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Official Committee Hansard

**HOUSE OF
REPRESENTATIVES**

STANDING COMMITTEE ON FAMILY AND COMMUNITY
AFFAIRS

Reference: Child custody inquiry

MONDAY, 27 OCTOBER 2003

GUNNEDAH

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HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS

Monday, 27 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

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 2.18 p.m.

CHAIR—Ladies and gentlemen, thank you for attending this afternoon. We apologise if we have kept you waiting. This afternoon's hearing is the 20th public hearing of the House of Representatives Standing Committee on Family and Community Affairs inquiry into child custody arrangements in the event of family separation. This inquiry addresses a very important issue which touches the lives of all Australians. To date, the committee has received over 1,600 submissions—a record for an inquiry by this committee and amongst the highest number 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 has not had any preconceived views on the outcomes of the inquiry and it takes all evidence with a view to ensuring fairness and equity. Accordingly, throughout the inquiry we have sought—and we are continuing to seek—to hear a wide range of views on the terms of reference. While at any one public hearing we may hear more from one set of views than from another—for example, more from men than from women in some areas—by the end of this inquiry we will have heard from a diverse group and thus have received a balance over the range of views. The public hearings the committee is undertaking are focused on regional locations rather than just capital cities—thus the reason that we are in Gunnedah today. At these hearings the focus will also be on individuals and local and regionally based organisations. Today we will hear from seven witnesses—three individuals and two locally based organisations.

I remind everyone appearing as a witness today that the comments you make are on the public record. You should be cautious in what you say to ensure that you do not identify individuals and that you do not refer to cases which may have been or are now before the courts. In recognition of the personal and sensitive nature of this inquiry, the committee has recently decided that when individuals appear before the committee in a private capacity at a public hearing—that is, those individuals who do not represent an organisation—the committee will use an individual's name during the hearing but the name will not be reported in the *Hansard* transcript, which goes on to 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.

I particularly ask any media present not to report the names of individual witnesses who appear publicly at the hearing. About 2½ hours has been set aside for the public hearing. This will be followed by just on an hour for community statements of about three minutes duration each. Three minutes may not seem long; however, this is the 20th hearing and the three-minute statements have been very good so far. People have stuck to their three minutes and have been able to get their points across. I indicate as well—and perhaps I do not need to be as strong about this—that local media coverage may be within the room and that would and could include radio broadcasting. If you have any concerns and problems with that, I ask you to see Rochelle from the secretariat to indicate your problems associated with that.

[2.22 p.m.]

WITNESS 1, (Private capacity)

CHAIR—I welcome Witness 1 to this afternoon’s public hearing. The evidence that you give at this public hearing is considered to be part of the proceedings of parliament. I therefore remind you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. I remind you that 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. 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 during this hearing; however, in the transcript record which goes on to the committee web site, we will refer to your evidence as being from a numbered witness. You will know your evidence, but you will not be publicly identifiable to others. Do you have any comments to make on the capacity in which you appear?

Witness 1—I am here as a grandmother. I was asked to appear firstly as a grandmother and then also as a family counsellor.

CHAIR—Thank you. Before Mr Cadman and I proceed to questioning, would you like to make a short opening statement?

Witness 1—As mentioned in the introduction to my submission, I am a grandmother who has experienced the trauma and sheer frustration of having my two granddaughters taken from a very loving and caring mother and put in the residency of the father who had left the family home more than two years previously. Both girls feel betrayed and let down by the system, having told the court through the court psychologist that they wanted to live with their mother, and they gave very explicit reasons for wanting to do so. The mother is a qualified and registered psychologist and a qualified schoolteacher, currently employed by the department of education as a TAFE counsellor, having been previously employed as a school counsellor for some years.

The two girls aged 12 and nine have a very close emotional bond with their mother for not only did she care for them as a mother does for their physical and emotional needs but she also home educated them. She is skilled at craft and has passed this skill on to the girls, and they have spent many enjoyable and productive hours together with their craft. The mother is also a qualified piano teacher, and the girls loved to dance and sing while she was playing. She had also started giving piano lessons to the girls.

With these common interests, naturally there was a very strong bond between the mother and the children—something which we hope to see in all families. But in this instance, it was taken and twisted by the court psychologist to be something evil and abnormal. Because of this strong bond and being home educated, the court psychologist said she was afraid the children were socially and emotionally isolated and were too emotionally dependent upon the mother. Again she failed to recognise that the mother was a trained psychologist and very aware of the problems that might arise in this area. The children were very much involved in guides, tennis coaching, dancing lessons, the children’s drama and theatre society in Newcastle and church

groups. They even did Meals on Wheels once a month with other adults to give them an understanding of community work.

The court took the children from this warm, caring environment against their express wishes and placed them with their father in a home where there is no female support or influence. The father has a relationship with a lady he met on the Internet. She lives in the USA but does not plan to come to Australia until 2005. The father has no sisters, his mother and grandmother are deceased, and he has one brother living in Sydney and another one in China. The girls are at an age when they need their mother and they certainly need some female guidance and support.

From a very early age both parents ensured the girls were brought up in a Christian home with a very strong biblical and Christian world view. The mother continued this after the family breakdown and still continues it on her access weekends, but the father has ceased to actively encourage the girls in this area. This has been a further frustration for them.

Given these facts it is not hard to understand that, even after nine months of living with the father, both girls still think of home as being where their mother is. They openly say, 'We're going to Dad's place,' or 'We're going home.' The result for them is that mentally and emotionally they are constantly living away from home. The constant tension for them is that they are always waiting for something to happen that is going to fix this. Unfortunately, under our present family law system there is no way that this situation can now be changed. The orders were based on assumptions made by the Family Court psychologist and, therefore, accepted by the judge.

These assumptions have been proven wrong over the ensuing months. They assumed that because the girls were home-schooled, they were behind in their education. They assumed that because of the close emotional bond with their mother, they would have difficulties settling into a normal school. They assumed that because the mother had been committed to home education, she would not support them in their education even though she said she would send them to a normal school. All of these assumptions, and many others, have proven to be totally incorrect.

I submit to the committee today that consideration be given to implementing a reassessment period so that the non-resident parent and the children have an opportunity to present their case. When orders are made on the presumption of what might happen, it is only time that can prove whether they are right or wrong. Our family law court, as it stands today, makes no provision for this situation. These girls should not be suffering from this trauma. If their best interests had been the prime consideration and their own wishes listened to, they would have continued living with their mother with as little change or interruption to their lives as possible. This would have given them security and stability, which unfortunately they do not have at the present time.

That is the background to my submission to you. My submission was: given that the best interests are of paramount consideration, it would be reasonable to assume that, providing the children are already in a loving and caring situation, the less change and interruption to their lives, the stronger their sense of security and stability will be. Most children spend more time with one parent who is the main caregiver in the family and, in some cases, very little with the other parent. This is a fact of life for many reasonable and obvious reasons. Nevertheless, it is a very relevant factor and needs due consideration.

Given these facts, I submit that, relative to term of reference (a)(i), there should be a presumption that children will spend the same time, or a similar proportion of time, with each parent post-separation as they did pre-separation unless there are strong practical, physical or emotional circumstances that would prevent that. I would also like to say that the mother in this situation has a very close and supportive family. My husband and I have spent a lot of time with the girls; they have stayed in our home from very early infancy. She also has three brothers, who are married, and she has a very close rapport with them. Her eldest brother is a medical practitioner on the Central Coast and had always provided medical care for the girls; that is an opportunity that has been taken away. Unfortunately, the extended family—grandparents, aunts and uncles—are not recognised formally in custodial orders. So we are left to bargain and plead for time with our granddaughters.

Mr CADMAN—Thank you very much for your submission; you have given a lot of your heart in the process. Before we move to your daughter’s situation, I would like to touch on one comment you made in your general submission as a counsellor. You quote an eight-year-old who, after being interviewed in the Family Court, said: ‘I don’t know why they get people like her to do it. She’s not really a family sort of person, is she?’ Is that your experience with counsellors and people around the Family Court?

Witness 1—That has been the experience of my clients, and now of my own daughter, around the Family Court. It is not a personal and warm atmosphere, particularly for children. I have seen children come out in tears. As I think I might have said, they have been asked what they called ‘silly’ questions such as: ‘Who do you love most—your mummy or your daddy?’ To me, that is abusive of children. If I were to ask you which of your children you love most, could you give me an answer? That is the equivalent of what these children are being asked. If they say, ‘I don’t know’, they are told, ‘You must give us an answer.’ That is certainly a very common experience.

Mr CADMAN—You do not like that situation at all. How do you think it could be improved?

Witness 1—I think it is time we looked at the possibility of having either two counsellors or two meetings—two different sets of interviews for families—and not just one person doing the whole interview. There could be two people there or they could have two interviews. I think that has to be looked at, particularly if we are going to find out what children really want and what children really feel. You find, in that situation, that all they are doing is trying to get out of it as quickly as they can and give an answer they know the interviewer is looking for.

Mr CADMAN—We can find this out, but is it your impression that most of the counsellors are women, or is there a mixture?

Witness 1—There is a mixture but, from my experience, it is predominantly women.

Mr CADMAN—Regarding the lack of enforcement of Family Court orders, you say that, in your experience, this applies to both residential and non-residential parents; they both fail to live up to the requirements of the orders. Do have any ideas about enforcement? You have been around a bit—how would you do that?

Witness 1—At the moment, normal legal responsibility does fall on the person who lives with the children—the resident parent. Of course, orders can be legally enforced, but it is expensive to

take someone to court to get them to keep to the orders. On the other hand, the other anomaly is that the non-custodial parent is not at all legally bound to keep up contact. I think I gave you the example of a mother who took her children to Sydney, on a train, every alternate weekend. She would pack them up and take them down and most of the time the other partner did not turn up. If she had not taken them she would have been open to being summonsed for breaking the orders, but there is absolutely no legal obligation whatsoever on the other parent to spend time with the children. That is the part that I think we should be looking at very strongly.

Mr CADMAN—You say ‘very strongly’. What would you do—fine them?

Witness 1—Yes. And I think if they do not turn up a certain number of times—if they cannot do that and they are not interested enough—then the children are better off not turning up to have contact with the parent who is never there.

Mr CADMAN—What about the situation where somebody fronts every Friday night to pick up the kids for weekend residency and they are sick or it is inconvenient and that sort of thing? It can work both ways, can’t it?

Witness 1—It can definitely work both ways. That is why I say that there is a legal path open for that parent. If they call for contact and the children are not available to them then they can go back to court for that, because that means that the resident parent—

Mr CADMAN—It is slow and expensive, though, isn’t it, as you said?

Witness 1—Yes, it is very expensive.

Mr CADMAN—Is there a better way of doing it?

Witness 1—I have not found it yet, but I certainly think a lot of thought should be put into that, especially if a parent is not interested enough to have the children ready. That could all be looked at in this time for reassessment, as I mentioned in my summary. At the moment we have only a 30-day period within which an appeal can be lodged. If an appeal is not lodged it is finished. In that 30-day period, firstly the non-resident person will be very upset and traumatised if they have lost the children and there is also not sufficient time to make arrangements for the finances needed for such a case. With my daughter we looked at an appeal and we were told it would cost us in the vicinity of \$100,000. That is a lot of money when you have no guarantee that your appeal is going to succeed. They do not succeed very often. And it is not very often that you can just go in and get your orders changed. You go in, and if the appeal is satisfactory a new hearing is ordered. That takes months and more expenses.

Mr CADMAN—Does your daughter have any contact with the children’s father?

Witness 1—My daughter is continuing to live in the same area so that she sees the children. He only makes contact by email. He will not contact her in any other way.

Mr CADMAN—What about arrangements concerning the children? If the court has decided that she is not going to teach them at home, does she have a say in where they go to school?

Witness 1—No. She told the court that if she kept her children they could live with their father sometimes and attend his school—he is a teacher. That is when it came up that they thought she probably would not be supportive of the children, and yet every week since that hearing she has appeared in the children’s classrooms to help with teaching and drama, and she has worked in the tuckshop and so on. Their assumptions were completely incorrect.

Mr CADMAN—So she has continued to maintain contact.

Witness 1—Yes.

Mr CADMAN—What contact was allowed by the court?

Witness 1—For the first three months she could have a phone call once a week and, other than that, the contact is every second weekend.

Mr CADMAN—She has them for residency?

Witness 1—She has residency every second weekend. Keep in mind that prior to the court finding the father was seeing the children twice a week.

Mr CADMAN—It makes me wonder whether there are some factors that we are not aware of.

Witness 1—The only factor that you are not aware of is that they did not consider that home-schooling to be an alternative to regular schooling. As I say, the psychologist felt that because the children were home-schooled and lived with the mother they were becoming socially dependent on the mother.

Mr CADMAN—So for the first three months she had one telephone call a week.

Witness 1—Now she has free telephone calls and she sees the children once every alternate weekend, except when she goes to the school to help in the schoolroom. The father objected to that at first, but the school principal gave the okay for that to happen.

Mr CADMAN—In this instance, do you think that fifty-fifty residency would be practical? Could the children spend perhaps one week with the father and one week with the mother?

Witness 1—It would certainly be better than what they have. That is certainly there and I am sure it could be a practical arrangement because both parents are living and working in the one town, and it is certainly a better alternative than what they have at the moment—the girls need the contact.

Mr CADMAN—It seems to me as though the court has made a decision that 80 per cent of the time would be spent with the father and 20 per cent of the time with the mother.

Witness 1—Yes, when that has been the reverse all their lives because the father was out working. The mother would have had them for 80 per cent of the time. Even now, I have to say that the father, even though he has the children, is just not coping. Everyone knows he is not

coping, because the children are left at home on their own if they are sick and he has to go to school, the youngest one has turned up to school several times without her hair done and things like that. But the frustration is that there is no comeback for this situation. The court does not make any allowance or provision for a parent who is in this situation to be able to come back and say, 'Let's look at this again.' This is how it is.

CHAIR—When your daughter went through the family law court process were you witness to the process that took place or did she do that on her own?

Witness 1—She did it on her own, in the sense that I had put in an affidavit and therefore was not allowed in the courtroom—if that is what you meant by asking whether I was present in the courtroom. I had submitted an affidavit, and the husband's barrister had said that he wanted me to appear to be questioned on that affidavit. So I went to court each day, but I was not allowed to go in. I sat outside the court until the very last minute. Then, after the last witness was heard and I was about to get into the chair, the barrister said that they did not need me to be questioned.

CHAIR—The reason I ask is because this is the 20th hearing of this committee, and there has been some significant robust exchange between various organisations, interest groups and individuals. As you could imagine, everyone has a different perspective on this. The one thing that continually comes out, particularly from legal organisations, is that the family law court now has everything in place and provides all of the safeguards and mechanisms to ensure that the best interests of the child are adhered to. As I said, the one thing that continually comes out is that the family law court has to take into consideration all of this documented area of interest of the children, including that that speaks of guardianship and parental responsibility issues. I am not talking about residency; I am talking about guardianship and parental responsibilities. But everyone we have had before us has said that at no time during the family law court process was any emphasis placed upon the issues of parenting responsibilities. Again, I am not talking about residency. I am talking about guardianship and parental responsibilities and those issues of where a child is going to go to school, what church they will attend, who their friends can be, whether they will do dancing or singing lessons, and the medical and health aspects of their lives—just the general responsibility for the upbringing of the child. Your daughter has only recently gone through this process. Was the issue of parenting responsibility emphasised and was it a very clear focus of the family law court's discussions with both her and her partner?

Witness 1—No. There was no discussion about parenting other than what was given in the orders. Up until the time of the hearing, they had shared parenting. That was an agreement between themselves and from the interim orders.

CHAIR—Did that mean shared parenting guardianship?

Witness 1—Yes. They made shared decisions, but after the court hearing he was given sole parenting rights.

CHAIR—So he now has sole parenting rights?

Witness 1—He now has sole parenting rights. He makes all the decisions regarding their schooling, their medical things—everything.

CHAIR—One of the issues that concerns us greatly is that, while we may have all of these guidelines within the family law structure, they are clearly not being delivered in outcomes and clearly not being adhered to during the decision making processes. As I said, the diverse people who have come before us, including organisations, interest groups, Family Court judges and the Family Law Council, have all indicated that all of the provisions are there now and we should not be considering making any changes or questioning those issues, because they are in place. So you are another person saying that.

Witness 1—They might be there but they are certainly not being used.

CHAIR—They are not being utilised?

Witness 1—No, they are not being utilised.

CHAIR—Mr Cadman asked you about the possibility of shared residency for your daughter and her ex-husband. What do you see as the advantages or disadvantages for children if we had a presumption of shared residency?

Witness 1—I think a lot depends upon the age of the children; that is the first thing. The other thing I think we need to take into consideration is that in a sense the children are leading very disrupted lives. They are with dad this week then with mum next week; they are asked to go somewhere and they have to wait and think, ‘Who I am with? Where am I that week? Am I with Dad or am I with Mum?’ From that point of view I see it as being disruptive for the children. I can see there would be positives, particularly if parents were getting along very well, but if parents were not very amicable with each other that could be a real problem. I see that as a problem.

CHAIR—What would you see as the advantages or disadvantages of shared residency for parents?

Witness 1—I think there is the advantage of getting a little bit of freedom from responsibility for the children. That is helpful to them. It also allows them to do other things, which they would not be able to do if they had the full-time care of the children. Other than that, I do not know. I would hope that it would always bring a much stronger tie—a family atmosphere—with the children, so that they could do things together. But as I say that does not always work out, unfortunately.

CHAIR—Can I ask a few questions about child support, because this inquiry is looking at child support payments as well. Currently, what is the position on child support payments? Does your daughter contribute to child support?

Witness 1—Not at the moment.

CHAIR—She does not?

Witness 1—No.

CHAIR—Is that because she is not working?

Witness 1—She is not working full time at the moment, no. Her husband is making a push for it, and he just wants her to notify him as soon as she gets herself organised, because it has been a very disruptive year for her. She had to move out of the family home—that had to be packed up and sold—and then she had to look for other accommodation. It has been a very disruptive year. So at the moment she is only working two days a week.

CHAIR—Did her husband provide child support when she had sole residency with the children?

Witness 1—He did.

CHAIR—And was any of that a problem?

Witness 1—No, there was never any problem with that at any time. Because Ruth continued to work her two or three days at that time it was not a large demand upon him, and he was quite happy with that.

CHAIR—As a grandparent you have obviously had a lot of contact with your grandchildren, but that contact is no longer there. What is the impact of that on your grandchildren and their need for a grandparent figure? You indicated that your son-in-law cannot provide any female role models, nor parents, grandparents et cetera. The only grandparent they have is you. Do you think that is a significant difficulty for them, not to have their grandparent around?

Witness 1—Yes, I do. I think it is very significant for them, and the girls themselves have said that: ‘We always love coming to your home so much, Grandma, but now we can’t do it.’

CHAIR—But you could apply for contact through the Family Court.

Witness 1—That is what we are going to have to do, because there are no formal orders given. At the moment I am negotiating with my ex-son-in-law to see if I can have the children for a week at Christmas time. He will not commit himself on that issue, but we are still trying.

CHAIR—In this role with the Family Court, were you represented by legal services?

Witness 1—Yes.

CHAIR—You might be able to give me some assistance here: I have a problem with the adversarial process in family and relationship breakdowns in that I think you seem to start off okay and then the more involved you get in the adversarial process the further apart you become.

Witness 1—That is exactly right.

CHAIR—It seems I am casting aspersions on solicitors and Family Court practitioners. I know there are good and bad in every situation, but did you have a good experience? When your daughter was seeking to further this in the Family Court, did you get good advice? I am not asking you to tell tales out of school, but, generally, do you believe you got good advice?

Witness 1—We thought we did, but I have to say this: my daughter had a junior barrister, her partner had a very senior barrister and my daughter's barrister was very reluctant to correct or stand up to the senior barrister or to in any way enforce his side of the story in court. I think that was very detrimental to our daughter's case. I think somewhere in my submission I said that, while ever the court dealt with it as litigation, it remains a game for the barristers—and it does.

CHAIR—It seems like your daughter is a victim—like many men—although we have an enormous number of non-custodial mothers out there. I do not think people recognise how many non-custodial mothers there are out there. They feel it is the dad who does not see the children. It seems that your daughter has fallen victim to and foul of the 80-20 unwritten rule.

Witness 1—Yes. Halfway through her court appearance, it was broadcast that the government would be looking to have more husbands getting custody. That came out and was broadcast and published halfway through her hearing, and it just seemed almost as though the judge was doing his bit and making sure it did not go her way.

CHAIR—This is what this inquiry is about. I do not know that the Family Court judges take any notice of governments, let me tell you. They do not demonstrate it in some of the things that they deliver. There is a clear intent in legislation and a clear intent in law but that does not appear to be what is out there, so I would relieve your mind of that. But, at the same time, there has been a challenge to us that there is this perception and every day we see the reality of the 80-20 split. In fact, we are told by many people that, when they go through the process, they are then advised not to go for any more because that is what they are going to get—80-20. Dads are primarily put in this position of getting 20 per cent while the residential mother gets 80 per cent because, supposedly, there seem to be more mums in primary care than dads. Would you concur from your experience that there seems to be this issue of the 80-20 split being every second weekend and one week of the school holidays?

Witness 1—Yes.

CHAIR—You would not argue that there is no such thing?

Witness 1—No, I would not argue that there is no such thing. As far as the judgments are concerned, you go into court almost knowing that, if you win custody of the children, you will get 80 per cent.

CHAIR—Yes, that is what I would have thought.

Witness 1—That is how it is.

CHAIR—We have had very many robust and significant debates across these tables during these inquiries on that issue, because the proponents of family law do not believe that is the case.

Witness 1—It is, very definitely.

CHAIR—Thank you very much for coming here today. You have been extraordinarily helpful, very truthful, very matter of fact and very honest about what you have put before us today. We certainly appreciate your taking that time to come in and be of assistance to us today.

Witness 1—Thank you for the opportunity.

CHAIR—Thank you.

[2.55 p.m.]

WITNESS 2, (Private capacity)

WITNESS 3, (Private capacity)

CHAIR—Welcome 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 this 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 do not refer to cases that are currently 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. You may like to make a short opening statement and then we will ask you questions.

Witness 3—I am extremely pleased to be here to express my views in this inquiry. This is a very emotional issue for me. I feel very strongly about my position and about other non-custodial parents who are in a similar position. I am very much in favour of joint custody arrangements. As I have outlined in my submission, there is absolutely no reason why joint custody would not work in my case and in the case of many other parents in a similar situation. My son lives three kilometres away from me. He would attend the same school, his friends would stay the same and he would live in a house that he is very familiar with. Nothing would really change in his life. I see my son every day from a distance. I pass him on the way home from school and I wave to him. His grandparents pick him up—my ex-wife’s parents. I am not allowed to speak to him. The only time I can see him is on my allotted weekends each fortnight. I think that is extremely unfair. As I said in my submission, my son and I were always extremely close; we still are. He wants to spend more time with me.

My son has behavioural problems. Because of the limited time I have with him, it is very hard for me to address those problems. He comes down on a Friday afternoon and he is that excited he is up in the air. It takes till Saturday morning before he calms down and that is his day with dad. We do what we can. We play. When Sunday morning comes, immediately his behavioural pattern changes. He becomes tense and uneasy and says, ‘Dad, I’ve got to go home this afternoon.’ That is the first thing he says. I believe that more time with me—he loves his mother but he also loves his dad—would be beneficial for the boy. We lack quality time. We just do not have enough quality time to spend with each other. Two days or one and a half days, as it works out, is just not enough. I have to return him home at 5 o’clock on Sunday afternoon or all hell breaks loose. I have often said, ‘We’ll come home a little bit later. It’ll be all right,’ and he says, ‘We can’t do that; Mum will blow her head.’ So I get him home.

I would just like to emphasise the point. Because of my position and where my son lives in the same little town of 2,000 people—he lives three kilometres away from me—I am in a position where he could be taken to school and I could pick him up. I pass him every afternoon anyway.

He would play the same sport—nothing would change. The only thing would be that he could participate in more sports. He wants to do that now but he cannot because of the situation where it is week about. It is just impossible.

He loves his pony club. That pony club is held every second weekend and that is usually the weekend when he is not with me. His mother has different views on what she wants him to do and that is fair enough but it is very unfair on the boy because at present he is very disillusioned with the way things are going. He constantly emphasises to me that he wants to be with me more. He still loves his mother and he wants to be with his mum but he wants to be with his dad too.

CHAIR—Do you want to say anything, Witness 2?

Witness 2—On the same topic, he expresses all the time his preference for living a week with us and a week with his mum. That is what he wants. But there is no way of doing anything like that. It means going back to the Family Court, and that is useless really. The last time Witness 3 went I think it cost us \$1,000 and instead of having to pick the child up from his mum's at 4 o'clock on a Friday afternoon either one of us can pick him up after school at 3.25 on a Friday afternoon. That is really just a minor issue, I know, but the money just adds up and up. If you have got two people who can agree, it makes it a lot easier.

Part of my feeling about shared parenting or the shared residency is that the non-residential parent, whether it is the man or the woman, is always in the background. It is the residential parent who goes up and fills in the school records—and I am speaking from a teacher's point of view as well. Quite often we will see a record card and, in the area that I am in, it is usually the mother who has the 80 per cent and the father who has the 20 per cent. The father will not be mentioned and you will not know whether she is a single mother and father is not around or has died—you just would not know. They are just not there. You do not find out until years down the track that there really is a father there who cares about the child and who does see the child every second weekend.

On the same note, any information we receive is from the one parent. It is as if the other parent is not there. I remember one case where I was taking a little boy for special reading lessons. I called his mum in for an interview and talked about things I wanted him to do at home. Yes, she agreed that they would be able to do some of those some of the time, but he spent some time with his father and she said he was not interested. So I said I might give him a ring and see if he would be interested. She said I could try if I liked. I was really glad that I did because I rang up and he was really pleased to hear from me. He came in and we discussed what he could do for the child, plus books and things he could use. He was happy to be able to talk to someone about things he could do for his children and in no way was he a parent who was not interested in their education or their reading. We see that at school a lot. We just get one point of view and unless we delve deeper then we just do not know that there is another parent out there who really does care.

Mr CADMAN—Your second paragraph in your submission makes six salient points in about as many sentences and it is pretty intense getting my head around the things that you are saying partly because of your background as a teacher, I think, where you observe things others may not. Firstly, you say that boys especially face a difficulty—is that right?

Witness 2—In the school situation?

Mr CADMAN—Yes.

Witness 2—I think so. I cannot say that there is not a difficulty with girls, but it is mostly with boys. At our school we have one male teacher, and he is the principal. So year after year the boys go from one female teacher to another. If a child lives in a home with their mum and does not see their dad a lot, all of their role models and all of their influences are females. I would be the last person in the world to say that a male is a better teacher than a female or vice versa, but males and females are different and they have different ways of addressing things. I think a lot of the time when women try to address the problems and difficulties that some of the boys have at school, we are very wordy; we tend to talk about things. At the present moment I do not teach full time; I do casual work, so I go to different schools. I see male teachers interacting. Sometimes just a look or a couple of words from a male teacher will mean more than me standing there going on for five minutes talking to the child.

Mr CADMAN—That is really a revelation to me because I can remember our kids saying, ‘Mum, don’t carry on so much.’ You have painted it very clearly.

Witness 2—I think it is a little bit like Witness 2’s—

Mr CADMAN—They are boys.

Witness 2—Yes. You see boys who are with their mums all day—I am just talking about friends—and their mums try all day to get them to do something. When their dad comes home, and I do not mean with a big strap, he will just say, ‘Haven’t you done that yet?’ and it is done. Women tend to go on a bit.

Mr CADMAN—It takes both approaches, probably.

Witness 2—I think so. As I said, it is not fair to say that just boys have difficulties. The wife of one of the parents that I spoke to took the children away. They had a reasonable arrangement in some ways in that he had more time with the children than he was actually allotted. That was because they had agreed upon that, even though they did not particularly get on. The mum got a job somewhere else and took the children away, so they left our school. We said goodbye to the three children and said: ‘It was lovely having you here. Maybe you’ll write to us.’ Not long after that they were back again. The mum had taken them away but the dad had gone to the court because she had not made any provision for contact with him. So they were back at our school. Then they went back to the court and she got sole custody of them. He got to see them every three weeks, which virtually turned out to be every school holidays because the travel involved with seeing them every three weeks was not working for any of them. We ran into him at a field day and we talked about how it was going. I said: ‘The boys are really missing you,’ and he said: ‘They are, but it is the girl who has been saying that she really wants to come and stay with me again.’ She was the eldest of the three. So it is not just boys who have problems.

Mr CADMAN—You go on to say that the mother controls the times. I guess that is the case if it is an 80-20 decision. What was your experience? Were you told that it was 80-20 or was that just the way it worked out practically for you?

Witness 3—I was told that is was 80-20. They said: ‘You see your child every second weekend and half of the school holidays. You are allowed one phone call a week.’ When I ring up, they say: ‘He’s out the back. He’s down the paddock somewhere.’

Mr CADMAN—You mentioned that solving the problem is expensive and it is difficult to get a solicitor.

Witness 3—It would have cost me at least \$15,000 or \$16,000 to get orders in place. It never, ever worked. If I went back knowing what I know now, it would cost me a third of that, because I just would not have bothered.

Mr CADMAN—Would you represent yourself? What would you do?

Witness 3—I had solicitors—

CHAIR—No; would you now?

Witness 3—I would represent myself because I am of the opinion that it is all—

CHAIR—Predetermined.

Witness 3—It is predetermined before you get there. In the end, I knew that if I was going to go to court I was going to lose anyway. That was the honest feeling I had. The solicitor would more or less tell me that. A couple of times I went back when I was refused custody. I lost overtime and that sort of thing. I had gone to pick up my son and was told, ‘He can’t go this weekend. We have other plans.’ So I went to the solicitor and said, ‘Let’s go back to court and get this all sorted out.’ He said, ‘Mate, you are wasting your time. We might call her in and she will get a smack on the hand. The judge will say, “Don’t do it again.” It is going to cost you \$600 for me to appear for you. I suggest you not worry about it.’

Mr CADMAN—What is your observation, Witness 2?

Witness 2—When I met Witness 3 and started spending time with him and he would tell me these things, I would say, ‘There’s got to be something we can do. It’s not right.’ I pushed and I pushed, both on the access position and the child support—the amount of money—position, which I know is another issue. I was there saying, ‘This can’t be right. It’s not fair.’ At school in particular you tend to get a real fairness thing going because the first thing the children will let you know is if you are not being fair. I would push him into going back to the solicitor. But I have got to the point now where I would not dream of it. I would just say, ‘Save your money.’

That is why I feel so strongly about this. If the whole thing starts off as fifty-fifty then both parents start off equal. It is not about saying that this one is a better parent or whatever. I do not care whether it is male or female. If you start off equal then they both have the equal rights and people take both of them seriously. Then you can go from there. Obviously it is not going to work in every case but, to me, it is so logical as a starting point. It starts the parents off on an equal footing.

One of the things I was thinking when I was listening to Witness 1 talk is that if one party think they are going to win no matter what then they can sit back there and say, 'To hell with you. I don't care.' They know that they are going to win. They know that they are going to get the bulk of the time. But if they know that they are going to start equal they have not got so much. They cannot be so sure and they cannot just sit back and say, 'I'm right. You take what you get and be grateful for it.' Does that make sense?

CHAIR—Yes, it does. Very much so.

Witness 3—In the beginning, it was preplanned. I was the last to know. When my ex-wife moved out, she just got up and moved holus-bolus. She took everything with her. I did not have family. I had nobody at all to fall back on. That put her on the front foot to start off with. As far as access goes, everyone would say, 'We can't give your son to you because you have no-one to look after him.' Do you see where I am coming from?

Witness 2—He was two years old.

Witness 3—He was two years old. Most fathers are on the back foot to start off with.

Mr CADMAN—I have noticed that one of your points of resentment is that your former mother-in-law seems to have more contact with the boy than you do.

Witness 3—Yes. His mother is working. The grandparents pick him up every afternoon from school. I drive past that school or where the bus drops him off. I have to go past their gate. I wave to him as he gets off the bus. Every afternoon that has been happening, while she has been at work. If I try to stop to say g'day to him, they pull him in the car and slam the door. They say, 'Your time with that boy is weekends, not now. This is our time.'

CHAIR—You indicated you were the left when you went through the process of breaking up. You have the leaver and you have the left. You were the left.

Witness 3—I was the left.

CHAIR—The leaver generally is a long way in front of the left in their mental and emotional status and in their position.

Witness 3—It is preplanned.

CHAIR—So you go through the death of your relationship—the grief, the loss, the pain, working out what you will and will not do, what you will and will not take, and how it is going to work. You have done a lot of preplanning in your mind as the leaver. So you may have gone through the separation process as a grief process—and divorce as like a death, because at some stage you obviously thought enough of each other to have partnered, had a child and lived together. There has to have been some sort of close relationship at some point in your life. Then it turns to something different and you have to go through this whole process. How do you then start talking about parenting responsibilities, residency of children, where you might or might not live and what is going to happen in your life when you are in a position where you are in shock. If you have been left, you have not gotten yourself up to speed with this yet. So you are

behind the eight ball so to speak. It is a very difficult time to be trying to make decisions and trying to be compatible, because you are hurt, angry, emotionally distressed and questioning. My worry is that there is a need for a process to take place. Through these hearings it seems like there has to be some sort of race or marshalling gate like where you get the sheep in and pen them for a while before you start putting them on the truck to ship them out. How do you get people to a position whereby they are at equal emotional levels to determine how they want to parent in the future? Do you have a feeling as to how that might be done?

Witness 3—I think mediation has to be a big part of it. The judge at one of the hearings suggested mediation to come together and try to work out issues. I was all for it, and I turned up twice, but the other partner never turned up. There has to be something put in place, as you say, where everybody is brought together so that we can all start off on an equal footing.

CHAIR—If you did not turn up to a process of mandatory mediation or mandatory counselling then you could not look at interim orders as to where the children stay. Our experience is that, once you put interim orders into place—you may not have a home, a place to go or any support structure and the order may be put in place whilst you are in that state of flux—they quickly become the acceptable position in a family law court later down the track. It is very difficult to fight that from a rearguard action. What do you think should be the penalty applied if you did not attend a compulsory mediation process that saw you try and put in a holding position until people could come to terms with their emotions? What sort of penalty would you like to have seen? I am asking you to answer purely off the top of your head. You are not going to get lined up and shot for saying anything. How did you feel when your partner did not turn up for mediation?

Witness 3—At the time, this was eight years ago, I can think of some things that should have happened that I cannot say now. It cost me a lot of money, time off work and that sort of thing.

CHAIR—Should there be a financial penalty?

Witness 3—You could say there should be a financial penalty. On the issue of denied custody, I think that the person who denies custody should be made to pay some sort of compensation in terms of the extra time with the child that the other partner has missed out on or for moneys lost by that partner, if you understand what I mean.

CHAIR—I see.

Witness 3—In my position I can work every weekend if I want to. I feel so strongly about my son that I have never ever missed a weekend with him. I take that time off to be with him. On a number of occasions I have taken that time off and then not had access to him. In those cases I have lost pay as well as that time with my son.

CHAIR—I would like to turn to the issue of child support. You started to talk about the child support scenario. This inquiry is about child support as well. Do you have any thoughts about child support?

Witness 2—I think at the moment it is 18 per cent of the gross income.

CHAIR—For one child?

Witness 2—Yes. That is the only really close contact I have had with it. That seems like a lot of money to me. It is money that the person does not get. It is 18 per cent, which is nearly one-fifth of money that the person does not get because tax comes out after that. It does not seem to take into consideration anything that the other party has. I think the last thing we saw was that the other party could earn \$36,000 and still get the complete child support amount. It does not take into account what sorts of possessions and belongings they have and it does not take into account, from what I can see, the other party remarrying and having another partner. So it seems that the person who is paying is not just paying for the children—they seem to be putting a lot of money into a new household.

CHAIR—Spousal maintenance or something like that?

Witness 2—Yes. To me, in this day and age, I think women really can look after themselves and their own children. One of the first things Witness 3 said to me when I first met him was, ‘I want to pay for my little boy.’ But the amount he is paying seems a lot to pay for one little boy who he would prefer to have with him anyway. With a lot of it, you end up doubling up. We have the child every second weekend and half of the holidays, so, with any holidays that we want to have, you pay all the time and nothing comes back from that. Also there is the business of investments and negative gearing. There is no incentive there because you lose those incentives.

CHAIR—Child support is not predicated on contact with children—it is quite separate. Child support is to be paid because of the responsibility of financially providing for a child. This is so that the child is not a commodity and child support is not seen as something that you are paying in exchange for rights of visitation. I am just talking about the principle of child support—it is supposedly for that reason. However, it is very hard to remove oneself from contact with the child and paying child support. It is very hard to say a child is not a commodity, really. You are paying for its wellbeing and support because you care for and you love it. So it is very hard to remove yourself from the idea that you would like to see that child because you are paying. Obviously, you pay because you are responsible and you indeed love the child. Do you think that, in essence, child support works against people being able to work out an agreeable position on contact with children? Of course, if you have 109 nights or something, after 109 nights with the other partner you start to lose your child support money. Do you think it is a principle that might work adversely or do you think it is correctly placed at the moment?

Witness 2—No, I do not think it is correctly placed at all. I think it is almost like a bonus for the person who is looking after the child.

Witness 3—In my case, I would like to have more say on where my money goes. I have no real problems, although I am sure I am paying too much. But I do not know where that money is going. My little boy comes down and he has clothes that he was wearing six months ago. He came down the other day with a pair of sneakers with holes in them, yet his mum is driving around in a \$50,000 Land Cruiser and she has a brand-new home. So who is getting the money? She only works part time.

CHAIR—Do you think that, if we removed the financial nights, there would be more opportunity or incentive for your ex-wife to allow your son to spend more time with you? I ask

that question because it is sometimes seen that the more the non-residential parent allows the child to be with the residential parent—and it does not matter whether the residential parent is the mother or the father; it does not matter what gender you are—the more the child support formula works against you. If you want to spend more time with the child, they might think of the financial consideration: ‘We can’t let them spend more time there because that reduces our child support payment.’ If we had a standard, across-the-board child support payment that had nights removed, do you think it would stop being an income or financial issue? Then you might get more contact because the resident partner, whether they are male or female, would not stand to lose financially.

Witness 2—I am not sure. It does make me wonder. I said we picked up the child at 3.25. We also wanted to be able to take the child back on the Monday morning, but that was definitely a non-issue: ‘It is not negotiable, no way.’ So it does make you wonder because that would have added an extra night every second weekend.

CHAIR—It does, and that becomes the problem at times because you have these set tiered nights that may become a financial incentive. For a female resident or a male resident, it can be an issue, and I am not genderising here at all because everyone experiences the same problems. Again, there are non-resident parents who will not pay a cent for their children either; there are parents out there who refuse to pay anything for their children, so it does make it difficult for those who continue to pay. They seem to get the bad name for everything. We certainly appreciate both of you appearing this afternoon. It is a very commonsense and principled position that you have put here. We all consider that you have been of great value this afternoon.

Witness 3—Do you mind if I bring up one more point?

CHAIR—Please do.

Witness 3—The point involves the way they assess child support payments. My income in the job I am in relies very much on bonuses. I do not know what pay I am getting from one year to the next. They have assessed me on last year’s taxable income. My bonus for this year is way down. It will probably stay down for six months, so I am paying over and above my income because I am not getting the same amount of money this year.

CHAIR—You need to apply for a reassessment.

Witness 3—It is very hard for me to reassess because I do not know what money I am getting. In my job, it changes from week to week. This year I am very out of pocket because of the assessment.

CHAIR—You can apply for a reassessment based on the fact that you are getting much less than what you were assessed on beforehand. The amount is never going to change—it is not going to drop—until you apply for a reassessment. That is a problem when you are in a vocation that has ups and downs. It is not a static sort of income stream but, again, I must say to you that you then have to provide all of the details of your personal life and your partner’s personal life.

Witness 3—And that submission takes three months anyway.

Witness 2—He did that before we were actually living together. He had to speak over the phone. He had somebody else looking through things. He had things listed for pets and for taking pets to the vet, and that was not acceptable. I cannot believe that. I do not know what you do with your pets. We encountered things like that.

CHAIR—Thank you both for coming.

[3.29 p.m.]

WITNESS 4, (Private capacity)

WITNESS 5, (Private capacity)

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

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 but in the transcript record which goes to the committee's web site we will refer to your evidence as being from a numbered witness. You will know your evidence, but you will not be publicly identifiable to others. Again, I need to caution you about the use of names, and I would prefer that you did not name anybody under these circumstances.

Witness 4—Thank you for the opportunity to speak today. As stated in our submission, we find ourselves here because our son had a night out at a local hotel to drown his sorrows. What we are trying to say to the committee is that not all cases are the same. As you stated, you have had a lot of meetings and spoken to a lot of people, so I have no doubt it has been borne out that not all cases are the same. We believe that every case should be dealt with on its own merits. I do not know how this can be done—it would probably put a financial burden on the government or the department; I do not know—but we firmly believe that all cases should be dealt with individually.

As stated in our submission, our son was engaged to a girl and the engagement was broken off by her. When it was broken off, he attended a local hotel to drown his sorrows. That is not something that we would agree with, but he did. Following a night at the local hotel, the barmaid decided she would look after him for the night. He now finds himself a father. That has been proved by DNA, and he has to pay maintenance. Our son is a hard worker. He works underground in a coalmine. He has a very good job and earns very good money, and subsequently he is paying over \$260 per week in maintenance for a child that does not bear his name, a child that he does not see—and, I might add, he does not wish to see that child anymore. He did initially, but after mediation the visiting arrangements for him were set at such a tough stage that, given that he is now in another relationship, he has decided he does not wish to see that child. We are hopeful that might change in the future but, unfortunately, at this stage that is the way it is. Please excuse me for a moment.

CHAIR—That is fine. It is a very emotional issue but, at the same time, it is one we need to be confronted with. Child support is indiscriminate. It is registered on all biological parents. All parents and young people need to be cognisant of that fact. We have discussed in the committee,

and at length with the departmental officers who have come before us during briefings on this inquiry, the direct need for people to understand what can happen in something that seems, at the point in time, a one-minute or five-minute exercise. It can be a lifetime problem, and it is something that we as a community have to recognise. We appreciate your having the courage to come forward to discuss this issue with us because, as you indicate, your son was not in a relationship. It is not as though child support were being paid to keep the child as it would have been kept if the parents were in a relationship with one another. Under these circumstances, that is not the case.

Witness 4—That is what we were told—that his payment was so that the child and the mother could live in a similar arrangement they had when they were together. But this is not the case; they were never together. They were together when they were at the high school some six years previous, but on this particular night he was there because of an engagement break-up with another girl. As I said to him, he has been caught out on a night that he cannot even remember. That is what he had told me: he cannot even remember the events of the night. But the current system says 18 per cent of the gross wages—which is fair in some cases, I believe. I believe if you are a husband, a de facto partner or in a relationship of some sort, 18 per cent is probably fair. But in the situation of our son, is it fair that he has to pay 18 per cent of a very good wage simply because he had a night out to drown his sorrows? Surely, in this case, the woman must be made responsible for her actions as well. That is the reason we are saying that all cases should be dealt with individually.

Mr CADMAN—It may be fair, but in my eyes the unfairness is the fact that neither you nor your son has access to a child which is, to all intents and purposes on one measure—that is, support—part of your family, but on another measure is denied being part of your family.

Witness 4—Our son does not wish to have access—

Mr CADMAN—I understand that.

Witness 4—We are, at the moment, in a negotiation stage with the girl, trying to get some access.

Mr CADMAN—But at one point he did want access.

Witness 4—He did want it initially, yes.

Mr CADMAN—How long ago was the mediation decision?

Witness 4—The child is only nine months old. The mediation was back in May or June.

Mr CADMAN—We need your help to explore this so that we come to good decisions in these areas. Could you tell us about the mediation? How did that work and why did you decide on mediation?

Witness 4—Are we allowed to talk about mediation? Mediation was arranged by her—

Mr CADMAN—Of course you are. We want you to.

Witness 4—My son had to sign a form saying that what went on in mediation would not be discussed outside.

CHAIR—Okay. Then you should not speak about that.

Mr CADMAN—How was the mediator chosen? Did she choose it?

Witness 4—I believe it was arranged through the Child Support Agency. It was a telephone hook-up—

CHAIR—I see, so you did not really have relationship mediation or a parental mediation. It was actually a mediation to discuss the issues of child support, the payment of child support and the custody.

Witness 4—Not custody but access.

CHAIR—Yes. You are right. It is not something that you should be talking about publicly here, because it is a different process. I think Mr Cadman and I were of the opinion that your son and the young lady had decided to mediate to come to some sort of arrangement of parenting and a whole host of different things, but this was a child support mediation, which is a totally different aspect.

Mr CADMAN—Some blokes in a similar situation would play all sorts of games and withhold payment and make it very difficult for that support to go on.

Witness 4—And let me say that it is not something that has not gone through our minds. But our son is in a situation where he is in a great job and he earns good money. He was 23 years old, he was bettering himself, and all of a sudden child support comes out, and out of his first pay he ended up with \$70 to buy fuel to get to work and to buy food for the week. We had to sit down then and reassess his situation and cancel an investment that he had so that he had money to live.

Mr CADMAN—In this situation, what do you think would be the prospect of going back for, say, parenting mediation where things like the child's upbringing, contact and maybe health factors and schooling could be discussed? Would you need a court order to bring that about, or do you think you could arrange it yourself?

Witness 4—I do not think it would happen. I do not think our son would participate anymore.

Mr CADMAN—Don't you?

Witness 4—I have been worried about him in the past and how it has affected him. At this stage, he is in another relationship and he is happy. He thinks that if he had anything to do with this child, it would spoil that relationship.

Mr CADMAN—So, at this point, he is getting on with his life more or less.

Witness 4—Exactly.

Witness 5—As best he can.

Witness 4—As grandparents, we would like to have access.

CHAIR—Aside from what took place at the conception of the child, the child is biologically your son's child which has been proved through DNA. Did he know about the pregnancy? Did he find out about the pregnancy before the baby was born or afterwards?

Witness 4—It was well before. He did not tell us for some time, and that is something else I do not know that I agree with either. He did offer to pay for a termination and to pay for any counselling, even before he knew the baby was his. She declined that because she wanted a baby and she wanted him.

CHAIR—It must be crushing for you as parents. I have three sons, and it is always a terrifying thought.

Witness 5—You cannot protect them.

CHAIR—You cannot. Their actions can lead to a lifetime commitment, and it is a child's lifetime too. The child has a father—a biological father—and the little boy is not going to know him or you, and that is sad as well. Is this your first grandchild?

Witness 4—Yes.

CHAIR—You would have looked forward to the day when you had a grandchild. It is a day that we all look forward to—when we have a grandchild that we can love and then give back. We can spoil it and not be responsible for its actions. That has not been a good experience for you and it must be an enormous disappointment. I do not know how one legislates for that situation, but it is something we have to confront. It is something that you have been courageous enough to bring to our attention publicly at this inquiry. The terms of reference for this inquiry clearly question whether the child support formula is equitable for parents in relation to the care of and contact with their children.

Mr CADMAN—I wonder whether you feel that, right at the beginning, some sort of parenting program could have been mediated between the two parents and maybe the grandparents as well. I wonder whether your son, the young women and you could have come to something that might have been more satisfactory than the current situation.

Witness 5—We tried.

Witness 4—In the beginning, it may have happened. It may have helped and we did try.

Mr CADMAN—What if it were mandated that you should do that?

Witness 4—It may help somebody in the future.

CHAIR—How old is your son?

Witness 5—He is 23.

CHAIR—In your opinion, what would be fair and equitable under the circumstances, bearing in mind that we recognise and you recognise that you have a responsibility on your son's behalf? You are not abdicating any of your responsibilities and I commend you on that. Many parents would be inclined to remove themselves from the responsibility. What do you think would be a fair and equitable approach for this committee to consider with respect to—I hate the term—the 'one-night stand'?

Witness 4—I really do not know what would be fair and equitable. I do not know what it costs to bring a child up in this world. In his situation, he earns good money. He has the opportunity to earn a lot more money because they have unlimited overtime and they get penalty rates. He has just been transferred to night work which means he gets a 25 per cent bonus. That \$260 a week he is paying now is going to go up drastically next year. Does it cost that much for one child to live for a week?

Witness 5—He gets no say.

Witness 4—He gets no say in that. That goes off the top. He has the opportunity to work plenty of overtime but when you are paying 50c for each dollar in tax and 18c a dollar in child support, is it worth while working for 32c per dollar?

CHAIR—In some of the submissions the proposition has been raised that the government aids and abets the process of young people wanting to have children and deciding that it does not matter who is involved with that child at a later time. Getting child support and possibly getting a family benefit and an allowance may encourage young people to look at having children for the wrong reasons, rather than—

Witness 5—Professional mothers.

Witness 4—I know of a couple of ladies in this town like that. One of them has five children with three different fathers and another has four children with different fathers.

CHAIR—I would prefer it if you did not raise that.

Witness 4—I am not naming them, but I know of that situation.

CHAIR—I know you are not naming them. We have certainly had that experience before the committee, and I must say that the young mother who was before our committee was an excellent young woman and gave this committee an enormous amount of insight—in another town and another state. But can I say to you that you need to have a responsibility because there is a child here. There has been a child born, and that child has rights and that child needs a parent somewhere in its life. But at the same time we need to understand that the formulas we have been putting into place are probably more likely to emanate from relationship children—not from children born out of, as I say, the proverbial one-night stand. Is it fair and reasonable to say that, if you did determine the cost of raising a child—because we are seeking to get the actual cost of raising a child, although everyone has a different cost for raising a child, so we are finding statistics very difficult to—

Witness 4—It has been a long time since I paid for one, so I really could not—

CHAIR—Yes. But would you think it fair and reasonable if there were a baseline cost of raising a child? If we looked at a process where there was a baseline cost—and if the parent wanted to contribute further to a private education or music lessons or other things, they could—would that be a position that you would be comfortable with, in your son's position? Would paying the baseline cost of raising that child be a position you would be comfortable with?

Witness 4—He is a father. He is responsible for the cost of that child. I believe that. But I also believe that she should be responsible for her part as well.

Witness 5—Equally.

Witness 4—Yes, equally. But in this case it does not happen, because she is the mother and she is at home with the child.

Mr CADMAN—We can be pretty stupid at times, can't we?

Witness 4—We can.

Mr CADMAN—And the results of what we do are really hard to unscramble. The only thing I can think of is that it would be good if there were some process whereby, early in a separation process such as occurred with your son, some sort of plan that everybody agreed to could be laid down for the future of the child—a plan that could be enforceable both in payments and access.

Witness 5—This little boy has no male contact at all. There is no grandfather on the other side. There is no husband for her. This would be the only male contact he had, if we could—

Witness 4—She has three sisters and a mother.

CHAIR—So you are still looking at a process of seeking to see your grandchild?

Witness 4—We are. We are negotiating with her at the moment, trying to get to see him.

Witness 5—And abused.

Mr CADMAN—You have great attitudes

CHAIR—I think that is sensational, because it is grandparents who are enormously impacted upon in these times but you have been impacted upon more because you have not built and developed a relationship with the mother of your grandchild. It is very sad.

Mr CADMAN—I just want to wish you well.

CHAIR—As I said, it is something that this committee has to confront. It happens. Our sons and our daughters get themselves in a position that they may not have intended—it is not an intentional issue. I think you underestimate the responsibility or the things that come into it, so

you cannot just turn around and say, 'Silly things happen,' et cetera, because we all do them—every one of us does them. But we do have to have some legislation or some set of rules. If we have a set of rules for families and a set of rules for partners who have children between one another willingly and knowingly, we also have to have a set of rules for having children unknowingly.

Witness 5—If you knew the full story, there was intent.

CHAIR—I think you have indicated that. I see that very clearly in your submission and read similarly between the lines. It must be heartbreaking. As I said, I am the mother of three sons and Alan is the father of three sons, although I must say that my children do not say, 'Mum goes on.' I only have to look at them and they do not, but they go on for their father. I only have to look at them and they stop, so I am a bit adverse to Mr Cadman's position. Is there anything that you think that we as a committee should be concentrating on in the aspect of a clear one-night stand, where a pregnancy results and you then have parental responsibility, whether you want to or not?

Witness 4—I think there should be a limit put on the amount of the payment in that situation.

Witness 5—The female has obviously participated as much as the male.

Witness 4—She was the barmaid in the hotel, serving the alcohol, and she took him home. In this situation there probably should be a limit of some monetary value. I do not say he should not pay for the child; he should—it is his child, it is his responsibility. But does it really cost \$260 a week to raise one child? And next year it is going to be 25 per cent more.

Witness 5—Leave their bonuses and leave their overtime alone. Take it on their base wage.

CHAIR—Of course, he is paying it on a gross wage, which he does not get, so he has a problem there. That is something that we are looking at intently as well. It is being taken on a gross wage; he gets all his overtime. Whether he is getting any FBT benefit from working in a mine, I am not sure.

Witness 4—Which he does not. That is something he could do to cut that payment back, and that is what a lot of miners do, I believe, but he has not.

CHAIR—He is not going to be able to because they have cornered that one. I think that is not open to him either because he is assessable on all of his income. What you have raised with us is something that we had not concentrated on a lot. I can say that Mr Cadman has had it brought to him in his office, I have certainly had it brought to me in my office, and I have seen it in these submissions, but it has not been publicly raised with us at a hearing. It is something that we now need to sincerely consider in a most concerned way as a committee because it deserves the strongest consideration. It is obviously not just your son and this young lady who have had this happen to them. It is obviously happening out there a significant number of times. It perhaps deserves its own special consideration and its own special determination.

Witness 4—Could I just say something on custody, especially for grandparents. When this inquiry started being advertised, we wrote to three MPs about this situation. Mr Anthony wrote

back to us and told us that the legal system was there for us to take advantage of to gain access to our grandchild. I formed the opinion then that the system is wrong. Why should we, as grandparents, have to pay to go to court to get permission to see our grandson? Why shouldn't there be a system in place where grandparents have access one day a week, one day a fortnight or one day a month? Why shouldn't there be a situation like that? In some adverse cases, someone could then make an application and say, 'Look, the majority of grandparents are good people.'

Mr CADMAN—I do know of cases where grandparents have had a really adverse effect on a very young couple—wanting to intervene, et cetera.

Witness 4—I can understand that occurring sometimes but not in the majority of cases.

Mr CADMAN—For us to write a law that gives you automatic access knowing that, in some instances, it is going to be a problem is a difficulty for us. Once it is down in black and white, it is there.

Witness 4—If this gets to the stage where I have to take it to court to get access, I will never see that child.

Mr CADMAN—You will never see the child?

Witness 4—No, because I will not go to court.

CHAIR—That is the sadness of it. What we are looking at, and what the committee is very clear on investigating, is the possibility of a tribunal or some other process that takes the issues of contact and parental and grandparental responsibility et cetera out of the family law court process. We are strongly coming to the conclusion that it is not always delivering a good outcome. There mere adversarial process of it takes away from the care, concern and heartfelt genuine intent of wanting to have a relationship with children. We are thinking about that. Under the same process we would be looking at how grandparents can have a role, and the possibility of a tribunal, panel or some sort of process outside family law. We are looking at trying to determine how best that can be done.

We appreciate you coming before us. We must consider it in depth. We must look to making sure that we cover that issue precisely. It is not just you and your son that this has happened to, and that young lady and your grandson. It happens to a lot of others and we need to think very clearly how we would like to see that addressed in the future. We appreciate you appearing before us. It is a difficult thing to do publicly and we appreciate it.

Witness 4—Thank you for the opportunity.

[4.00 p.m.]

BENNET, Mrs Marion Emily Ruth, Partner, Family Pathways; Stepmother

BENNET, Mr Paul Warren, Partner, Family Pathways; President, Lone Fathers Association, Dubbo

CHAIR—Those organising refreshments for themselves should please feel free to continue, but in the interests of continuing the inquiry I will call the next witnesses. I point out to witnesses that the evidence you give at this public hearing is considered to be part of the proceedings of parliament. I therefore remind you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. I also remind you that the comments you make are on the public record. You should be cautious in what you say to ensure that you do not identify individuals and that you do not refer to cases before the courts. I welcome Mr and Mrs Bennet, who represent Family Pathways. Would you both please state the capacity in which you appear before the committee.

Mr Bennet—I really have three capacities today. Apart from being a partner in Family Pathways, which is a mediation and court support business that I am attempting to run with a great deal of opposition, I am also the president of the Lone Fathers Association in Dubbo and have been involved with that organisation for about seven years, both in Dubbo and in Queensland, and I am a separated and nonresident parent.

Mrs Bennet—I am a partner in Family Pathways. I am a teacher's aide at Dubbo West Infants School, where there are enormous problems with children. I am also a stepmother.

CHAIR—Please make an opening statement if you wish, and then we will proceed to questions.

Mr Bennet—Thank you. I have a degree in social science and am currently studying law at UNE. I have been involved with the Lone Fathers Association for about seven years. I commenced a court support program in Queensland, which involved assisting people through the courts when they could not afford a barrister or solicitor and could not obtain legal aid, and I did some mediation for that organisation. I have since commenced conducting mediation in Dubbo, which was my home area and to which I have returned. I have considerable difficulties in the operation of the organisation and with opposition, particularly from the Women's Legal Service and a couple of legal firms. I was married for 17 years the first time and have four children. I have not seen my daughter for nine years. I have managed to gain contact with my second child in the last two years but I have to do it on the quiet. I have restricted access with my other two boys and they are under all sorts of pressure. That is my position at the present time.

I have done reports for the Family Pathways advisory group—I have just provided material to the committee—which outline some of the difficulties I saw within the Family Court hearings I was involved with in the Brisbane court. I have recently been involved with another court case, where I assisted a lady as a McKenzie friend. There are areas there where I have noticed some

marked changes in the direction of the court, but the culture of the court and the legal profession is still much the same.

CHAIR—Thank you. Mr Cadman might begin questions.

Mr CADMAN—Mr Bennet, how many members does the Lone Fathers Association have in Dubbo?

Mr Bennet—Around 25.

Mr CADMAN—Are other members in similar situations to your own?

Mr Bennet—They vary in the difficulties they have. Some have child support problems. Many have contact problems. Many have court problems. They vary, and there is a significant number of grandparents and a large number of women in the group. One-third of the whole organisation is made up of women, in fact.

Mr CADMAN—Could you tell me why women are involved?

CHAIR—Are they there as partners of the lone father?

Mr Bennet—There are some second partners. We have nonresident women who are members, with their new partners. There is a significant number of grandparents. To follow on from the last people who were here, one of the major areas where there is a problem is where there are people who are significant to the children. That is part of the act, I understand. They are important to them and should be dealt with. The quality of orders that we see in a lot of areas where people are having problems is extremely poor. Many times they are very poor in description and direction. They are not specific. Some are a dog's breakfast, you might say, in that they are overly complex. I can say that about our situation. Some of them take up no more than two or three lines and are far too open. There are many difficulties. You cannot say that any one problem is specific to the group.

Mr CADMAN—Are separation and the breakdown of families more likely in isolated areas or in towns?

Mr Bennet—I do not think it makes a lot of difference. The problems are much the same, and I think they are social problems more than anything else. Having grown up in a rural area and having had some work in large cities with these problems, I see the emerging problem of women's development—quite rightly; I have no problems with that. You have changing circumstances that a lot of men do not know how to deal with. There is also a very strong push from women's support groups. In fact they are quite ruthless in certain areas. Once separated mothers in particular get involved in those areas it is a free-for-all—it really is. All ethics and morals seem to go straight out the window just to have total control and advantage over the whole thing. I find it very difficult trying to assist people as a McKenzie friend. Most of them are men who cannot afford lawyers and cannot get legal aid.

The objections and obstructions that come from the Women's Legal Service and a couple of legal firms in Dubbo are horrendous. The majority of legal firms are quite behind it; they think it

is a great idea. There are only two or three groups there, and they are well-entrenched in family law issues, that are causing the problem. They have a close association with the Women's Legal Service, which is a federal government funded organisation.

Mr CADMAN—Do you think that there is an advantage for somebody perhaps seeking interim or even final orders to be supported by a group or a legal service?

Mr Bennet—What is very evident out there is that many men do not know where to turn. There are no support groups for men in particular. They find themselves very isolated. In particular, emotional support in knowing the directions in which they can go, what they can do and how they can get into other services for assistance is not there. They do not know where to go and how to access help. That is a big problem for them.

Mr CADMAN—How do you make your services known?

Mr Bennet—Publicity—newspapers, whatever. I regularly write articles in the newspaper. I have given out copies of the debate that we had with the Women's Legal Service and we regularly put notices in the paper and write articles for people who come to our groups for support.

Mr CADMAN—In the Orana area, say, what would normally happen if a couple split up? Could you describe a typical process? Where are the legal services based? How do people normally handle that situation?

Mr Bennet—Word of mouth is probably the first way that it occurs because they know somebody that has been somewhere else and has been assisted through these groups. As far as men are concerned, people have rung me up and said that they have seen something in the paper and thought they would come and find out how they could get some assistance. In some areas there is word of mouth, once you get around. I have started putting phone numbers in phone books and things like that that were not there before which is an access situation. Other than that, there are lawyers. We are now getting referrals from groups like Interrelate and Centacare in the last few weeks since we have had a large publicity drive. Those areas are starting to recognise our value.

Mr CADMAN—Would the mother take the children and leave the family home or say to the husband or partner, 'I would like you to leave'?

Mr Bennet—It depends on the circumstances. Being in the situation where I was the one that left, I did not expect what was going to hit me down the track. I did not realise there was support, we had made agreements of what we should do and then my ex-wife got involved with the women's support service. It ran off the rails, there were domestic violence orders taken out on me and all sorts of issues which later I had thrown out of court because they were false.

Mr CADMAN—Do you think this is normal practice?

Mr Bennet—It is in a large number of cases. It took me three years to get out of that and I proved later on that it was a total fabrication by her lawyers in the Family Court. This was a significant factor in me not seeing my daughter and my oldest son for that time because orders

were made with regard to that. After the break up, I found that I was segregated. I did not know what was happening to my children. Because I wanted to find out what was happening and I went near the house where she was, I finished up having a night in the lockup for breaching a domestic violence order. These sorts of issues are very common in many domestic violence cases. I have put some figures in there relating to that.

The Women's Legal Service are canvassing very hard on the basis that children will be exposed to domestic violence in these family break ups if there is a joint residency program. I totally disagree with that. On the figures that come through, 0.3 per cent of domestic violence orders have been taken out in the last 12 months in the Orana region. So that is 3.6 in every 1,000 people and I would suggest that, in the current situation, the majority of those are Aboriginals, which is another social problem that we have in the area. Something like 60 to 70 per cent of orders relate to Aboriginals. With that being the case they take every opportunity—it is not being used as much now as it was, but it was a significant problem going back eight or nine years ago.

CHAIR—You actually support the presumption of shared residency. You also, in your submission, speak of a whole range of issues. One thing that you talk about is the issue of an increase in bogus domestic violence claims, so as to move past the issue of joint residency in the courts. Basically, you are saying that what is going to happen is that there may be an increase in accusations of domestic violence, so there will be more cases of joint residency before the courts. But the one thing you then say, which I thought was rather a profound statement, is that it is cheaper to defend domestic violence matters than Family Court issues. Could you expand upon that? It is a profound statement to say that it is easier to defend domestic violence stuff—

Mr Bennet—Well—

CHAIR—so it is acceptable for somebody to put domestic violence claims on you—

Mr Bennet—Can I just check—

CHAIR—because it is cheaper to go there than it is to go to a family law court. That is a pretty significant statement.

Mr Bennet—To start with, you will find that domestic violence hearings are probably only half a day to a day, whereas Family Court hearings are usually three days. I had a case in which a fellow was accused of domestic violence issues and there was a fairly significant property issue involved. It cost him \$25,000 to get out of the domestic violence issue but the whole thing was thrown out of court on both occasions. So that is one where it was not. But there has been a strategy in the legal profession that, with people who have limited funds, if you send them broke in the domestic violence court they will have no money to fight it in the Family Court, which can cost anything from \$5,000 to \$35,000.

CHAIR—It can be \$200,000.

Mr Bennet—Yes. There was a case in Queensland in which, between the two of them, they had spent \$900,000 on legal costs, which is extraordinary.

CHAIR—On average, the people who have appeared before us have spent \$150,000, \$180,000 or \$200,000. Then, when they are broke, they sit down and sort it out. It seems to me a crazy system. You talk about the effect that child support has on the non-resident parent in an unbalanced system. You talk about the current structure of child support based around the 109 nights, which I have spoken about previously during this hearing. You say:

The basis of joint residency will eliminate the inequities that exist and balance the funding out. It will eliminate the need for the CSA to chase some parents for money and therefore eliminate the conflict both personally and politically.

If a process of joint residency were put in place, how would you see child support working?

Mr Bennet—If you look at it simplistically, to start with, if you have two people on similar incomes and they have shared residency, clearly there would be no money going either way.

CHAIR—What about when they have not?

Mr Bennet—Obviously there is going to have to be an adjustment in those areas.

CHAIR—So you would advocate that somebody would be paying child support in those circumstances?

Mr Bennet—Certainly. I have no problem with the idea that people should be supporting their children—I think it is essential—but I do have difficulty with people holding children to ransom, really, on the basis of the dollar factor. That is fairly rampant in the community at the present time.

CHAIR—It is, and it happens with both males and females.

Mr Bennet—Absolutely.

CHAIR—We have had more female non-resident parents in front of us in the last couple of days who are paying child support. They have the same problem: their male partner is withholding children for child support purposes.

Mr Bennet—We have them at Lone Fathers in Dubbo.

CHAIR—They are professional women or working women. We have tried to get across that this is not a gender specific issue in which we are pandering to dads who do not have time with their children—

Mr Bennet—I support that 100 per cent.

CHAIR—This is a problem that affects mums who also do not have time with their children. Would you see a situation of fifty-fifty residency in which one partner is earning more money than the other as requiring a top-up to ensure an equal lifestyle for the child?

Mr Bennet—Certainly. I have no difficulty with that at all.

CHAIR—How do you see the needs of children being delivered in circumstances of shared residency in different towns or states?

Mr Bennet—Obviously it is a starting point. We have to look at that as the basis of the whole issue, rather than one person getting the major part of the residency and the other person getting half the holidays and every second weekend. There are always going to be difficulties in the whole structure.

My observations of what has happened in the Family Court over the years, going back to B and B—I think there have been some adjustments since—are that in the past children have had to work in with one or both of the parents. Undoubtedly parents have moved away and taken the children or just made it difficult for the other parent. Hopefully, now in this area we are looking at a situation where parents will have to fit in around what the children want to do. If the children are settled in an area and the parent wants them to spend 50 per cent of the time with them, parents have to decide that they are going to stay around that area to facilitate that access for the children. If they cannot or there are particular extenuating circumstances—violence, abuse or whatever—normally that would all be considered and taken into account in the court.

CHAIR—This is the most difficult inquiry. You think you have all the answers and then the very next day somebody comes up with the reason why you should not go down the path which you just thought was the right way to go. Last night I happened to be sitting with a little boy who was returning from 80-20 access with his dad. He was telling me all the little things along the way that affected him at school, just generally talking. He could not play soccer any more because he can be at soccer only one week out of two. He visits another town by plane and he hates flying. We had a great conversation and he grabbed my hand every time there was a bump, and he did not know who I was. He does not like flying but he loves to see his dad.

You find there are so many different problems we are confronting, but the one thing we have to determine is the responsibility parent to parent. Aside from residency, aside from where that child lives, there needs to be some sort of understanding of parents' roles in parenting. We could start at a presumption of fifty-fifty parenting—and I am not talking about residency at the moment; I am talking about parenting. All things being equal, once you sort out your emotional turmoil—obviously you have spoken about that in your submission as well where you say, 'It is clear there is usually a large amount of tension in marriage breakdown. It includes high emotional stress on both parties'—and you move towards the rest of your life as a separated unit, so to speak, with shared children—

Mr Bennet—Hopefully.

CHAIR—You have to have a positive outlook, that we are going to start there. You have been in the room and heard me talk about whether or not the Family Court puts emphasis on that shared parenting role. You have been through the Family Court process and you spent money there.

Mr Bennet—I represented myself.

CHAIR—Well it cost you money to get there. Has there been an emphasis by the Family Court back to you on the role of parenting, guardianship and understanding children's needs—

not talking about residency? Have you placed emphasis, with your ex-partner, on the role of parenting and providing children with that shared parenting and individual decision-making role?

Mr Bennet—Continually.

CHAIR—Is that emphasis put by the Family Court when you are there?

Mr Bennet—That is what one anticipates when you go there. You will see in the report some of the things that I put into the Family Pathways thing and some of the attitudes of the judiciary that came out. One particular statement made by one judge in Queensland was, ‘We’re going to put the interests of the children on the backburner here until this fellow learns to follow orders.’ Another statement was, ‘Your penalty is that you will never see your child again.’ These sorts of comments are coming from the judiciary.

CHAIR—To come to my question, when you are in that process, are there people talking to you and getting you to forget about property settlements, residency arrangements, who pays for what and who is going to get the lounge and the car? Are there people talking to you, first and foremost, about your children and your roles, obligations and responsibilities?

Mr Bennet—No. In basic terms, no. I insisted on mediation at the time. I tried to negotiate with my ex-wife’s solicitor to get mediation. They avoided it on all issues. The circumstances have changed now in court; you are required to go to a mediation session. But there is no penalty for not going, so the whole thing falls apart. One of the loopholes—and that is one of the structures I have set up in my mediation process—is that people can claim, if there is a domestic violence order, that it is not safe to be in the same room, so they sit in two separate rooms trying to run a mediation. It just does not work. I say, ‘Righto, I’ll put a security guard or an off-duty police officer in there if you don’t feel safe. Let’s get to the mediation.’ It still does not happen.

CHAIR—I could go down a thousand pathways with you, because there are a thousand things in your submission, but as President of the Lone Fathers could you explain something to me. We have fathers and mothers, probably more fathers at this time, who do not present for contact and break the hearts of their children in doing so. There are some dads who just do not want anything—

Mr Bennet—Yes, and we are particularly hard on them. We say to them straight up, ‘The orders apply to you as much as they do to the other party, so it is your obligation to get there.’

CHAIR—So as a group Lone Fathers are trying to educate fathers that they must have contact and a relationship with their children?

Mr Bennet—Yes.

CHAIR—What penalties would you put in place for a father—or a mother, but let me just talk about fathers at the moment—firstly, who continually fails to turn up for contact; secondly, who insists on contact but will not pay anything towards the upbringing of his children; or, thirdly, who does everything to avoid contact and to avoid paying child support? We are very sympathetic to those fathers who pay their child support religiously—and they are in the

majority—but who get contact refused all the time. But there are also these dads out there who will not pay for their children, who will not present for contact, or who demand contact but still will not provide for their children's wellbeing. What penalties could we put in place?

Mr Bennet—Can I say, firstly, that those sorts of people make the job very difficult for the rest of the dads out there.

CHAIR—They do. That is why we are doing this.

Mr Bennet—Yes. As for fathers not wanting to have contact with their children, personally—and as far as our group is concerned—I think they need encouragement rather than penalties in that case. They need to sit and reassess their whole direction, because they are only thinking about it from their own point of view, certainly not from the children's point of view. I have had people come in to speak to me about this situation who say they are not worried about their kids, and I just quickly show them to the door. If I were in a position to put my toe behind it, I would, but you cannot do that, unfortunately. They do not deserve the time of day, as far as I am concerned. As for people who want to see their kids, we give them as much help as we can. I do not know how you would penalise these people.

CHAIR—But we are in a position where we are making guidelines and laws for four or five per cent of the population that impact severely on 95 per cent of the population.

Mr Bennet—That is right.

CHAIR—And we have got to be able to understand. Even after this committee makes recommendations, we are still going to have people who will do everything to flout them.

Mr Bennet—Within that five per cent, I would suggest that there is only a small minority—probably five per cent—who are not wanting to have contact with their children. The majority of that five per cent want to have contact. You do see it in certain circumstances but, in the majority of cases, most want contact. The people that we have had come through the organisation and the people who I have seen in our business structure want contact with their children. Again, most men are quite happy to pay for their child support.

CHAIR—I understand that.

Mr Bennet—The financial circumstances that it may put them in can be difficult—and I can go into my own situation—particularly with the cost of travelling from one spot to another for contact. If the contact is not there, the cost of going to court can be very high—solicitors just say, 'Give me \$3,500 and I will do something for you.' If they are broke from the child support, they have no chance of covering the money needed to travel from one point to another for contact. Those sorts of areas are big areas that need to be dealt with. People say, 'I just can't afford to go—end of story.' Another issue is that I have had a number of people who say they have gone and the children were not there, so they do not bother going again. I suggest to them that, if they can possibly go, they go and get some proof that they have been there and then deal with it the best way they can.

Mr CADMAN—I would just like to ask Marion one question, if I may. I know West Dubbo quite well—my wife was a teacher at the West Dubbo Infants School for some years. That is the area where you are, so I know the population that you work with quite well. You give a very good example of where you were able to intervene and get a better arrangement working in the Indigenous community in that area.

Mrs Bennet—I did not personally intervene. The counsellor approached me because she knew of our business and she also knew that I worked one-on-one with Indigenous children. She said that they were having trouble. She had spoken to the mother's lawyer who said that the father must obey orders and that was all there was to it. The father was obeying the orders. It also had in the orders that, if an agreement can be reached outside the orders, reach it. The father then went to the counsellor and they talked about it. The counsellor then went to the mother and asked if she would be agreeable for the father to see the children before and after school. They had both agreed that it was better for the children to live with the mother due to circumstances out of their control—they could not have them on an equal basis, each having half and half. In that situation, it worked very well. The father then got to see his children before and after school. Since then, the children have done a lot better at school. It helped enormously, because the children then knew first thing in the morning that their mum and dad still loved them and they were not neglected children.

Mr CADMAN—At the end of the day, they knew dad and mum both still loved them.

Mrs Bennet—Yes, that is right, and that is what mattered. That was the problem: they went to school every morning, thinking, 'People yell at me here, mum yells at me at home, dad yells at me sometimes when I see him—no-one loves me.' That was where they were at.

Mr CADMAN—Is that particularly important for Indigenous kids more than others? Are they more sensitive, do you think?

Mrs Bennet—I do not know that it is more important for them than for other children. As far as their lifestyle is concerned, they do not have a lot of the opportunities that non-Indigenous people have. They are seen as a lesser minority and a lesser potential employee and are not looked on as an important part of society when they are an extremely important part of society.

Mr Bennet—I want to say one more thing to follow on from that. It also follows on from the things you asked me a while ago about parents. We were living in Toowoomba and it became too much for us to go backwards and forwards to where the children were in Dubbo. My youngest child was also threatening suicide because he wanted to see more of us. We relocated and now we are 500 metres from where they live and they are still forbidden to come and see us on their way home from school. In these situations where the children requested that they also wanted to see their fathers more, they had to go around the system and away from the legal profession to get a structure to suit everybody.

CHAIR—Thank you very much, Mr and Mrs Bennet, for appearing before us this afternoon. It has been very helpful.

[4.35 p.m.]

McGRATH, Mrs Jennifer Ann, Team Member/Manager, Muswellbrook Women's and Children's Refuge Ltd

CHAIR—Welcome. We appreciate your coming in from Muswellbrook. The evidence that you give at this public hearing is considered to be part of the proceedings of parliament. I therefore remind you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. I remind you that the comments that you make are on the public record. You should be cautious in what you say to ensure that you do not identify individuals and that you do not refer to cases before the courts. If you would like to make a short five-minute opening statement, Mr Cadman and I will then proceed to ask you questions.

Mrs McGrath—I represent women from the upper Hunter, the lower Hunter and the New England region. I also represent the women's refuge movement and the peak body of the women's refuge movement. I have managed a domestic violence service in Muswellbrook for 20 years. I run the only court support scheme in Muswellbrook and I have just been seconded to manage a large domestic violence service in Sydney, starting this week. But the submission that I put before you today is specific to the area of domestic violence and the impact the proposed changes to family law will have on women and children who face ongoing danger after separation from a perpetrator. I am being quite specific.

The current provisions of the Family Law Act already include mechanisms for couples to have shared residency agreements for their children. Active, non-violent and involved fathers are very likely to be granted shared or joint residency or generous contact, including fifty-fifty, under the current law. In fact, we do that in Muswellbrook with the local court.

The cases most often requiring court intervention are those where there has been violence or abuse or where other social issues such as substance abuse are apparent. In our opinion, they are exactly the wrong cases to be decided in the light of a presumption of shared care. Shared residency under any circumstances requires a high degree of commitment to the needs of children. It requires mutual respect for the differing views of both partners in all matters. Shared residency in cases of domestic violence and sexual abuse cannot work. There is no chance that such a change would enhance the life of the children involved. Rather, it is likely that children would be at further risk of experiencing domestic violence as parents struggle to resolve day-to-day issues regarding their welfare.

Children are not shielded from the horror of domestic violence; they are part of it. Every blow is sensed or seen. They are aware of the build-up to violence and are terrified of what comes next. They live with a high degree of anxiety as they know the patterns and the result of displeasing the perpetrator. They blame themselves for the violence perpetrated against their mother; they attempt to placate the perpetrator or control their mother's actions in their desperate desire to keep the peace. Children do not deserve to live in such a constant state of anxiety and fear.

The proposed changes to the Family Law Act appear to have been driven by the desire to placate adults with little regard to the fact that, for many children, domestic violence is an ongoing threat after separation and that the most dangerous time is on the point of leaving a violent relationship or, in fact, after leaving the relationship. We believe it remains the responsibility of all law-makers to consider the impact of any changes to existing laws on the most vulnerable in society—that is, children post separation who are escaping domestic violence—and that no such changes should further the risk that children are vulnerable to ongoing violence or even death.

The proposed equal time joint residency arrangements raise for me questions and no answers—and I have a list of questions. I also have a case study that you might be interested in. We will see how we go for time. I implore you that further changes to family law should be a thoughtful process where the impact of domestic violence is considered with due regard to those women and children who have needed to separate from a perpetrator to remain safe from abuse.

CHAIR—Thank you. We would be happy to take your case study and distribute it to the committee members. Could I just begin by saying that it concerns me that there would be any thought in the community that this committee would indicate that children or adults—females or males who are subject to domestic violence, because there are both—should be put in a position of domestic violence. This inquiry is about looking at a position for all people. This is not just a family law court inquiry. The purpose of the inquiry is to look at whether the fifty-fifty presumption could work for all people—the Australian population who unite, parent and then separate. It is quite clear to us that there may be some misconception out there that we would be seeking to have a presumption whereby children are forced to go 50 per cent with their dad and 50 per cent with their mum, irrespective of whether that 50 per cent is with the person who is the perpetrator of abuse of them. That is certainly not the intention of the committee or the intention of the terms of reference for this inquiry.

The intention of the terms of reference is clearly born not just from the parents' desire to see more of their children—which is not a bad thing; I do not think it is a bad thing for parents to want to see more of their children—but also from the statistics on the value of family involvement. They have come to everybody's attention, and nobody is happy with the situation. We have statistics that say that children want to be with their parents more, that more women want their husbands to be involved in the parenting and that more husbands want their wives to be involved with their children as well. It seems the majority of people want to have an involvement with their children, but during a partnership breakdown there is some sort of unwritten law—outside as well as within a domestic violence situation—that says, 'If you are the non-residential parent, you get every second weekend and a week in the school holidays.' Nobody seems to be happy with that. That is the reason we are looking at this issue. We want to see how best we can resolve that dilemma out there. A couple of issues have been tacked on to this inquiry with respect to grandparents and child support. To allay your concerns I want to make the comment right from the start that this committee is certainly not looking to put children or partners in a position of danger with violent people.

Mr CADMAN—Yesterday we heard evidence from Pru Goward. Under questioning she said that the people least likely to be violent towards children are their biological parents. Those are the statistics. I wonder whether you have any other statistics. They are national statistics. Pru

Goward, by the way, is the Human Rights and Equal Opportunity Commissioner, with special responsibility for children.

Mrs McGrath—No. I have not got any statistics to refute that today. In the refuge where I have been involved for 20 years children are subjected to violence.

Mr CADMAN—Witnessing violence or violence against the children?

Mrs McGrath—Sometimes it is sitting there watching your mother being raped with a knife. Witnessing hardly describes that, in my view. It is a bit of a soft word for what has just occurred to that child.

Mr CADMAN—Yes, that is true, but it could well be that a child is safe with both parents but that the parents are not safe together.

Mrs McGrath—My concern is that the benchmark will move. I do not know how it works in—

Mr CADMAN—So you like the benchmark being 80-20 because it is there?

Mrs McGrath—Yes. The benchmark being at 80-20 does not mean that, when I go to the local court to begin residency with a woman, we start at 80-20. But it does mean that solicitors in Legal Aid have to begin there. There is not much money; they have to do what they have to do in the shortest period of time. Obviously they have a pro forma and that is what is spat out and everything is arranged after that. That is what I see in the local court, as a general rule. So if fifty-fifty is the general pro forma, the general benchmark, then it is like any negotiation: you have to allow something to go when you begin.

Mr CADMAN—If it were the starting point, not the finishing point, in your experience what would be the result of that? In considering this, let us put residency to one side for the moment and just look at plans for the children—not a fifty-fifty input into where they are going to be living and into access but a fifty-fifty input into what schooling they will have, what health arrangements they will have and those sorts of things.

Mrs McGrath—But that is joint residency.

CHAIR—No, it is joint parenting.

Mrs McGrath—A joint parenting plan. I always mention that to people I have dealings with.

Mr CADMAN—The court fails to do it, I have to say, and even the Chief Justice said that they do not consider it.

CHAIR—It is in the guidelines; it is in the process.

Mrs McGrath—Yes. It is certainly easier if people can agree.

Mr CADMAN—What is your experience when putting that to people? Do some agree and some not agree?

Mrs McGrath—It depends on the level of violence, on whether it was the partner who perpetrated the violence and on how safe a mother thinks her children will be. But I would always say it.

Mr CADMAN—Do you get a positive result sometimes?

Mrs McGrath—Sometimes I do, but not very often. You have to take into account that most of my clientele come from domestic violence; that is our criteria. So I see people in the courts that are not part of our service and give them assistance sometimes but mainly I see people who are escaping domestic violence.

Mr CADMAN—How would it go if, for instance, mediation were forced, where as parents they had to work out what was best for the children's future—the lifestyle for the children—and leave residency and access to one side?

Mrs McGrath—I take up the previous witness's point that mediation with an armed guard is not what it is about. Often women say, 'He looks at me; he has only to look at me.' For families who are escaping genuine violence, the man involved usually has some kind of a look. He does not have to do very much and she knows she is dead. There is a secret code. He does not have to say anything an armed guard can hear to frighten her so that she does not speak. It is the grandparents who are under threat—and her family, her sisters and everyone else. She might be able to keep herself safe but she cannot keep her extended family safe. That is where mediation falls down.

CHAIR—That is very interesting. Again, that is something we are going to have to ensure we come to terms with, and we will be very cognisant of that fact because we know it exists. My problem, again, is putting in place a law that covers five per cent of Australians and impacts gravely on 95 per cent of Australians, and we have to try to resolve that.

In your submission—I do not think you wrote it; it was Karen Truscott—you indicate that the fifty-fifty residency:

... does not reflect current caring practises in intact families where mothers are still predominantly the primary carers of children and undertake most of the domestic work. Shared residence would mean arrangements for some families post-separation would be significantly different from pre-separation arrangements.

Do you think we send a confused message to primary breadwinners, whether they be male or female? I say 'whether they be male or female' because in our cases yesterday and today the female non-residential parent was the primary breadwinner. The father was not the primary breadwinner; he was the primary caregiver and the women were the primary breadwinners. Do you think we send a confused message that says this to the father: go out and earn the money to keep the roof over our heads, the car paid for, petrol in the car, food on the table and the electricity bill paid and I will care for the children, and then, when it comes to a separation, because we have not given fathers a choice—they have had that primary breadwinning role—they have forfeited their right to be a primary caregiver because they were assigned the role of

primary breadwinner. Do you think we send confused messages? We are saying that dads—we will talk about dads specifically—do not have that shared parental responsibility or residency role or caring role during an intact family and so cannot possibly do it when they separate? We do not give him the ability to do it because we have sent him out to work in an intact relationship. He thinks he is doing the right thing in being the primary breadwinner and allowing and enabling his family to exist in money terms, and then we hold it against him and say, ‘No, you can’t be a shared parent now because you have never done it.’

Mrs McGrath—That question is always asked in legal aid: how much have you contributed to the care of the children? I think that it is not always a time thing. My husband worked shift work. We had young children. He was able to give care to the children.

CHAIR—But that is not recognised. That is the point exactly.

Mrs McGrath—That is the question asked in the parenting plan. With the women I see, if there are drugs, alcohol or substance abuse involved the whole balance changes.

CHAIR—But what about when there is not? I have looked at your submission and I understand your reasons for rejecting the presumption of shared residency and parenting for all the reasons that it might endanger people. We had a lady in this morning as a witness in our public hearing who left a relationship because she was a victim of domestic violence. The children are with their father. She believes that shared parenting could work. She is a victim but she believes it could work because she believes that the other parent would conform to law and also that they could come to an arrangement where they could both, even though they do not get on, have shared residency of the children. She believes that even though she is a victim and had to leave for her own sake.

It is a complex question and one that we asked your particular types of organisations. As Mr Cadman alluded to, if a parent is not violent towards a child but the parents are violent towards one another or one parent is violent to the other and the child is a witness, then that is inflicting violence on the child. There is no doubt about that. There is no doubt that a child who witnesses their mother being raped at the end of a knife is being scarred. That is violence perpetrated on that child. There is absolutely no doubt about that. I do not condone any of that. But once the violence is removed so that one parent is in one corner and the other is in another corner and the child is not seeing them together and has not experienced violence from either of the parents, do you think it is possible that the child can have a relationship of residency with the parent who inflicts violence on a partner but, removed from the partner, has never inflicted nor would inflict violence on the child?

Mrs McGrath—I would love to say it was that simple, but I think it is a lot more complex than that. I am not there in people’s homes, so I do not know, but what people tell me I have to take at face value. The sorts of children that we see are acting out violence. That is the positive reinforcement that they have seen. I am not talking about family breakdown. Family breakdown, where someone says, ‘Get out of here,’ with a raised voice and someone gets an AVO to prove a point, is different. That is not what I am talking about. I am talking—and I think you are too—about violence, and it is just not so simple that you can separate two people, corner to corner, and the violence stops. In 20 years I can remember maybe twice where that has happened, with the sort of person who sees an AVO as a very serious breach of the law—who does not see it as a

piece of paper but really cares about what the rest of the community thinks—and makes a commitment to change within themselves. That would be women and men. But often there is no commitment to change and people see the AVO as just a piece of paper. I have heard a fellow say, ‘It’s great to be going back to Tamworth prison; it’s like going home.’ If he thinks of going to prison as going home, then there is not very much the law can do. It is a piece of paper. And that happens in a lot of the cases of the people we see. Women say, ‘Please don’t make me get an AVO, because he’ll know I’m in Muswellbrook and I’ll be dead.’

Mr CADMAN—On the other hand, the evidence we have had within the last 24 hours is from grandparents crying because a mother has vindictively taken an AVO out against grandparents to keep them away from the kids. An AVO is a non-provable instrument, a non-evidence based instrument, as I understand it. Is that right?

Mrs McGrath—It is on the balance of probability. An AVO is not beyond reasonable doubt. So you can accept an AVO—

Mr CADMAN—On raised voices.

Mrs McGrath—You have to be in genuine fear.

Mr CADMAN—And someone being in genuine fear is determined without proof by either a policeman or a magistrate?

Mrs McGrath—By a magistrate. Someone who is a defendant in an AVO can accept an AVO and it is explained to them that they are not saying in a court of law, ‘I did this,’ but they are saying in a court of law, ‘I will keep away from that person.’

CHAIR—So you could lie to get an AVO.

Mrs McGrath—Yes, of course. I could even be lying now.

CHAIR—I know, but I would hope you are not.

Mrs McGrath—But you could lie about anything, couldn’t you?

CHAIR—That is right. The point that has been brought to us is the amount of lying and indiscriminate use of AVOs. Please do not get me wrong. You see enough of genuine violence, and I believe and know that. But we are not talking about genuine domestic violence. We are talking about unproved allegations and unfounded, untrue statements being made about grandparents and other people in order to ensure that a child does not have a relationship with extended family members or with a parent. There is indiscriminate use of AVOs, and people will lie. And they can do that. They can lie to get the AVO, and it is not really a provable instrument.

Mrs McGrath—They do have to swear on the Bible.

CHAIR—I understand that. I had this problem with my son the other day who was confused about that.

Mrs McGrath—Do not get me wrong—I am not saying that every single person who gets an AVO is not lying. I am not that silly.

Mr CADMAN—But there is an incentive there that is a bit of a problem—that is, access and benefits can relate to whether there has been contact between the interim order and the final order. If you can freeze somebody out, then you may attract substantially more benefits for yourself.

Mrs McGrath—If that is the situation, then you tick the box when you are getting the AVO that explains the clause that, if there are children and there is a family law matter, the family law is the Supreme Court and that goes beyond a local court. So that is the beginning and end of it, or you can contact only for the matter of accessing the children.

Mr CADMAN—I know, but the grandparents in question said, ‘It cost \$4,000 and, six months later, after having our name around the town as being violent people, we had it removed.’

CHAIR—What we are talking about here is the fact that all of these court processes following the AVOs that we have been told about have been thrown out.

Mrs McGrath—Because they are hard to prove.

CHAIR—They are, and maybe they were baseless in the first place. We now have a second tier structure of utilising different aspects. As I said, again we are not talking about genuine domestic violence. We are talking about the indiscriminate use of AVOs which takes away the integrity of an AVO. Even with the police, it takes away the integrity of an AVO.

Mrs McGrath—I think when the laws changed around AVOs, it all became whitewashed; I really do. You can get a PPO. People only ever got an AVO when they were really scared and they had thought about it for a long time. What I am seeing now is that, for example, with the raping on the knife incident, an AVO does not help her. She does not want an AVO.

CHAIR—No.

Mrs McGrath—If you take away the PPO—if you make them different, a person to person order with the person over your back fence who throws the rubbish over your fence—all those people become one and the same in the court. It just whitewashes the whole thing.

CHAIR—We appreciate you coming in, because this is another issue that we need to get right and we are very cognisant of it. I understand why you are here and I understand your opposition to shared residency. We look at shared parenting as a starting point rather than as a mandatory sentence that, ‘You must do this and you must do that.’ We are exploring that avenue. It just seems that at this time there are so many Australians being greatly affected by the actions of others. This committee has been confronted with every different action every single day. We appreciate you coming before us today and registering the concerns of those women and men who are affected by domestic violence to ensure that we take them into consideration and do not lose sight of them when we make our recommendations. So thank you for coming from Muswellbrook today.

[5.04 p.m.]

CHAIR—We now move to the community statements segment, but before we do, I wish to indicate something that I neglected to do at the beginning of this hearing. Emma, from John Anderson's office, has been here for the whole afternoon, so we thank her for coming because it is important that your federal member is aware of the issues that arise in his own electorate. Unfortunately, the Deputy Prime Minister could not be here today and he apologised to me personally for that, but he certainly is very concerned about this issue. He is so concerned that he be across this issue that I ensured we held a hearing right here in Gunnedah so that the people he represents had the opportunity to put forth their views and make the committee aware of them. Thank you, Emma, for being here for the whole afternoon.

Moving to community statements, we ask that you do not speak of those cases that might currently be before the court and that you do not name people during your three-minute statement. As I indicated at the beginning, the three-minute statements have gone very well. People are able to get their message across. If you have a written statement, we are only too happy to distribute it to all the committee members. That would enable you to make the pertinent points of personal issue that you want to make rather than reading pages of a statement and running out of time.

Phil—I am a resident of Gunnedah. I was married for 10 years. In that 10 years I had four kids. I was told on a Monday to leave the family home. On the Tuesday another male moved in. So we did DNA tests on the four kids. Lo and behold, three came back that were not mine. What I would like to know from the committee is: what is best for the children, and who represents them? I have given you a piece of paper about that. Should the real father be pursued? Should the real father support the three kids? What are the implications for me in the way of child support if I continue to see the kids? Is it not a basic human right for a child to know his or her true identity? Really, most of us should know who our real father is, but my kids do not. As far as I am concerned, the children deserve to have the real truth. Is it in the best interests of the child for them to be denied their medical background? What steps are the CSA taking to name the real fathers—or DNA fathers as I like to call them? Should the mother be forced to reveal the identity of the DNA father to the children? I also want to know who represents the grandchildren—that is, my mother, father, brother, aunts, uncles and cousins. I agree with a lot of what you have said, but the government really needs to pull its head in and look at everyone as a community. Thank you.

CHAIR—Thank you very much.

Stan—Thank you for the opportunity. Custody in separated parent situations is the cause an enormous amount of unnecessary conflict and misery. I should apologise, by the way. This is entirely abstract; I feel like a bit of a fraud without a personal story to tell. The reasons for the unnecessary conflict and misery are mainly in the operation of the Family Court of Australia and can be chiefly identified as two problems. The first is the practice of the Family Court of Australia whereby every time it makes a decision about custody arrangements for separated families, it says that that decision does not represent any precedent for any future cases. The result is that nobody knows where they stand in law, and this practice of the Family Court, while

it no doubt encourages a lot of business for the Family Court, encourages people to take legal action and become involved in all sorts of conflict which could be largely eliminated simply by a statement of clear rules and guidelines.

The second problem in the operation of the court is the lack of support for a proper family structure. The notion that the desirable state is for both parents to, in some sense, equally nurture and rear their children in a loving way completely ignores the fact that we are talking about two people who have been unable to live together and who possibly cannot stand to be in the same room. It is basically a piece of political platitude. The establishment of a proper family structure would require the assignation of a primary parenting role to one or the other of the separated parents. I would say, without any question, that it should be the mother, as the mother carries the child and nurtures it with breastfeeding and so on at an early age. That should be done in association with the vesting in the mother of a single and overriding authority in the rearing of the child—in association, of course, with arrangements for visitation by and other contact rights of the other parent. Where there are exceptional cases, of course—such as where the mother does not particularly want the child or is deemed, for various reasons, unfit for the primary custodial role—then obviously the father would take the child.

It is my view that this nonsense of equality of authority between two parents who have split is basically a matter of destroying a proper authoritative parental structure and gives neither parent any chance of controlling and rearing a child properly. I would suggest that a reasonable division of parenting, which would consider the rights of the non-primary parent, would be for the child to go to the non-primary parent from, say, age 11 for a year and then possibly for another year at age 14 so that the father—if it is the father—would feel that he had a proper go at parenting. This would be in addition to his occasional visitation and contact, and that would still leave the primary role to an authoritative mother.

Glenise—I think the children's rights are the ones that should be of utmost importance. The children should have the greater rights to wellbeing, education and future health, plus any moral standards that must be met. These things are the most important. The parent who will provide these things for the children should have the greater say.

I would like to talk about one mother who has four children. The first child, a daughter now aged 11, has changed schools between 13 and 20 times. A school report earlier this year said that she needed to do a lot of work to improve to be ready for high school next year. She has changed schools twice since then. She has one father. The second child, a son now aged seven, has a different father, is repeating year 1, and is now in his sixth change of school. This child rebels against any change. He loves to be cuddled, but his mother has told him that he does not need any, because she did not get any when she was young. She condemns his father in front of him and says he is just like his father.

These two children do not see their fathers. The third child, a daughter now four, and the fourth child, a daughter now 20 months, both have the same father, and that is my son. With child 3 and child 4, she is trying to keep contact with them. She married him on 7 September last year and moved out just before Easter this year and is now with another bloke—living with him. The little four-year-old has told me that she is going to be a mummy and she is going to marry somebody rich—and the fellow she is with now is rich and she can go to Toy World. Anyhow, I have tried to tell it differently.

CHAIR—Would you like to wait a while and then come back?

Wayne—Honourable members and senators, it has been a while since I was in parliament—I believe it was at the end of November last year at the invitation of Ken Ticehurst—when we started this journey that we have embarked on. I am a loving and committed dad who, after separation, simply wants to share in and carry on with the upbringing, welfare and schooling of my little boy, now aged 4½. I separated in October 2001 and, from the first day of separation, the mother maintained an absolutely cruel and vindictive campaign of a zero contact regime. The mother simply deemed that no contact would be in order, and that position has been supported in the last two years that I have been involved in the Family Court. The mother filed for sole residence orders in the Family Court. After huge amounts of exchange between our solicitors, still my son did not get much contact with his father. The court order counselling was an absolute waste of time, where the mother continued to maintain during counsel with legal representation a position of zero contact.

It can only be described as a living hell until interim orders are finally held, and there are usually extensive delays. In my case, I was lucky to get in in six months for an interim orders hearing. There were protracted court hearings and matters were thwarted by the other side in failing to file a certificate of readiness. This is a great delaying tactic to move into a defaulters court hearing coming out of the Family Court lists and to further enhance the status quo rules that the Family Court loves to apply. Unsubstantiated allegations of child abuse came quickly after that to DOCS. I then ended up in a significant discussion with JIRT, the Joint Investigation Response Team of DOCS. After some period of time all allegations were proved false; however, it clearly favours the mother's case in a matter going to the Family Court.

The system as it currently is really forces good dads like me, and some mothers, to fight it out in a significantly adversarial position in the Family Court. In fact, you do not even know which court you should be in. When you apply to the local court, they push you to the Family Court to get a further delay or they send you to the Federal Magistrates Court—depending on which sorts of barristers you have against you. Not a single shred of evidence supporting the current sole custody model has been presented to this parliamentary inquiry by the array of family law industry participants. The reason for this is simply that none exists.

As Senator Harris said in his speech in the second reading debate on the Family Law Amendment (Joint Residency) Bill 2002, 'The time has come to end the system under which the courts on a daily basis enter orders that bar fit and eager fathers'—and some mothers—from exercising a most fundamental human right: the right to simply spend time with their own children' and for their children to spend time with both parents. Of course proponents against the proposed presumption of shared arrangements will go to any length to misinform the committee and to lead astray the facts that would support such parenting arrangements as is sensible and proper. My view is that a rebuttal presumption, where children spend equal time with each parent, is a fair and equitable solution, giving full and complete protection because of the presumption where there are factors that must be taken into account to preclude such shared time. I have a single page of some significant changes.

CHAIR—Thank you very much.

Linda—I suppose I am here firstly as a mother. I am a residential mother. I have a father that does have contact with his daughter, which I am very pleased about. I support all dads who do that—I think that is fantastic. Obviously, I allow contact. Rather, I do not think it is my right to allow it or not allow it; it is my daughter's right to have contact. I have a non-paying child support person. In some areas he is an excellent dad but he does not feel that he has to pay to support his child. I am not the one that wanted the separation. I am just trying to clarify where I stand in all of this. I am in between everywhere. In my situation the father lives in Sydney and I live here. I came back to my home town to get more support from my family because initially he really did not want to have any contact. He now does, and I am pleased about that. That has taken a long time to get under way.

My concern about the fifty-fifty split is where it is not going to be viable. In my case, I do not feel it is. Obviously, in domestic violence—and I strongly support what Jenny said—that is not going to be healthy for children. My concern, when we are looking at what is in the best interests of the children—and that is what should be our primary concern here: what is good for our kids—is whether it is in the best interests of the child to have a fifty-fifty split. I do not know the answer; this is why I am asking the question. Who suggests this? Is it in the best interests of the child to have a 20-80 split? There seems to be no strong research out there that is saying to me—and my background is in psychology; I am a qualified psychologist—what is right.

When I went to the family law court, I kept asking the question: what is in the best interests of the child? Nobody could answer that for me, and I was very frustrated. I have been through the family law court so many times, as well as the federal law court and the Child Support Agency, which changed its assessment four or five times, trying to get what I thought was for the best interests of my child. That is what I still do not have an answer to. What is the best thing for her? Is it good for her to be dragged all over the countryside to have access to her dad during school time? Is it better for her to be or not be at school then? Should she miss a day's school to see her father? Is it better for her to have contact with her father or to get an education? Nobody has yet answered for me what is actually in the best interests of the child, so that is my question.

CHAIR—Thank you very much. That is the issue that this committee faces.

Glenise—I wish to bring up a couple of little points. On one of her visits the little four-year-old told her father that she had a new daddy, which I think was quite wrong. I think it is mental abuse of children for them to be told that they have got a new daddy when their daddy is well and truly in the picture. Another thing, something that sounds similar to something raised earlier, is that within no time of meeting my son the woman was pregnant with the little one that is now four. She continually used that child against him, coming and going and threatening him. She demanded that he leave his job to help her more around the place, because he was working hours that were too long. He left that job and got another one. He is still doing the wrong thing by working and not helping her around the house—and then she moves out anyway. I believe these children—the whole four of them—should be allowed an education. They have moved from one school to another every time that she moves. They are just not getting an education, which I believe is of utmost importance in this day and age in which you really need an education.

CHAIR—Thank you very much.

Sabina—I am representing myself a little bit but I am also the coordinator of the family support service here in Gunnedah. What I have heard today is pretty much what we see nearly every day in our service. I am also representing myself here because a year ago I separated from the father of my two young children. We have one of those very mutual agreements without any court orders. We made a clear decision about that, that we would both stay in the picture of both children. I think that is actually the point. From the inquiries I receive at my work and also now from what I see in my private life, I see it is actually about the issue of power and the issue where two adults are willing to communicate about the best interests of the children. It is also about how a community and a state can actually support parents who are willing to communicate about the best interests of their children and also support people who are not willing to do that.

I think the main issue, as Linda has said, is what is the best for the children. I can see that my boys would absolutely not survive without their dad. I also would not, without his support. I am wondering what Australia can put in place to encourage families after separation to stay in dialogue with each other—you do not have to love each other to do that—and to put the children's views in focus. My biggest criticism is that there are not enough services in place so that a system can be enforced of having services for children to ask them, after a separation, what they want. They will tell you how often they want to see their dad and their mum, where they want to stay, where there is an abusive situation. Domestic violence is about power, so we are not talking about two people being violent to each other and when you take these two people apart the violence is not happening. Research shows us that violence continues in other families when the perpetrator marries again. Often, because it is about power, they are using children for their power games after separation. That means the children are constantly in the same situation as they were before the separation: they are used for the issues that both adults have. So I strongly think it should not be a fifty-fifty arrangement, and every case should be looked at separately. I believe that children should have much more say about their lives in this country.

CHAIR—Thank you very much.

Kevin—I am speaking off the cuff but I have a few points I would like to put across. With child support, I wonder if we could turn it back the other way, so the more the father sees his child the more he pays. We would have a low base rate and bring it up the more he sees the child. I have had to fight hammer and tongs to get past 80-20. I only got three days a fortnight, and that took me God knows how long to get. I do not know whether would be a financial gain because both men and women could say, 'If I can limit their access I actually gain that financial reward.' But I would be quite happy if the more I see my son the more I pay.

I do pay my child maintenance—and that is another thing. With the way the CSA is set up, in the last nine of 10 months, since I have been on there, I have had six different case officers and none of them have got any idea of what I am on. They send me back to the one that I had before and then she will send me back to the general manager. Nobody knows what is going on there. My child support is now totally out of whack. I have been trying to keep it in line but, with the way they have had it structured, one minute it was right for me to ring up and give an estimate and the next time I do that it is not correct. I have been overcharged, and I am currently a student.

Another thing I would like to mention is that I can understand where a lot of dads come from when they say they do not want to have anything to do with their children because it is just so

hard. I am sure they get to a point where they just go, 'I would rather walk away because it is not worth the pain to my son or myself,' and that is what they choose to do. I think that must be very hard for them. Thank you.

Ben—I wish to start by saying I am a recently separated father of two young children whom I love dearly. I cannot refer to any other personal references because we have a case currently pending in the Family Court. I want the opportunity to be there as a good role model to my children and a positive influence in their lives without robbing my children's mother of the same opportunity, and to have a situation where we accept that our rights and responsibility are shared equally, where we both work together to further the interests of our children, putting aside our own differences. The reason I want this is because I genuinely believe that it is in the best interests in the long term of our children. It enables them to maintain strong relationships and bonds with both parents and overcomes the need for parents to be adversaries in court over the kids, greatly increasing the likelihood that they will remain on speaking terms. As it currently stands, how many children cannot go to the footy or go to the movies with their friends or join a footy team, for example, because they are subject to Family Court orders?

I share the concerns expressed by the Chief Justice of the Family Court, Alastair Nicholson, who on the ABC radio's *The World Today* on 10 October said that evidence suggests that judges can be lazy and tend to apply the accepted presumption. All one has to do is look at the current standard orders. The name itself betrays the manner in which the court is treating them as a one-size-fits-all solution. Unfortunately it is a solution that in most cases leaves one parent separated from the children and in many cases leaves that parent and the children seriously distressed without any real reason. This is having a negative impact on our community at large. This negative impact in our community is compounded by the Family Court's criticism of formal child care and endorsement of welfare dependency. Parents who do not work have an advantage under the current system and, to me, that promotes poverty, which cannot be in the interests of the child or our national interest. Why should children be restricted in their access to good parents due to judicial laziness, as is happening now?

Changing the accepted presumption to equally shared access and responsibility is an absolute must in cases where both parents are competent and desire the residency of their children—although I believe that if such a system is to work and also be in the interests of the children then separated parents must in some cases be prepared to make personal sacrifices and agree on where their children are to be schooled, and then establish their homes in an area that is a sensible distance from both the other parent and the school. This would enable children to attend their regular school from either home and it would mean that they could live with both mum and dad and lead what is considered to be an otherwise normal life, maintaining full contact with their community and circle of friends.

If parents cannot agree because they do not want to relocate or they are trying to restrict the other parent's access without good reason then the court should be able to act in the child's interest and order the parents to reside in an appropriate area, near an appropriate school, if they want any residency. This would also encourage parents to agree at mediation. The primary concern should always be the best interests of the child. In some cases there should be acceptance of shared care, such as where allegations of repeated abuse or violence can be substantiated. This final point is a strong argument—that the new laws should reflect that shared residency and access would not be appropriate in every case—but it is not a valid argument

against the proposal. I strongly urge this committee to support the proposal and endorse equal and shared access and responsibility as the new accepted presumption within the Family Court. Thank you.

Rex—I have put in a very detailed submission, but I would just like to say a few things to the public and to the committee today. I am the father of an eight-year-old. I have been to Family Court. I will say more about that in a minute. I have orders—I see him during the year but not on Christmas Day. I have no contact on Christmas Day, no contact on his birthday, no contact on Father's Day, and no contact on my birthday because the court has granted the mother discretion on those occasions. I will say more about my case in a minute. I would like to go on the public record to thank the Anglican Counselling Service of Tamworth. I see one of their counsellors here today: she was a strength during my court proceedings; she went to court with me. I would like to thank the Anglican Counselling Service today.

I heard a sad story—it is about a woman in Tamworth. She has got a 14-year-old daughter. I would like the committee to listen to this and how the proceedings in the custody inquiry should affect this situation. To support her daughter she sells drugs. She has been fighting with the father of the child for 14 years—'Not my daughter,' he says. They finally go and have a DNA test. Maybe none of you knows this fact, but in 90 per cent of the cases the DNA test is positive. His was. So, there we have a situation where the daughter and the mother hate the father. I would like to put it to the committee: how does the proposal before parliament solve that problem?

Who has been to Family Court? It is not tennis; it is like football: the parents are the captains of the team and the child's best interest is the football. Hopefully, when you go to Family Court, the playing field is level—you think it is going to be. You hope that you can score a few tries that you think are worth trying for for the child; you hope the goalposts are not too far away. And, by the way, whatever you do, never argue with the ref and put on a good public show. Finally, the committee here is like a video ref: they see all the details and they make the final decision because they are responsible for the level playing field. They have to make sure that the legislation they are proposing is fully funded; that there are DOCS workers in every town; that there are mediators in every town; that there is a registry nearby, just in case—as I have heard today, and it happened to me—you do get dragged off from the local court to a registry 350 kilometres away.

The final thing I would like to say is about my submission. I have made a submission and I oppose these changes. I oppose them because I believe the existing legislation has not been fully funded. The chief justice has asked for more judges. One additional judge in 30 years; is that fair? From 1995 to 1998 the laws changed—parliament changed the laws. Up went the applications, from 10,000 to 20,000. Are there more judges? No. Are there more courts? No. Is there more infrastructure? No. So you make sure, ladies and gentlemen and the committee, that for any changes you wish to proceed with and make you get the full endorsement of these people and that they are prepared to pay for all the extra services to make sure that your proposals are effective.

Lorenzo—I am a separated father. I have two children. They are over in Western Australia. I came to New South Wales for my work. It has been over two years since I have been able to see my kids, due to the fact that I have to pay nearly \$400 a week in child support. I cannot afford to see my children due to the fact that I have to fly over to Western Australia. I now have a new

family and I would like to have my new family with my children. It costs me nearly \$5,000 to see my other two children, but my ex-partner will not allow the two children to come and see me in my own environment. That is very difficult because, when I go over to Western Australia, I have to get accommodation and car rental.

The situation is that, after we left, she started illegal matters in dealing with drugs. She has been convicted of that just recently, so over the last few years she has had a very good income coming in illegally. She has been receiving that money. I know that she has been purchasing large amounts of gold for herself and looking after herself, whereas I have been told that my kids are in op shop clothes and are being neglected. I ring my kids every fortnight because I do love my children. I want to see more of them.

I would also like to get across that I do not get any feedback as to how they are going at school. I do not get any reports. I would like to see how I can get some information back to see how my kids are going. If it does go to 50-50 shared care, I would like to know who is going to help me save some money to get the children. Does my ex-partner have to give me some financial assistance? Four hundred dollars a week is a lot out of someone's wages. I still have a young child and payments to make here. We did have an agreement: I had a house where she was living. She has just moved out and she is also forcing me into bankruptcy because I cannot afford to pay those mortgage rates as well.

CHAIR—Ladies and gentlemen, we have come to the end of our community statements segment here in Gunnedah in this 20th hearing. We certainly appreciate the courtesy that you have shown towards all the witnesses—the individuals, the organisations and those who have made community statements—this afternoon. It makes it so much easier when people feel comfortable enough to put forward their position. It also makes it easier when the audience participates and gives respect and consideration to those people, recognising that at times they might not agree with what they say but that, again, in a democracy they have the right to say those things.

It is important that everybody is exposed to other people's experiences. I think that this is why the public hearing process is good. If you think that you are the only person with a problem or the only person who is experiencing a certain issue, you start to understand that other people are experiencing them as well. If you think that men are the only ones who experience this problem, it is also very good for you to recognise and hear that there are women who are experiencing the same problem.

In the last 24 hours we have had people come in and say, 'When I came in this morning I was just coming to be abusive and disruptive. I wanted to scream at you and tell you that you didn't understand. Having sat and listened through the whole day, now I want to come up and say that, because of everything that everyone has said here today and the questions that you sometimes asked, I feel confident that you do understand.' That lady also indicated that she had not realised that there were others in her position. Some of the gentlemen came up and said, 'I didn't realise that there were women non-residential parents as well. We thought it was all us blokes.'

So thank you for the way in which you have conducted yourselves today. We certainly appreciate that. It has been a very valuable process for us. We will be able to take the *Hansard* back to our committee, distribute it and then answer any questions that members who were not

able to be here today might have on the process and the issues raised today. I call this meeting to a close and I thank everybody for being here today.

Committee adjourned at 5.41 p.m.