost 20 years. I am the father of two girls aged 10 and 12. I have got no criminal record, I come from a good family, and I am hardworking and civic minded. I had no choice in this matter. I pay 27 per cent of my weekly wage in child support and have the children under the standard arrangements that everyone has gone through today if they are lucky. This is despite the fact that my ex and her new husband and my new partner live only 10 minutes apart. The girls could still go to the same school and probably always will—that has never been taken into account.

I believe most men are being torn apart by an unfair system that denies them the dignity of a presumption that their children's welfare and society would benefit if more fathers had a chance

to prove they are willing, ready and able to do the work that society has come to demand and expect of them with their children. As a 12-year-old I was glad an act was passed to change the society in which my great-grandmother was forced to flee a drunken thug, take two young children on the road, change her name and live in poverty.

But opponents of the proposal to presume children would be better off spending 50 per cent of the time with each parent do not seem to understand that while the Family Law Act and its court have prevented many such situations they have given so much power over custody and support payments to so many non-custodial parents—I was going to say women, but I have changed that after today because I did not realise how many women were in the same position—that this has encouraged some men to continue escaping that duty. At the higher end they avoid contact or payment. At the lower end more poorly educated or socially disadvantaged men—who were often victims themselves as children—continue to abuse these women and children who cannot leave for fear of economic ruin. The former needs addressing by more effort to enforce contact and payment and the latter by welfare work to break the cycle of violence, neglect and abuse. But the answer is not punishing the vast middle class of dads, like myself, who have embraced shared parenting, and wish to continue to do so, after divorce.

Father Chris Riley, of Youth Off the Streets, is fond of quoting an old Indian saying: 'Parents do not own their children; they are only put on this earth to look after them.' The best interests of the children are the paramount consideration, but the only way to determine those interests is to start from a presumption that children will spend equal time with each parent. Each parent would then be equally financially responsible and would be unable to manipulate the situation. There needs to be a civil forum or court of character in which each parent's background, suitability, willingness and capability to care for their children could be tested and rebuttal factors—abuse, distance, special needs, cost and, most importantly, the children's wishes—could be aired. There would need to be an avenue of civil, simple and cheap appeal when one party breaches the good faith of the arrangement or engages in behaviour damaging to the children. The same forums with the same tests should apply to other family members, step-parents and significant others.

On the child support formula, I am sure that a presumption of 50 per cent care arrangements would, in many cases, end the need for payments. Resources would need to be redirected to a system of accountability for sharing those costs. The current system is unfair for the vast majority of dads who are PAYE earners, as it does not take into account the huge cost of separation—

CHAIR—I am happy to take that document, because you have it all written down. Would you like to make a last point?

Richard—Okay. Under a fifty-fifty arrangement, both parties would provide all the essentials, ending all these fights and saving a lot of money on legal fights. There is no forum where men can go and complain about bad behaviour, whereas women can go to doctors, the courts or the police. I just beg you to make this decision to start from that presumption of 50 per cent and work your way back from there.

John—I am sure that we all thank the committee for taking the time to come to the Central Coast today. I have previously been a marriage celebrant and a counsellor in an organisation recognised under the Family Law Act. I am now involved at the other end of the scale, in a

voluntary capacity, in marriage preparation for young couples and for older people who are marrying for the second or third time around and come with a lot of hurt and hesitation. I have previously made representations to the Attorney-General's Department, but I perceive that there is still ample proof that major problems remain.

When the family law legislation was amended, the concepts of 'custody' and 'custodial parent' were pushed aside by the terms 'contact' and 'residence'. I believe that the intention was to do away with any thoughts of ownership of children by one particular party. I do not believe that this has been achieved, and I feel that the judiciary has frustrated the intention behind the amendments to the legislation. In considering appeals made against decisions of the Family Court, members of the Court of Appeals and the High Court have relied on precedents which were established before the amendments were approved. It appears to me that interim orders determine the primary caregiver and when—after considerable time—final orders are made, the status quo makes it almost impossible to provide reasonable contact for the non-custodial parent.

I read the submission from the Family Court to this committee. I have looked at the statistics and the graphs, and I am not convinced that the conclusions proposed are necessarily valid. I pick up a reluctance to concede that there are problems which ought to be and can be addressed. There also appears to be a resistance, stemming from the head of the Family Court and filtering right through the system. If media reports are to be believed, there is already a negative attitude towards any recommendation of this committee regarding the proposal put forward by the Prime Minister about the presumption of equal opportunity of contact with children by each of the parents. When I heard one of the earlier witnesses speaking, I felt that this joint contact and residence need not be concurrent but could be sequential: for example, he has had them for 3½ years, she is in a position to care for them for another 3½ years.

I do not think that shared parenting should be the fall-back position. I believe that equal residence and contact is not an ambit claim. It is not an either/or situation, and they are not mutually exclusive. I commend the proposal that the starting point for decisions regarding the future of children be that each parent have the opportunity for equal time in contact and residency, that strict penalties be introduced when contact is either denied or frustrated and that children's wishes be given every consideration. I do not see any children speaking before this committee today. I know there are difficulties, and I hope that through your own constituency you will make an opportunity to have the voices of children heard. I recognise that it will not be easy for this committee to achieve these objectives. I fear that only when changes are made to the approach of the judiciary will the intention of government in the amended legislation be observed. There also appears to me to be ample evidence to support an overhaul of the operations of the Child Support Agency. There remain inequities and hardship in a system which was supposed to overcome these very same problems. I hope that the committee will be able to make basic recommendations which will ensure support for children while at the same allowing fairness and dignity to what, at present, are alienated parents.

CHAIR—Thank you.

Individual A—I applaud the comments of the previous gentleman in mentioning pre-marriage counselling. Fifty per cent of all marriages now end in divorce, and that means that more than 20 per cent of our children are going to be raised in single households. This panel must give serious consideration to these concerns. One of my worries with this panel inquiry is that, unfortunately,

like previous inquiries, it will get shelved or put in the too-hard basket—and I would hate to see all your hard efforts literally come to nought.

CHAIR—We are happy to take your written word, if you like. Since we have to finish at three o'clock, if several people read out a statement that is going to go for five minutes, not everyone will have the opportunity to make a statement. So we are happy to take your statement—we would all get a copy of it—and you could just give us a comment, if you like.

Individual A—I appreciate that, in fairness. I will just briefly summarise some of my points. Everybody is in agreement that the best interests of the child should be paramount and that two quarrelling adults should forget their quarrelling and concentrate on what is in the best interests of the child. That should be by the active involvement of both parents. Major studies have been done overseas, which no doubt you are aware of, that show that the involvement of both parents is important to the welfare of the child. There has been comment in the media of late about the lack of, let us say, a fatherly figure all the way through a child's life. There are no father figures in the schools, and when some children have a birthday or pass a major milestone the father is not there to commend and support that child. When we talk about the presumption of equal time, perhaps we need to look at equal quality time. We were debating the point about it being an hour here and an hour there, but isn't the point really about how much quality time both parents can put into the children?

Finally, I found on the Internet that numerous studies have been done on shared parenting by well-documented sources. I am not talking about a survey base of 10 or 20; I am talking about literally thousands of people in the major Western countries. Shared parenting has now been in the United States for, I believe, 30 years or more. It has been shown that, where there is no domestic violence or friction, shared parenting can and will work and should be encouraged in meeting mediation. Thank you.

CHAIR—Thank you very much.

Dennis—I will be brief. For years I was cast in the role of assisting men and their children to see if they were entitled to legal aid for family law appearances. It became plain to me that men simply did not matter. There was a system of what were called allowable deductions, and they were never going to qualify for that because, if they had a job, they would never qualify. The amount of money that was allowed would never come down to a level where they would qualify. Anyway, that changed and I saw that change. It went on for a while and quite different results came through for parts of family law activity. I wish the committee well in coming up with concepts or changes that are going to have the effect of rewarding people for doing the right thing, irrespective of gender. The trouble is you are saddled with levels of criminality that build up for a long time. Some of that has come up against a lot of women in their different capacities—whether they are aunts, grandmothers, sisters or others that somehow or other have had to deal with stepchildren and so on.

My understanding of the position is that you are going to have massive problems in those areas where you have existing vested interests. These include barristers and solicitors—some of them well connected with Oxford Street, specialising in children and in other areas. I have had years of opportunity to see various things go on. These people would never bother coming to something like this, because what was alluded to earlier is correct: what we have are some

politicians, again, having to provide their time on top of all their commitments in their electorates, family commitments, parliamentary commitments in Canberra, and of course some politicians have been known to have their share of overseas trips and so on—

CHAIR—What!

Dennis—I thought I would throw that one in.

CHAIR—You have to keep going, Dennis.

Dennis—I have taken the trouble to come here today. The point is that you need to come up with concepts for rewarding people who do the right thing. I rather like the idea that there should be some sort of equal basis because, if there is not, we are all in big trouble. You had better start at the schools and tell everyone at the school level if there is an inequality. There have been massive inequalities for a long time. For most people this has been in the too-hard basket—that would be enormously disappointing for me and a great number of other people who have been affected one way or the other. I have a son here today at the hearing who is listening to all this, and I would hate him to experience anything remotely like what other people have experienced—not tens of thousands but hundreds of thousands of people. I have two daughters. One is married and I have grandchildren. I wish you well to see if you can tidy it up. If you can reward people for doing the right thing, then children matter. If fathers do not matter, children do not matter and no-one else matters. Thank you very much.

CHAIR—Thank you, Dennis.

Craig—My situation is that I ended up winning my kids through the Family Court and got full custody back in 2000. For four years I paid 32 per cent of my income and I was trying to live off \$20 a week after paying the mortgage, which was really hard. When I eventually won the children the Child Support Agency stopped me making payments, which was really terrific. I could get on with my life and look after the kids. Then 12 months later, my ex-wife found out that the visitation days had gone over 109 days a year. Once it goes over 109, she is entitled to child support again. So I am bringing the kids up at home, trying to keep everything going, and she is getting child support for her visitation rights. It just makes it unbelievably hard. She has got on with her life, which is good. She has a partner and is getting married to him. He has his own business and there is no shortage of money for her to live off. It is getting to the point where my mortgage and support for the kids is getting near impossible, and the Child Support Agency cannot do anything about it. I have sent them all my expenses, telling them what is left at the end of the month and they say, 'Sorry, that is the formula. See you later.' That is where I stand.

Mike—I was happily married with two children until 1994, when separation was suddenly sprung on me. As with others who have appeared, my only knowledge of separation was what I had heard through the media and my immediate reaction was to seek legal advice. That is where it stayed. To my knowledge there was never any way through this impasse that I found myself in with my ex-wife other than to go through litigation. I was encouraged to find reasons to apply for an AVO against my ex-wife. I was encouraged to perhaps see if there was a reason why the children might have needed some kind of protection or if charges of child abuse might be levelled against her. I was encouraged to find any means by which to fight and to continue.

Never at any time was there an acknowledgement that there might be reconciliation of the marriage—that it might be repaired to the point where we could go on with the marriage. Never at any point was there any arbitration or mediation offered so that we could sort out how to progress, except by litigation. So we had our three days in court and we bashed each other in the blue corner and the red corner until one of us was left standing and took all the spoils, and obviously there were court orders that applied as a result.

Years later, something very interesting happened: we came to a cooperative understanding. These days, while court orders still apply, we are in breach of court orders. We do not have the 70-30 per cent custody that the court imposed on us; we found our own way, which is much nearer 50-50. Today I have a child with me, with the agreement of my ex-spouse, and she has some comments to make about this too. We have found our own way, since those court orders and since the heated battle has been taken out, to live our lives. I regard the whole court system and the inability to offer any way of conciliating through the dispute as a terrible indictment on the courts and an imposition on the children. Now we can get on, thank you very much, without any court. And if anybody says that that is a no-fault court, I am afraid they are entirely wrong. It is full of fault—as much as you can find.

CHAIR—Thank you very much.

Jeff—I have appeared before the committee before to make public comment. I have been following this inquiry with a lot of interest and reading a few of the submissions and most of the transcripts. I have been disheartened by some of the advocacies I have seen, and one thing that distressed me was the court saying we should take more of an inquisitorial approach like they are doing in Europe. The only country that I know that does this in Europe is France, where the magistrates conduct investigations from beginning to end. A major case just finished there where the magistrate grabbed a movie star who had just turned up, had him brought in, had the press there and tried show that he was investigating him over some wrongdoings in that country. The guy knew nothing about it and the magistrate was accused of abusing his power but not much could be done because the magistrates and the law there run everything. I have also seen some really good stuff said in submissions and during hearings, and I urge the committee and the government to please listen—please take the venom out of the system; please take the adversarial aspects out and make it more friendly so no one person has power over the other and that each can have an equal say in raising their children.

My brother has been married twice and has two separate families, and he is raising them with the help of his ex-wives. They all get along, sort of, but they all keep together because of the children. He is even helping his first ex-wife raise her little daughter, who is not even his. He babysits her. She thinks that he is her uncle, and they have got a great relationship. I would have that same relationship with my ex-wife if she would just let it be, but she won't. I am still getting attacked in the street by people who believe her, because she has said, 'My friend the judge said this, my mate the judge said that, and we did this to him and he is no good.' That is not exactly true. Thank you.

Individual B—My circumstances are pretty much different to those of everyone else here today. I have got four children who are in foster care. I only get to see them one day a month, for two hours, which I do not think is sufficient, so I can understand how all the fathers who are good parents feel if they only get one weekend every second weekend or whatever it is. It is

unfair. If they are a decent parent, they should be able to have equal say in what happens with their children. But if the children are in a violent relationship where they are subjected to violence or anything like that then I do not think that that parent should be allowed to play a role in their wellbeing or how they are raised. Good luck to all those people who are out there who are decent parents and fighting for their kids, because I know that I am fighting for my kids. Thank you.

Rosemary—I am a grandparent. I have been married for 37 years and I have two children. I just came to this meeting as a general inquiry, because our son has just separated from his partner and I think we are in for a hell of a ride. The other thing is that we have had a nightmare with this young woman for three years over being able to see our grandchild. Mr Cadman, you brought up the matter of these AVOs being issued willy-nilly. We have been subject to that. I think there are a number of grandparents here who have also had this done to them, which is a terrible thing. Some people can just go out and get an AVO willy-nilly and the police do have to go and investigate—so that is there. Our son has had it done to him. It is a horrible thing, isn't it? It is a horrible thing to have put on you when it is absolutely false. I am off the track with what is happening. Thank you very much for all your time and please get to the bottom of all these matters, because there is a terrible lot of injustice. Men are just as loving as women. There are some loving men out here, and grandparents as well. Thank you.

CHAIR—Ladies and gentlemen, we do have to finish up. Mr Ticehurst is your local member here and he has indicated to me that he is very willing to take the information that you would like to put to the committee and then put it to the committee. He has been very proactive in doing that since his election. He is quite happy to stay here so you will have that opportunity. We apologise that we have to leave. We have gone over time and, in the interests of us getting to the next hearing, in Coffs Harbour, we really do have to leave.

I congratulate you and thank you very much for the way in which you have participated and the way in which you have been such a courteous audience today. It is an emotional issue and we are trying our best to deal with it, but it does help when the audience is as cooperative as you have been today on an issue that is affecting the lives of each and every one of you, otherwise you would not be here. I thank all those witnesses who have appeared before the committee today, both in the public hearing and the community statements segment. Thank you for keeping your comments brief. It just does give you an opportunity to give us your thoughts and perspective if you were not called during the public hearing. Ladies and gentlemen, again thank you all.

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

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

Committee adjourned at 2.59 p.m.