COMMONWEALTH OF AUSTRALIA

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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS

Reference: Child custody inquiry

MONDAY, 13 OCTOBER 2003

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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS

Monday, 13 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, Mr Dutton, Ms George, Mrs Hull, Mr Price, Mr Quick and Mr Cameron Thompson

Terms of reference for the inquiry:

To inquire into and report on:

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

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

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

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

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

WITNESSES

Committee met at 8.36 a.m.

SANSON, Dr Ann Veronica, Acting Director, Australian Institute of Family Studies

SMYTH, Mr Bruce Marty, Research Fellow, Australian Institute of Family Studies

CHAIR—I declare open the 14th 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. I welcome representatives of the Australian Institute of Family Studies and thank you for your attendance. We will also hear evidence today from Professor Patrick Parkinson and Associate Professor Judy Cashmore from the Faculty of Law at the University of Sydney.

Approximately two hours have been set aside for each group of witnesses at this public hearing this morning. The evidence you give at this public hearing is considered to be part of the proceedings of parliament. I therefore remind you that any attempt to mislead the committee is a very serious matter and could amount to contempt of parliament. The Australian Institute of Family Studies has made a submission to the inquiry, copies of which are available from the committee secretariat. I invite you to make an opening statement after which I will invite members of the committee to proceed with questions.

Dr Sanson—We are very pleased to have this opportunity to respond to the inquiry. Since its establishment, the charter of the Institute of Family Studies has been to conduct and coordinate research to further our understanding of the factors affecting family and marital stability in Australia. Given that numerous factors affect family wellbeing and stability, our research focus is of course very broad. But, among our research, our work on family transitions has direct relevance to this inquiry's concerns about the nature of post-separation patterns of parenting in a changing social context. We welcome the strong support given in the inquiry's terms of reference to the best interests of the child as a paramount consideration and also the encouragement given to consider the best ways of strengthening the engagement of parents, particularly fathers, in the care and support of their children, post separation, so as to enhance the wellbeing of children as well as that of their parents and other family members.

You will have noticed that our submission does not make any recommendations as to what the committee should conclude or as to what legislative or other changes should be made—that, of course, is for parliament to decide—but we do see our role as being to review and compile the available research literature in Australia and overseas on the issue of joint physical residence and other related matters and to offer this to the inquiry to assist in its deliberations. That, really, is the bulk of what our submission is about.

The review of literature that we have conducted suggests four conclusions that are worth stating up front. Firstly, the great diversity in families and children's situations reinforces the conclusion that no one single post-divorce arrangement can be in the best interests of all children. Secondly, most studies indicate that the interests of children, post divorce, are generally best served when they can maintain ongoing and frequent contact with both their parents, who cooperate and communicate effectively and with low levels of conflict. If any one of those three conditions is not met, the results are much more mixed.

A third conclusion is that, despite the current focus on allocations of parenting time or the quantum of time that each parent spends with the child, the research literature suggests that it is the quality of relationships between parents and between parents and their children which has the greatest impact on children's wellbeing. Of course, an emotionally close and warm supportive relationship requires some minimum amount of parent-child contact to sustain it.

A fourth conclusion is that parental separation is one of the leading causes and correlates of child poverty. While there are multiple influences on children's development and wellbeing, most studies indicate that the single factor—if you have to point your finger at one factor—most likely to lead to poor child outcomes, whether we are talking about education, behavioural or emotional adjustment or health, is poverty. So avoiding any increase in the numbers of children growing up in poverty would seem to be a very high priority.

A thread running through our submission is the ongoing need for independent, high-quality research into the issues this inquiry is addressing—parent-child contact, child support, the involvement of grandparents and other family members in their children's lives and so on. I think it is not a contentious statement to say that, in developing family law and family policy, it is very important not to focus only on those families who are most visible but to explore the patterns of parenting in the general population of separated parents, including those who make private arrangements and do not come into contact with bodies such as the Child Support Agency and the Family Court of Australia.

A unique feature of our research is that it includes data on separated men and women from a broad range of circumstances—resident parents, non-resident parents, urban and rural dwellers, the whole range of educational and socioeconomic circumstances. So what we try to do is to gain nationally representative data in order to have a comprehensive understanding of the key issues of interest—so that the data can be more safely generalised and used to inform policy and practice, rather than basing these on anecdotal reports or data on atypical groups.

Over the years, the institute has done a number of studies on divorce and separation. We always try to anticipate emerging issues where research data will be helpful to policy development. So a year and a half ago, we embarked on a large-scale investigation into post-separation patterns of parenting called the Caring for Children After Separation Project, which Bruce Smyth my colleague is managing. We have conducted a number of focus groups with parents with different forms of post-separation parenting and interviews with over a thousand separated parents from around Australia. The aim of the research is to give a detailed picture of the sorts of contact patterns that are actually occurring right now across the general population of separated and divorced parents and their children to provide data on attitudes towards parenting post separation, to try to explore why it is that so many non-resident fathers—about 30 per cent—have little or no contact with their children and to explore the links between contact and child support. So it is going to be a very valuable dataset. Unfortunately, although we did predict this as an emerging issue, we did not quite predict the need for data quite so fast, so data analysis has only just begun and we have tried to fast-track this as much as we can to be of use to this inquiry. Bruce will be able to present some of this data to the inquiry, but there is a lot more to come.

One of the things that we are really trying to achieve in this project is to provide evidence on the diversity of arrangements that are currently being used. We know that no one single

arrangement is going to work, so we think it is important for parents to be encouraged to be creative in the arrangements they come up with. Because parents usually rely on what they see other people doing—and so probably do professionals—they may be unaware of or only dimly aware of the wide range of more individualised parenting arrangements that they could come to. So we see that as being one of the important outputs from this project, which will then allow people to be a bit more creative in finding the appropriate mix for their children.

We should also note that the institute is the lead organisation in 'Growing up in Australia, the longitudinal study of Australian children'. This study, which is funded under the Australian government's Stronger Families and Communities Strategy through the Department of Family and Community Services, will provide some very valuable data in time for better understanding the impact of divorce on children. We are also responsible for the family dynamics module in HILDA—the Household, Income and Labour Dynamics in Australia survey—and this new longitudinal dataset is already yielding important findings. So a lot of rich data is going to be available soon to guide us in this area.

One of the main focuses that we have taken in our submission is our support for alternatives to litigation—interventions such as mediation and conciliation, and also parent education. These interventions may facilitate reaching and implementing the most appropriate parenting arrangements in the best interests of the child. Obviously these alternative processes are already provided for under the Family Law Act. The tensions that arise in trying to ascertain and balance children's and parents' needs and interests might be better resolved if these interventions became more child focused and child inclusive. What we see as one of the positive outcomes of this inquiry is that it is going to elucidate where our knowledge gaps are. From the institute's perspective, we look forward to using that as a means of steering our own research agenda in the future, to try to fill in those gaps. Those really were the main points I wanted to make as a general introduction. We welcome the opportunity to make an attempt to answer your questions.

CHAIR—Thank you, Professor Sanson. Can I congratulate you on your submission. It was extraordinarily easy to read and very focused, as for the inquiry. I am sure the members have appreciated it as well. Would you start with the questions, Mr Dutton?

Mr DUTTON—Thank you, Chair. My question is probably best directed to Mr Smyth. Could you elaborate a little bit more on the study that you are in the process of undertaking at the moment. What have been some of the findings so far, what are some of your gut feelings on where it is headed, what might be some of the outcomes and how far away is its conclusion?

Mr Smyth—The Caring for Children After Separation Project has two components. The first was a preliminary scouting component, whereby we ran a series of five focus groups. Essentially what we were trying to do there was look at different patterns of care. With the five groups that we ran, basically, we looked at fifty-fifty care—so we had a group of parents who actually were engaged in equal time parenting, and groups of parents who had very little or rare contact, holiday only contact, daytime only contact and mid-range contact. What is very interesting about that part of the study is looking across those different patterns of care. We have written up the fifty-fifty results, and they are in the submission. But actually, when you look across the different patterns of care, you see some quite striking things going on, even within those small groups. We are interested in exploring children's wellbeing across those groups. One observation that is quite clear is that, when you look at parents where little contact is occurring, the parents

are not doing very well and the children are not doing very well—and I guess there is no surprise there. We are in the process of writing those up at the moment. I am guessing we are about a month away from actually having a conclusion on how all those groups line up against each other.

The second part is the larger part of the study. That has been in the field for the last two months or so. It is a random sample of 1,000 separated parents all around Australia. That sample includes not only people who have been married but people who have never been married or have never lived together. That is a real broad spectrum of what is going on. The power of that kind of sample is that it includes a number of people who never go near administrative agencies such as the Child Support Agency or the Family Court. So you get a sense of that group of people who are very hard to get at, who basically do their own thing. That kind of study is quite hard to do, for a whole lot of reasons. I just looked at the core results last Friday, because I am very keen to try to get some data out very quickly. That study has taken us 250,000 phone calls. We speak to 33,000 people, and out of that we get 1,000 people. So you can see why it takes so long to get a sample, so to speak, to get some sense as to what people are doing.

As for preliminary data, I am reluctant to talk too much. I keep on sneaking peeks at the data, but of course the data have not been cleaned. The field work company that provide us with the data say: 'Just hold on. We need to do some things before we give you the data.' The first question that we asked respondents was quite an interesting question. We asked about what parents thought about fifty-fifty care. What is quite clear from those data—and Ann has seen those data—is that there is quite a marked gender disparity between men, who are very keen for fifty-fifty care to occur, and women, who are not so keen for that to occur.

The other thing I have been trying to get a sense of, because I am aware that the committee is very keen to look at the level of disquiet around processes and so on, is the number of people who basically make informal arrangements, whatever that means. We seem to have a picture that around half the population do not go anywhere near formal legal processes and the other half do. A fair swag, or some three-quarters, of people who do make informal arrangements, by and large, make verbal arrangements. So there seems to be a substantial group of parents in the population who do their own thing for whatever reason and make verbal arrangements. That is probably the best I can do on the data at the current moment.

Ms GEORGE—Are there any correlations between socioeconomic status and the making of informal arrangements?

Mr Smyth—In a week's time, when the data comes through cleaned, that will be the first question we will be looking at. We basically get top line data, which means that I ask to have a look at the frequencies on particular questions. I have been reluctant to ask for too much because, of course, the field work company says, 'We're doing your analysis.' They will start slugging us for that and we would like to do the analysis ourselves. But the first thing we will be doing is looking across the broad spectrum of those associated demographic factors and correlating those with those particular variables.

CHAIR—If any data does come to hand that has been cleaned, we would certainly appreciate it if we could have access to that for our deliberations.

Mr CADMAN—You have only recently detected that there has been disquiet amongst men's groups and fathers about the role of family relations?

Dr Sanson—No, I think it is fair to say that we have been very aware of this as an issue. That is why we started on this research a year and a half ago.

Mr CADMAN—That is fairly recent.

Dr Sanson—Some of our previous research, like our Australian Divorce Transitions Project, also picked up on these issues. In developing this research we are very much committed to doing high quality research and that means engaging in a lot of—

Mr CADMAN—Focus groups are not high quality, are they?

Dr Sanson—Focus groups, as Bruce was explaining, provide a very useful starting point for developing the questionnaire for the large scale survey. That was a large reason for their use. But I think more important are the questions that are asked within those focus groups and in the main survey. We really needed to go through a period of consultation with all of the stakeholders involved, which includes different interest groups.

Mr CADMAN—Can we have a copy of the survey forms? Would that be possible?

Mr Smyth—Yes.

Mr CADMAN—Thank you. Have you done any studies on what works best for children? What I am driving at is that, rather than focusing on all of the multiplicity of arrangements people may make—and that might be very interesting, but I do not know where it leads—the alternative is to focus on what works best for children.

Dr Sanson—Yes, I quite agree that that is a very important consideration. Some of our research has looked at that. As I said, things like the Longitudinal Study of Australian Children are going to provide very good opportunities for doing that. I know it is a theme that has come out through the inquiry and it is probably a frustrating one to hear, but there are a lot of difficulties in conducting research in this area if you want to get a representative sample of children. A longitudinal study that follows families over time is really the best way to do that. That is certainly one of the great strengths of the Longitudinal Study of Australian Children—we will be able to track the impact of family transitions and family arrangements of different sorts as they grow up. Also, we have another study in the field at the moment which is looking at children's development and wellbeing in different types of family arrangements. That data will also be available next year and it will also be informative on this.

Mr CADMAN—There seems to be a lot of information available in the United States, but not a great deal here.

Dr Sanson—Yes. The United States have the advantage of having over 100 times our population so it is not so difficult to find the samples of sufficient numbers to be able to draw conclusions from. Of course they have more resources to put into research. We have certainly scrutinised the available research very closely. As I say, we see one of our roles as being not only

to conduct research but also to collate and review and pull together research findings. I think probably one of the most authoritative sources we have at the moment is Bryan Rodgers. I think Bryan has put in to this inquiry a submission which has really drawn together the findings from a huge amount of research in the UK, the US and Europe as well as Australia.

Mr CADMAN—I refer to gender differences. One interesting factor is the 50-50 difference in response. Have you been able to assess whether or not this may relate to any family support benefits? Is there a financial factor there or not? It has a curiosity factor for me and I cannot put my finger on whether there is a financial factor there as well as the maternal/paternal care for the kids one.

Dr Sanson—In terms of attitudes towards joint residence?

Mr CADMAN—Yes. The family tax benefit part A and part B would really depend on how many nights they sleep where and all that sort of thing.

Dr Sanson—The project may have come up with some correlational data that would help inform that question.

Mr Smyth—This is the threshold thesis to which you are referring, which is where you actually get clustering around the balance points on different levels of child support. That has been an issue that many people have been very keen to explore. It is actually quite a tricky issue because in some cases people may move to cluster around points and when people get stuck at certain points everything may fall over and people may walk away from points. So the idea of actually looking at the data and seeing these kinds of clusters around certain points is actually quite tricky. Our data will hopefully be able to shed some light on that because of some of the open-ended questions that we have asked.

Mr CADMAN—That is interesting. It is not a very easily measurable factor, is it?

Mr Smyth—No, and people may push towards those points and then walk away.

Mr DUTTON—Mr Smyth, you have been talking about the gender breakdown or division in those attitudes. Have you also looked at it on the basis of custodial versus non-custodial attitudes? We have taken some evidence from some women who are non-custodial parents who would share the same views as some male non-custodial parents. Have you found that as well?

Mr Smyth—These are top-line data and this is the first snapshot, so we have not disaggregated parenting roles by gender. So the answer to that is no, we have not done that. We will do that. Typically, when we analyse these data we actually keep the groups quite similar because of the similarities that you get sometimes between those two groups of parents.

Dr Sanson—What we could say with the Australian Divorce Transitions Project is that questions were asked to as to whether people would prefer more contact or less contact and so on. Again, it is difficult to look at those data entirely across the spectrum of resident/nonresident and gender because there are so few nonresident mothers. So our analyses there have really needed to be comparing on the whole resident mothers with nonresident fathers and we do see again the same sorts of attitudes there that there is still a number of woman who would like there

to be more contact with the nonresident parent and then a majority of fathers who would like to have more contact than they are currently receiving.

Mr Smyth—I would like to pick up a couple of points that Mr Cadman raised. As for the first point about the quality of the focus group data, I must say that, as you will see in our submission, we have actually been using HILDA data, which is a very large national representative sample, to have a look at how our focus group data hold up. It turns out that our focus group data hold up very well when you do that, so we have actually got the power of some richness in the data and in the generalisability of the data. That is very useful.

Secondly, as for the disquiet amongst many nonresident fathers, I actually gave a paper last year to the Lone Fathers Association explaining what we were doing with the study and how we were trying to explore and get a better understanding of different patterns of care. They were very interested in that. We are very interested in hearing their thoughts on that, so we actually work quite hard to hear what is going on amongst our different stakeholders. We would view them as an important stakeholder.

Thirdly, the point of doing these descriptive research exercises is that, because so little is known in many areas of contact, typically the first thing we need to do is map in detail these patterns of care. These basic patterns will shed light on what is going on with child support. Anecdotally we have heard that every other weekend and half school holidays is the standard pattern. I would like to look at the data and see if that is true.

Ms GEORGE—The Family Court figures, in their evidence that we received on Friday about the clustering, show that. It is almost, as someone described it, a formulaic outcome.

Mr Smyth—A cookie cutter template is what Americans would call that approach. That is one particular group in the large population of separated parents. Anecdotally, we hear that change is going on. We hear that every second weekend or every weekend some fathers are picking up their children straight after school on Friday and dropping them back at school on Monday, as opposed to just every Saturday night. We are trying to get a sense of what is going on over time. We need more detailed data to be able to get a sense of those patterns.

Ms GEORGE—One of the issues that concerns me is that, despite what the principles of the Family Law Act say about children having the right to know their father and be cared for, your data and other studies show that more than a third of Australian children appear not to have any face-to-face contact with their father. The survey that you refer to indicated that both fathers and mothers are not satisfied with the level of contact that occurs. The reality does not gel with the high-sounding principles. I guess that is what we have to grapple with. You do not appear to want go down the route of a fifty-fifty rebuttable presumption, because one size does not fit all, but your conclusion in the executive summary states:

> However, 50/50, or joint physical custody, could be interpreted as a symbolic starting point for encouraging a parenting agreement.

Could you elaborate on what you have in mind and how one could give tangible support to that? You get people sitting down and being constructive if they agree, but in a situation of heightened

animosity how do you get two parents to sit down and work out what is in the best interests of their child, or children?

Dr Sanson—There are some good points there. I will make a start and then let Bruce continue. In making the statement that many fathers, and some mothers, would like there to be more contact with the nonresident parent, we need to remember that it is never 100 per cent of parents who are saying that. There is still a group of nonresident parents who are saying that they are content with the level of contact that is occurring. Trying to engage in research those parents who are not interested in taking any parenting responsibility is a very difficult thing to do. So we are probably under-representing in our research those parents who are completely disengaged. We have to remember that there are those parents who—maybe consensually between the two parents or maybe just with one parent—are quite clear that they do not want to have any parenting role, for whatever reason. That is one side of it.

Looking at the data that we have collected as well as the research literature from elsewhere in Australia and overseas, we certainly see great difficulties in making fifty-fifty work for anything like the majority of families. Stringent conditions need to be met in order for that to work, like living close together, having flexible work arrangements so that both parents can take the time, having the physical resources to have two fully functioning households to support the child, and so on and so forth. A whole list of criteria is needed. As a reality to aim for, we do not believe that is ever going to be achievable for many families as we currently see the world. We certainly would agree with the notion that encouraging parental involvement, responsibility and engagement as much as possible is a good thing.

We made the point in our submission that fifty-fifty was a symbolic starting point, but we see having that as a legislative requirement as not being particularly easy to work. But the whole thrust of our work and one of the main things that we hope will come out of the Caring for Children After Separation Project is awareness of there being a whole lot of different ways in which parents, whatever their circumstances, can be involved and can find ways of having a meaningful engagement. Ways of achieving that, given that one cannot legislate for it without creating, one might say, more harm than good, is difficult.

Primary dispute resolution processes are already in the Family Law Act. We think there is an opportunity for more work in that area and, in particular, we are encouraged by the work that has been done on child inclusive processes within the court. Looking at that from a conflict resolution perspective, what it can help do is to have the parents, whatever the nature of their relationship, recognise that it is the two of them together against the problem of how to best care for their child. In a way, it defuses the conflict between the parents because it is putting the focus on the child and the child's needs. That sometimes can be an effective way of dealing with high levels of conflict. I am sure Bruce has more to add to that.

Mr Smyth—I would just add that paternal disengagement is a very troubling issue. One of the aims of this current study is to explore that. There is not a great deal known about it. We know that some fathers walk away and we know that some fathers are cut out. We know that nonresident parenting is a very hard thing to do, particularly where there is conflict and distance. All those factors can work against and grind down involvement with children. That is probably all that I will say on that issue. We are very keen to explore it.

Dr Sanson—We have to keep in mind that one of the clear things that came out of the research is that when a child is engaged in a high-conflict situation it is clearly detrimental to their wellbeing. Coming to an arrangement which is highly conflictual but involves high levels of contact with both parents is probably worse for the child than a situation where there are lower levels of conflict but less engagement.

Mr QUICK—I am interested in the questions that you asked the focus groups. As a former education person, I am interested in the research on the educational achievement of the children we are talking about. Are there any longitudinal studies in Australia about what has been happening since we have had no-fault divorce?

Dr Sanson—Are you talking about children's educational achievements in separated families?

Mr QUICK—Yes; comparing families who have organised a so-called parenting plan, where there seems to be not much conflict, with families where, for instance, the non-custodial parent owes the CSA tens of thousands of dollars and the other parent is kept out of the work force and is trying to survive.

Dr Sanson—I aware of no such research in Australia that has looked at that. Again, we are relying on longitudinal research following children over time and, as far as I know, the only datasets that we currently have—until the longitudinal study of Australian children starts to produce data—comes from the US. HILDA might be able to tell us a little about that in time.

Mr Smyth—In time, yes.

Dr Sanson—Again, it requires multiple waves of data.

Mr QUICK—One of the other House committees recently released a report about boys in education and the problems of males in schools, especially in grades 9 and 10. I am interested in the fact—I might be hypothesising here—that relationships seem to be breaking down a lot easier. Second and third relationships seem to be the norm rather than the exception. Is this the product of what has been happening before—underachievement, alienation, a lot of men opting out of looking after their children?

Dr Sanson—There is one dataset that I am involved in that has shed some light on that, and that is the Australian Temperament Project, which is a longitudinal study I have been involved in for the last 20 years. We have tracked a bunch of Victorian children from infancy who are now aged 20 to 21. We have looked at children who have experienced family transition, mainly divorce and separation, and how that has impacted on their continuing development. Again, that was a sample of about 2,000, so the numbers who have experienced transitions are very low. In that study we have not detected much in the way of effects that we can put down to the transitions themselves. The data we do have is also fairly hard to interpret. With the US data it is fairly hard to separate out how much of the negative impact of divorce and separation is due to the reduction in living standards for the children and the fact that a number are living in poverty, how much is due to ongoing conflict and how much is due to the separation.

Mr QUICK—You mentioned fifty-fifty being a symbolic starting point. That would be fine if we kept the lawyers out of the process. You mentioned that we have to have some legislative

requirement. Do we get to the stage where, when there is separation, before we put them through the grinder we insist on them lodging a parenting plan to a tribunal, where fifty-fifty is a symbolic starting point and we ban the lawyers completely? Could we use that as a process rather than the cookie cutter template? To my mind that seems to be such an easy resolution.

Dr Sanson—We do have to bear in mind that there is always going to be a minority of families where primary dispute resolution processes cannot work. That includes those where there is evidence of domestic violence and child abuse, those where there are mental health issues and those where the level of conflict is just so high that the possibility of sitting down together and doing anything like a rational plan is just unworkable. We have to remember that there is always going to be that minority.

Mr QUICK—Looking at my constituency, quite often the families that you have just described are case managed by half a dozen agencies with no real cohesion about trying to resolve their problems. It seems strange that we have to get to a situation where people expend tens of thousands of dollars to put in place something for their children when all the evidence is there from a very early age. Education, health, housing and juvenile justice agencies have case managers and social workers dealing with these families. Why do we have to get to the stage where it is going to cost society a lot to resolve this issue?

Dr Sanson—Those are very big questions and I would certainly be the first to say that the more we can move towards joined-up services and approaches to dealing with multiproblem families the better off we will be. There are some interesting initiatives in various places in Australia as well as overseas that are trying to get more joined-up approaches—being able to defuse problems before they get to be so large. We certainly are thoroughly convinced by the evidence that prevention is better than later treatment and trying to resolve the problems once they are fully developed.

Mr QUICK—How real is this idea of a child support formula and its link to the real cost of raising a child? Have you done any research into the cost to raise a child from zero to two, two to six and during the teenage years? There is a certain percentage under the child support formula but what are the relationships? What are the focus groups telling you? Is it realistic and should we have more at the early age and less at the teenager stage, or vice versa?

Dr Sanson—In the past, the institute did analyses of the costs of children, but we ceased doing that some time ago for a variety of reasons, partly because that task is now undertaken by NATSEM, the National Centre for Social and Economic Modelling, and by the SPRC, the Social Policy Research Centre at the University of New South Wales. They are probably in a better position to comment on the costs of children at different ages than we are. Bruce might have something to add on the feedback from our research, in terms of the adequacy of the child support payments at different ages.

Mr Smyth—The main impetus behind the Caring for Children After Separation Project has been child support. The reason is that at present there are a number of pressures on the scheme which reflect the massive social change over the last two decades. I am very keen to start to explore those pressures on the child support scheme, but what needs to be plugged into the modelling around child support is what people are doing. That is why we have gone back a step and started to closely map patterns of contact. Once we have those patterns mapped clearly, we

can put the data into the modelling around child support and get a much sharper picture of what is going on in the pressure points around the scheme.

Mr Quick, those were excellent questions and there are a couple of things I would like to pick up. On the issue of parenting plans, my understanding is that those plans have recently been put aside—or it has been recommended that they be put aside—by the Family Law Council, largely because people tend not to use them. All the research, certainly over in America, is suggesting that mandating parenting plans is a really good thing. The reason is that, as you would be well aware, there is much emotional distress at the time of separation and it is really helpful to parents to have clarity of detail, and to have specificity and flexibility. In the United States, certainly, there is a big push to move away from 'as agreed' or 'reasonable' contact, because, when circumstances in people's lives change, that can lead to conflict and, if nothing is specified, people have nowhere to go, so to speak, and that is why things can drop off. In many ways, I would be very keen to see parenting plans back in and mandated.

The other thing we found from the focus group data is that, across the different groups, people were very keen to get information that would help explain what they can do. Almost all the parents who wanted fifty-fifty care said they would like to have a brochure or something which explained different ways of sharing the care of children. One asked the mediators, 'How do we do this?' They said, 'That is up to you guys to work out.' For parents who are struggling with that issue, this is no help. Out of this study, we would like to put up different and more creative ways that parents can arrange care, so that, if parents separate, they can look at different ways of doing things. I guess that is our mantra: think about different ways of doing things. Hopefully, if information is around that shows parents ways of doing that, in ways that work, that will move us away from a cookie-cutter approach, be it by the system or by the parents.

Dr Sanson—To elaborate on that, if we do take seriously, as indeed I think we should, the importance of the early years of children's life for their later development, again from an early intervention and prevention perspective, I think we also have to acknowledge the need for ongoing support, particularly for separated parents and nonresident parents—that being another place where information is not adequately available for them. We know that, despite social change and changes in attitudes towards fathers' involvement in the family, it still is the case that mothers do something like three times as much of the child care as fathers do. So when fathers are taking on the role of nonresident parent, with potentially a substantial amount of care, there is a lot of new learning for them to do. Capacity, competence and ideas about how to fulfil that role and the wide range of parenting roles that a resident parent is asked to take on are areas in which I think we really need to be making sure there is good support and education available in order to ensure that those children are doing well.

Mr CAMERON THOMPSON—You have spoken about this template—the cookie cutter outcome—of the family law process, and yet that whole process is supposed to be driven by what is in the best interests of children. There is an extensive list that they have got, about what is in the best interests of children, and that supposedly shapes the profile of their decisions, so we wind up with this arrangement of half the holidays and every second weekend. Given that there has been a lack of analysis of what is in the best interests of children, how can we say it is a valid list?

Dr Sanson—I think that we can be fairly confident about the validity of that list. It fits in with everything that we know about children's development and their needs. It comes from a wide range of research, not just research on separated families. I am fairly confident about the list being valid as things to aim for and to steer the thinking. I think the real concern is the outcome—as you say, in the end it very often comes back to the cookie cutter solution. I think that is where the concern is.

Mr CAMERON THOMPSON—So you think they are ignoring the list?

Dr Sanson—I think I will leave Bruce to make comment on that first. I do not think it is a matter of ignoring the list. I think it is a matter of other constraints and, perhaps, as we said, the lack of awareness by parents as well as by professionals. Our thinking is always shaped, to some extent, by what we see happening already and what we know works to some extent. So the creativity of our thinking about alternative solutions may not always be there and at the front of people's minds.

Mr Smyth—I think it is a mind-set that has occurred basically because we have not had a great deal of information about different ways of doing things. So, for me, a lot of it is around, 'This is what everybody does.' Because the stakes are higher with children, I guess the safest way forward is to do what most people do, if that makes sense.

Mr CAMERON THOMPSON—If you stand by the list or what it says, should there be some sort of validation that it is being followed through? It does seem to me that either the list is wrong or somebody is not taking any notice of the damn list.

Dr Sanson—If I go back to the conclusion that we drew about the things that are best for children, it is having ongoing contact in a situation of cooperation and communication with low conflict. If you cannot achieve all three of those then you have to make some choices. If there is no way of having high levels of contact without also having high levels of conflict then the court has to decide which of those is the most important criterion, and that might be where they are saying, 'Let's go for less contact if that's a way of minimising the level of conflict.'

Mr CAMERON THOMPSON—I am disturbed by the lack of commitment that some parents have to children, or a perception that it is possible to have no commitment—that you can just have children and then have no further interest in them or whatever. I am then concerned about the impact on children of the product of that. I am thinking also that today's children are tomorrow's parents. Why is it unreasonable to start reinforcing the responsibility, for example, by asking separated parents to live closer together if they want to separate and to take more educational responsibility for their children? As part of the idea of encouraging a community mind-set that says that you are responsible for your children, what is unreasonable about requiring separated parents to live closer together?

Dr Sanson—It seems to me that it would be a brave act. I absolutely concur with your views about the importance of parents taking their parenting role seriously. It may to some extent reflect society's views about the importance of children and the importance of parenthood, which is another thing that we try to keep some tabs on at the institute as well. I think parents being located close to each other is certainly a desirable thing. I do not feel like it is in my area of expertise to think through what the implications of legislating a requirement for them not to

move far away from each other would actually involve, especially in the complexity of re-formed families with step and blended families. You would end up asking people who happen to meet at a conference but who live on different sides of the country not to get together and form a blended family because one or the other would then be separated from their biological children.

Mr CAMERON THOMPSON—I am not really saying that we should legislate to make that happen; I am just disturbed about the lack of any application and thought about that. Can I just go to another thing. We have this system of no-fault divorce. Doesn't the current system, which I think is quite discriminatory, impose a perception of fault on the non-resident parent? I am trying to look at this in the eyes of the children. If one gets the residency and the other one does not, doesn't that then imply fault in their mind?

Dr Sanson—From the research on children's views and attitudes to parental separation that I am aware of, children on the whole would of course like to have as much contact as possible with both parents and they would prefer the separation not to occur et cetera. But I have never picked up from studies that have looked at children's voices any sense that they have thought that the non-resident parent is to blame per se.

Mr Smyth—When you speak with child interviewers who work in mediation centres and who spend all the time talking with kids, one of the things they say that comes out very clearly is that the most important thing for children is basically that mum and dad are happy. So long as mum and dad are happy, regardless of how the arrangements are structured, then kids seem to be okay with that.

Mr CAMERON THOMPSON—Given your involvement in looking at studies of these things, if the US have a lot of data, is there reason to suspect that their outcomes would be different? Have we done much work on trying to test and validate the sorts of outcomes they have had within an Australian context?

Dr Sanson—In all of our research, we certainly have an eye on what other research says—overseas research or Australian research—and how much our own data is replicating what is found elsewhere. So in terms of the second part of your question, I think we always use that as a sounding board—'how does this relate?' I guess the social context in which children are growing up in different places is substantially different. For example, the levels of poverty and inequality in the US are greater than here. There is the huge disparity between the states in terms of how they are tackling issues of separation and post-divorce arrangements and child support. So I think we always have to be using that as useful hypotheses as a possible starting point but to be validating it with our own data.

Mr CAMERON THOMPSON—But doesn't this disparity in the way they treat it create the opportunity for assessment of this kind of topic that we do not have?

Dr Sanson—Yes and no. If things were only differing on one dimension, it would be easy to make a comparison, but when the differences between the states are in multiple dimensions—and the social context is different, with things like income distribution and so on—it is fairly hard to put your finger on what it is that might be causing differences in outcomes or patterns.

Mr PRICE—I apologise for being late. I have just a couple of things. If my memory serves me correctly, the institute used to annually publish updates on the cost of children. Is that correct? I always used to think that, if we look at the cost of children and multiply that by the number of children in Australia, we would be somewhat bankrupt. The point I would ask you to comment on is this: isn't a lot of the data around on the cost of children more what intact families spend on children as opposed to a discrete cost of children?

Dr Sanson—I think that is probably a reasonable statement. As we were saying earlier, I think before you were here, we no longer provide those estimates of the costs of children. We are a small organisation. We only have a dozen or so researchers on board. We do have economists, but not a large number of them.

Mr PRICE—That is fair enough.

Dr Sanson—It seemed more appropriate to have NATSEM and SPRC taking on those tasks.

Mr PRICE—If we do not adopt that joint rebuttable presumption of shared residency, how do we shift from the extraordinarily high numbers with sole custody into forms of shared custody as the Child Support Agency reports its client load? We can do it legislatively, but what do we need to do in terms of the child support scheme to facilitate that?

Dr Sanson—I will ask Bruce to answer that.

Mr Smyth—That is a very difficult question. I am not meaning to make that sound like a platitude but I have been following this over in America. Most Western countries are wrestling with that question. I have only found one state in America that has been able to work hard at being able to factor in a range of other costs outside standard formulae. Most countries are wrestling with that question. I am not sure what the answer is.

Dr Sanson—One of the real difficulties is that we need to be doing that at the same time as avoiding increasing the number of children who are growing up in poverty. We know that it is more costly to have two fully functioning households than one fully functioning household or one that is fully functioning and another that is subsidiary. We need to find some way of ensuring that children do not grow up in poverty, because that is going to be our very best predictor of the fact that we will not have fully effective adults and parents for the next generation.

Mr PRICE—I was impressed when you said that having two parents that were getting on was a key outcome. Often parents have a good idea of what the quantum of child support should be, but, as the scheme has had a de facto No. 1 priority of clawing back Centrelink payments, that agreement hits the fence and causes a great deal of unrest. Have you done any work on how we might overcome that problem? Could I also ask you to comment on this? In some ways, the child support scheme rewards parents with maximum child support payments, if you like, for not arriving at a mutually satisfactory decision. The weight of the system seems to be on not agreeing. How do we change that? Is it appropriate for us to rethink the child support scheme away from maximum payments to a minimum payment?

Dr Sanson—Bruce is more of the expert on the child support scheme. I will ask him to respond.

Mr Smyth—I am not quite sure how to respond to that. The reality is that often money is a very important thing to get by, but one of the things that troubles me about the link between child support and contact is that in some ways it forces parents to become petty accountants, such that they start recording the number of nights they see the children and so on. Ideally we would like to encourage parents, where they can, to enjoy their children for what they are rather than keeping a record of how often they see them for the sake of some financial return. I understand your question, but it is a difficult one.

Dr Sanson—I have to also say that the economic sides of the child support scheme are not an area where we pretend to have a huge amount of expertise.

Mr PRICE—With your indulgence, Chair, could I turn to the issue of domestic violence? First, in my own electorate, I am concerned that more than 50 per cent of the police resources are now tied up on domestic violence issues. Secondly, it seems that we spread so many resources across so many cases that we do not use enough resources on a smaller number of very serious cases. In legal terms, there seems to be a disconnect, in that domestic violence is first dealt with by a district court where an AVO is issued. That may hang there or subsequent AVOs may be taken out. The AVO is then next presented in the Family Court without any resolution. Has the institute done any studies in this area or do you have any views about it?

Dr Sanson—We have expertise in the area of child abuse and we have some emerging expertise in the area of sexual assault. We have a newly founded centre for the study of sexual assault. But we do not have a great deal of background about domestic violence per se. When it is in the Family Court and it is a matter of allegations in the Family Court, the situation is that the potential costs concerning the validity of that allegation are very high if it is not taken into account. As to how a DV is actually dealt with in the court processes before it reaches the Family Court, I do not pretend to have expertise there. I am happy to take questions on notice about that but I would really need to pull things together on it.

Mr PRICE—Thank you.

CHAIR—In your submission you have indicated the changing nature of family life and patterns of women's and men's participation in the work force et cetera, which has meant that there is a changing responsibility in the parenting role. Certainly it softens the boundaries of shared parenting. Then when we look at the 1997 study of patterns of parenting post divorce, we find that few resident mothers wanted any change to children's living arrangements and yet 41 per cent of non-resident fathers wanted a change, with two-thirds of the fathers preferring children to reside with them. When we have this process of determination, whether it be in the most difficult five per cent of cases that go through the family law court or the ones that get decided without orders somewhere along the pathway, if you have two-thirds of dads wanting children to live with them, how do you think that reflects the outcome that does not see anywhere near that happening? Why is this so?

Mr Smyth—I think my first response is that an inherent tension in family law and policy is juggling everybody's needs against everyone else's—for example, the children's needs against parents' needs. So, while fathers may be saying, 'I'd love the children to live with me or to have fifty-fifty care', the reality of how you make that work against children's needs and a resident mother's needs is a very complex issue.

Dr Sanson—Can I just clarify that two-thirds figure—that is two-thirds of the 41 per cent of fathers?

CHAIR—Yes, that is right.

Dr Sanson—So we are talking about something like 25 per cent of fathers who would like residence.

CHAIR—Absolutely, but it is still a significant amount of fathers when compared to the number of fathers who currently have shared care or residency of their children. I guess it comes back to this issue of determining the best interests of the children. But it just seems so amazing that, for such a large proportion of people, it seems that it is in the best interests of the children to live with the mother. We also understand that the world in which we live is changing, but we do not seem to be reflecting the changing world of parenting applications. Could it be that the determinants of residency have not caught up with the changing world?

Last Friday the Chief Justice of the Family Court, Alastair Nicholson, was before the committee. My concern is that maybe, because you get so used to dealing with the most difficult cases and the people who cannot relate, there is a perception out there that that is the way in which all orders and contacts et cetera must be considered. Maybe we are enforcing the principle of law for the most difficult small percentage onto the larger percentage of society without recognising these changing dynamics of parenting.

Dr Sanson—In terms of perception, I do not think we are enforcing that pattern on others. But, as Bruce has been saying, with regard to the perception that that is the norm, I think you are right—that does permeate through and limit people's ideas about what the other options might be for those who are not in that most difficult five per cent. I think it is also the case, as we said, that attitudes have changed. Still, women do tend to do three times as much of the caring as fathers do. Family friendly work practices are still somewhat limited. So there are a number of ways in which I think social change is not keeping up and things are not happening in sync. We are very much committed to fathers having a much more active role in their children's lives. We are much more committed to the fact that fathers can be as good primary care givers as mothers in the right situations. But other things in our society have not necessarily caught up to support that happening.

CHAIR—I am a bit concerned about the questions that we ask to determine whether mothers are still the primary care givers and the primary nurturers of children. I have said this before, but, as a parent and grandmother, I know that my sons have a far different role in their children's lives than my husband had in our children's lives. They go out to work through the day as the primary breadwinners, but I would not consider their mothers to be the primary care givers at all. I would consider that my sons are the primary care givers, even though they are the primary breadwinners as well. That is the way in which it has manifested itself.

Dr Sanson—I think you are right that the way in which we ask about what the roles of parents are does need to reflect the complexity of the fact that patterns like that can occur. I think we are trying to do that. For example, in the Longitudinal Study of Australian Children, we are making sure that we talk about a whole lot of different parenting roles and responsibilities that parents can take and we ask about what each parent does.

CHAIR—My concern is that all your studies show and all the indications seem to be that women are still the primary care givers, but I am not sure that that is the case. The questions you are asking—'Do you stay at home?' or 'Who stays at home with the children from nine to five?' or whatever —are determining that that is the primary care giver. To me, in the majority of times, when the children go to school from five years old, the person who is at home from nine to five has about 2½ hours maximum with the children as primary care giver, yet a father may come home from work and have the next 12 to 14 hours as a primary care giver. But that is not given weighted consideration.

Dr Sanson—Our strongest data that we do have on this comes from time use surveys where both parents are asked to indicate what their activities are over a whole day and we can ascertain how many of those are child-related activities. It is very important for us to include in that the planning and decision-making effort that parents put in as well. Organising the child's extra curricular activities, arranging for their care after school and all those sorts of things are the really important parts of the parenting role. To some extent the notion of primary care giver is obviously definitionally fairly fraught and complex—about what things you believe ought to be put into that definition.

Mr DUTTON—Could I just take you back a step. I have read your submission and I have listened to your evidence today. I am still confused as to your position in relation to fifty-fifty. That is either because of my lack of comprehension or that I think you might be placing an each-way bet; I am not sure. It is convenient for some people in this argument to suggest that a fifty-fifty presumption would not work because of a variety of reasons. Work commitments would be one of the primary considerations.

Can I suggest that the model that is being spoken about and that we have canvassed as part of these deliberations is that the fifty-fifty is a starting point and that we try to move ourselves away from the eighty-twenty situation of the courts? You can argue whether it is a perception or reality but it is a starting point from which both parents can then put their arguments as to why they believe that they should have more or less time, depending on their circumstances. It seems to be a convenient argument to say, 'Fifty-fifty doesn't work.' Quite frankly, it would not if it were a prescriptive model for all people and applied across all cases. Can you clarify your position for me so that I am a little clearer?

Dr Sanson—I will give it a try. I guess we are very aware of the diversity of families and therefore very concerned about anything that limits the flexibility of decision making about individual cases.

Mr DUTTON—Isn't that the case now, though?

Dr Sanson—It is the case sort of by default now. There is a lot of flexibility allowed in the system but it has not been taken advantage of for the reasons that we have been trying to say—that people get into a mind-set and adopt a cookie cutter mentality—but there is no requirement for that to occur. In fact there is encouragement for it not to occur. In terms of limiting flexibility by having that presumption as laid down, it is hard for us to see how that can be productive.

Mr DUTTON—But doesn't this provide more flexibility because at the moment we essentially have a prescriptive model? For whatever reasons, people are precluded from the court

process because of cost or once they find themselves in the court process they end up with a result of eighty-twenty, or they are directed away from that process because that is known to be the outcome. Doesn't a fifty-fifty starting point provide more choice and more flexibility for people because it provides an equal starting point? They may well end up at eighty-twenty. It might be that because of their circumstances that is appropriate. But wouldn't this presumption provide more flexibility than is currently the case?

Dr Sanson—I find it hard to see how it actually increases the level of flexibility because it seems to me that already there is the possibility for maximum flexibility across the whole range of arrangements.

Mr DUTTON—Could you expand on that because I do not understand that comment at all.

Dr Sanson—The Family Court can make whatever arrangements they wish in terms of the split of time between parents.

Mr DUTTON—Of course they can but we are here because they do not.

Dr Sanson—Yes. I guess the question is whether fifty-fifty would encourage more of that to occur. We have to keep in mind the five per cent who do go to litigation, versus the 95 per cent who do not. That is another issue. Setting up something as a presumption which we know in the current situation is very difficult to achieve for most families seems to me to be putting a constraint on flexibility and creating difficulties rather than creating more opportunities, I suppose. I guess our other concern with having a presumption like fifty-fifty is that it is very much a focus on the parents' rights, and takes the focus to some extent away from the child's best interests.

Mr DUTTON—I cannot comprehend that argument, either, with respect, because all of us, I think, hold the belief that the interests of the children are paramount and that if they can have contact with each parent then that is developmentally significant for them in their upbringing. I am sure that all of us have that best interest at heart. It seems to me that we are able to find an argument of convenience in putting that aside and saying that fifty-fifty is only about the interests of the parents. In my mind, and as a result of some of the evidence that we have taken, a presumption would be able to provide many of these children with additional contact with the non-custodial parent. That would achieve the outcome of being in the best interests of the child. I am keen to hear why that would not be the case. Certainly in one part of your submission you are suggesting that additional contact is in the best interests of the child, but a rebuttable presumption where circumstances might mean that we go from eighty-twenty to seventy-thirty or sixty-forty would not be in the best interests of the child. Those arguments seem to conflict, in my mind.

Dr Sanson—I guess we are saying that, everything else being equal, greater levels of parental contact with both parents is in the best interests of the child but it does need to be in the context of low conflict and high cooperation between the parents. That is not always achievable. If that is not achievable, as I have said before, the benefits of the higher levels of contact may be outweighed by the negative side of things.

Mr CADMAN—Have you done any studies on the conflict issue, or is that a presumption that you are making now?

Dr Sanson—There is a lot of research looking at parental conflict between parents and the impact upon children's wellbeing, both within intact families as well as in separated families. Conflict, whether it is within an intact family or in a separated family, is quite strongly related to negative child outcomes.

Mr CADMAN—Bruce and others completed an inquiry in 2001 which indicated a very high degree of dissatisfaction with the current system, and you are saying, 'Let's stick to it.'

Dr Sanson—No—

Mr CADMAN—I think you are.

Mr Smyth—That high disagreement is actually around how patterns of contact are working, not about the system as such.

Mr DUTTON—But doesn't the system provide those patterns of contact?

Mr CADMAN—Weren't they dissatisfied with the residence arrangements? Wasn't that one of the conclusions?

Mr Smyth—But not all those parents went through the system as such. About a third of those parents made their own arrangements, without any contact with the Family Court.

Mr DUTTON—This is part of the argument, though, isn't it? It is a 95 per cent or five per cent argument, which I think we have just about blown out of the water as a result of this inquiry. Because 95 per cent of people do not go to the Family Court, therefore it is a rosy picture for them. The reality is that it costs people over $100,000 for each party to go to the Family Court. It is a process that is dragged out over two years. The majority of people, I would suggest to you, throw their hands up in disgust at the system, accept what is being offered to them, and walk away as part of the 95 per cent, yet people are suggesting to us that the system is working because only five per cent run to a conclusion.

Mr Smyth—We are not suggesting that.

Mr DUTTON—If we are suggesting that there is a high level of dissatisfaction with the outcomes, and it is a system that provides those outcomes, why wouldn't we not be about trying to change it?

Dr Sanson—We certainly are very much in favour of doing everything that we can to encourage greater participation and engagement by both parents. It is a question of whether a fifty-fifty presumption is the most effective way of doing that.

Mr CADMAN—Why don't we put an eighty-twenty presumption into the law and allow people to dispute that assumption? Wouldn't that be a fairer way of doing it than having an unwritten code that it is going to be eighty-twenty?

Dr Sanson—The research that Bruce is managing is uncovering the wide variety of arrangements that families are in fact using. We think that if there is greater awareness of the variety of arrangements that families can come to then it is much more likely that more will be picking up on those alternatives. Finding ways of strengthening our primary dispute resolution processes to encourage parents to explore those options in a non-adversarial way and with the child as the focus of their attention is also likely to lead in that direction. We are most certainly in favour of moving towards greater parental involvement.

Mr DUTTON—The second point that you gave in your evidence related to child poverty, the cost of two households and how meeting that cost was very difficult. I understand that, traditionally, that may well have been the Australian reality. You might be able to provide me with some figures on step- and blended families, but isn't the reality now that, in the majority of cases where people's first relationships break down and they have children in a second relationship or have a second household already in existence, the additional cost of operating two households is not as great as, perhaps, you might make out? You could look at it in the sense that you have fixed and variable costs. If a relationship breaks down and there are two children from that relationship, the situation in this day and age is generally that the former non-custodial parent enters into a new relationship. I think Mr Quick or Mr Price gave an example before showing that it is almost the norm now, as opposed to the exception, that these people are moving into second relationships. So they already have all that infrastructure in place and there is not the stark contrast that some people might make out. Does that make sense?

Dr Sanson—I will provide some data on that—and I am sure Bruce will have more to add to this—from the Australian Divorce Transitions Project. In that study we found that a minority of separated people were repartnering. It was more common for men to repartner than women—44 per cent of men were repartnered versus 29 per cent of women, and that was about six years or more after divorce. It was also the case that poorer women were less likely to repartner than more well-off women. There is also data from Professor Gregory at the ANU which suggests that poorer women who do repartner rarely do so with wealthy men; it is more likely to be with men who are also on income support payments of some sort. The analysis that we did in the Australian Divorce Transitions Project was on the financial outcomes for both men and women post separation. We used the Henderson poverty line as our indicator there as well as looking at more stringent criteria. The data showed that there was a big shift of sole parent households to below the poverty line. Bruce can probably provide further detail around that.

Mr Smyth—I would like you to restate your question, please, Mr Dutton.

Mr DUTTON—What I am trying to establish is this notion that, if some of the moneys that were floating around out of child support or whatever else went to the children of the second relationship, the children of the first relationship would suddenly be plunged into poverty. I am suggesting to you that in many households that are step or blended households, as people like to term them, many of those fixed costs are already there and this is an argument, a rebuttable presumption, that has been put up against the fifty-fifty that it would starve one family to feed the other whereas at the moment it seems to be the other way around.

Mr Smyth—We have 2½ million families with children under 18 in Australia. Seventy-two per cent of those are in intact relationships, 21 per cent are lone parent families, four per cent are

stepfamilies and three per cent are blended families. So when you look at the blended and step situation, they are actually relatively small groups compared to the 21 per cent of lone parents.

Mr DUTTON—So, for argument's sake, of the 44 per cent of men who would repartner, only a very small proportion would have children in the second relationship; is that right?

Dr Sanson—That is 44 per cent of the group of divorced parents in that study. It does get down to the sorts of percentages that Bruce is talking about.

Mr DUTTON—So it goes from 44 per cent down to four per cent; is that right?

Dr Sanson—It is 44 per cent of divorced families, which is about—

Mr DUTTON—No, you were saying that 44 per cent of men repartner.

Dr Sanson—Forty-four per cent of separated men? Yes, in that study.

Mr DUTTON—But then only four per cent would go on to have children in a second relationship. Is that correct?

Mr Smyth—I would have to check that against the data.

Mr DUTTON—Could you take that on notice and come back to us?

Mr Smyth—Absolutely.

Dr Sanson—That is coming from a different box. What Bruce is talking about is national figures—

Mr DUTTON—I just want to make sure we have the national figures right.

Dr Sanson—and the national perspective is four per cent.

Mr DUTTON—Dr Sanson, you were talking about sexual assault studies that you have done. What are some of the major findings out of that? In particular, what was the prevalence of sexual assault by biological parents or introduced step-parents?

Dr Sanson—Are you talking about child abuse? Bear with me while I search for the right page.

Mr DUTTON—I am sure you have been well briefed.

Dr Sanson—So what you are interested in is particularly child sexual abuse rather than child abuse more generally and what proportion is perpetrated by the parent?

Mr DUTTON—Yes.

Dr Sanson—The general finding there is that the majority of abuse does occur within the family. I am not quite sure what is the most relevant data to give you here. If we look at single parent families and single mother families there is a higher rate of reported abuse of all sorts—physical, sexual and emotional—and neglect in sole parent families. This mainly comes from US research. The big confounding variable there is poverty, because we know the rate of abuse of all sorts is higher in poor families than in wealthier families. So it is unclear whether the link to single parent status has anything to do with that.

Mr CADMAN—You are saying that, in families, if there is a single parent then that single parent is abusing the children in some way?

Dr Sanson—There is a higher rate of reported abuse of children in single parent households. Whether that is by the mother, another family member or somebody outside the family is less clear cut.

Mr DUTTON—Do you have the figures to break that down?

Dr Sanson—I do not think—

Mr CADMAN—A better description would be in a household rather than in a family, because if you have a person unrelated who visits and abuses the kids, that could hardly be classified as a family assault.

Dr Sanson—Yes. I think we are talking about child abuse as it occurs in a family context.

CHAIR—Dr Sanson, if you would like to take that on notice and bring it back to the committee we would be most appreciative.

Dr Sanson—We most certainly can do that.

Mr DUTTON—I would like to know, in particular, of 100 cases of child sexual abuse, what is the breakdown of the percentages? Is it 30 per cent perpetrated by X and 20 per cent perpetrated by Y?

Dr Sanson—I cannot give you those detailed figures with the data that I have here right now but I am happy to take that on notice.

CHAIR—That would be very good.

Dr Sanson—We will do our best to provide that data. The data is not all that strong. I guess the other area that has been of concern is the extent to which abuse occurs in stepfamilies compared to biologically intact families. There is evidence from some studies, but not all, of higher rates of child abuse in stepfamilies. Again it is complicated data because again it seems to be related to low SES as well. It is also the case that there seems to be some reporting bias that people are more willing to report child abuse if it is perpetrated by a non-biologically related person.

Mr CADMAN—What if you say you do not look at the assault, you look at the circumstances? You seem to be separating the two things.

Dr Sanson—I am sorry; could you clarify that, Mr Cadman?

Mr CADMAN—You are saying you cannot consider these factors without looking at the poverty factor, aren't you?

Dr Sanson—No. What we are talking about here is prevalence rates. It is unclear—

Mr CADMAN—Peter was asking about who, not about circumstances.

Dr Sanson—I agree. The question I have taken on notice about what proportion is done by whomever is something on which I have to come back to you with those figures. I do not have those figures. I was moving on to another issue, which was to do with reported prevalence rates in different sorts of family structures and, in this case, to do with step-parenting.

Mr QUICK—With 360,000 children with a natural parent living elsewhere who rarely ever see their other parent, is it your understanding that, if the symbolic fifty-fifty starting point is introduced, it will apply to all these children or that it will only apply to children of divorce after the introduction of legislation?

Dr Sanson—So your question is: of these 360,000 children who are not currently having contact—

Mr QUICK—Is it your understanding that if this committee recommends to the government and the government introduces legislation to introduce this symbolic fifty-fifty rebuttable it will be retrospective to all those 360,000 or will be implemented and applied from whenever the legislation is gazetted by the Governor-General?

Mr Smyth—It is a good question.

Dr Sanson—I suppose that would be a matter of how any legislation was actually framed. One thing that children do need is stability, so, if there were workable arrangements in place, to go back to the drawing board for a situation that may have been existing for 10 years and think about a radical change may not be in the child's best interests. I think it is something that would have to be handled very carefully.

Mr QUICK—Can I pick your brains and ask: if it is made retrospective and we are talking about the best interests of the children and these are the criteria, what would retrospectivity do?

Mr Smyth—The US data are very clear on this. Those data suggest that fifty-fifty tends to work quite well when it has occurred at the outset from the front end and less well when people actually have arrangements in place and then go back and try to rework them.

Mr QUICK—So, if we do not introduce retrospectivity, all the fathers that are annoyed, angry or upset about their current status—who in my mind are the prime movers and shakers of

changing the cookie cutter to this symbolic fifty-fifty—will still be left with all their angst and unmet needs. Would I be right in saying that?

Dr Sanson—All we can say on the basis of the US data is that that would seem to be what the situation would suggest.

Mr QUICK—Is this US data just from particular states?

Mr Smyth—Certainly from Washington state. For what the focus group data are worth, it was very interesting that, of the 12 parents we had in that group, all of them made those arrangements from the outset and by and large on philosophical grounds. They had the strong belief and commitment of both parents. All of them made those arrangements pretty much at the outset.

Mr CAMERON THOMPSON—I want to talk about the ongoing monitoring of the situation—the extent of unrest, the extent to which the system is meeting the needs of the community, where we are at, whether or not things change et cetera. Whether it changes or stays the same, we need to monitor it so that we can have some idea about whether we are in a spiral that is going down the tube, and so that we can have some idea about what this is contributing. To be frank, this honestly seems to me—and I am not talking about our discussions today but what I have seen of this whole debate—to be a debate between the industry and its customers. There are people engaged in the industry who think the industry is wonderful, and then there are all these customers who are ringing up all the talkback radio stations and who are talking in this inquiry. This issue emerged not because some watchdog in the industry said to government: 'My God, there's a lot of angst out here. We've got to do something about it.' It was basically a move because MPs started getting so many people on their doorsteps. What do we do about that? How do we more effectively monitor it and keep the industry away from having too much of a vested interest in the current system? You have lawyers, representative groups, social workers, public service departments and all these sorts of things attached to the existing thing, and they are also giving advice. Do we need some kind of external monitoring? What can you suggest?

Dr Sanson—I certainly would suggest the need for ongoing research and ongoing collation of information in the best way that we can. Again, I think that undertakings such as the Longitudinal Study of Australian Children give us one of those opportunities where we can track—and, if we can, continue to track—children over time with a representative sample. That gives us a way into those 50 per cent or so who do not actually have dealings with the industry as such. It is very important to be keeping tabs on those as well as those who are engaged in the industry. Ideally the collection of more data than we currently can and do, and the analysis of those data, would be very valuable. Of course privacy legislation makes some of that very complex. For example, if the Family Court were to find ways in which more data could actually be released for analysis, we would be extremely excited about being able to analyse that to see what it is saying in terms of trends over time and indications of satisfaction with the system over time.

Mr CAMERON THOMPSON—Sorry, I am not familiar with that. Are you saying that is held in secret?

Dr Sanson—The Family Court, quite rightly, has got strong concerns about privacy. So there is not a lot of data available.

Mr CAMERON THOMPSON—Why shouldn't there be some sort of watchdog? Given that there is severe concern about the moral or internal health of our families in our society, shouldn't there be something internally that looks at these things and casts a critical eye over just this sort of material that you are talking about?

Dr Sanson—Whether that needs to be a separate body or a commitment to the collection and analysis of data by existing bodies, I think it is something that could be considered. But I certainly think that continuing to monitor what is going on and finding the mechanisms for doing that is very valuable, so that we do not get into a position where the levels of disquiet grow to a threshold where something has to happen fairly urgently.

Mr CAMERON THOMPSON—Keeping going on the data front, this is one thing that has always amazed me. Do we have anything that assesses just what family breakdown is costing our community, even in dollar terms, and how that has been trending?

Mr Smyth—The Andrews report had a go at that. My understanding is that FaCS are currently very interested in exploring that and maybe even talking with us about getting better estimates on all of that.

Dr Sanson—But I think the answer is that there is not a lot at the moment.

Mr CAMERON THOMPSON—Any idea on trends?

Dr Sanson—Trends in terms of what?

Mr CAMERON THOMPSON—The cost. There are some pretty extreme costs at one end, but there are also just dollars and cents. We heard Roger saying that over half his police locally are running around chasing family breakdowns. Is there nothing yet?

Dr Sanson—Not in terms of costs. Not that I know of at the moment.

Ms GEORGE—One of the things that troubles me in this debate is the definitional argument about what we mean by 'joint custody' or 'joint parenting'. The claim is that this is already applied in many jurisdictions in the US but, when you look a little further, it appears not to be the case—it is a myth. Why would fifty-fifty be a good concept to start with when so few separated parents either here or overseas actually implement anything like an equal time sharing with their children?

Mr Smyth—Due to the complexities of the issues, fifty-fifty is a very seductive idea. In a way it goes to the heart of issues around fairness, and so often fairness is at the core of so many debates. I would move away from a symbolic starting point for parents to come to some arrangement. I would submit that that is a very different thing to actually looking at what is in the best interests of children. Each child and each family circumstance is unique, so you need to take each case on its merits.

Dr Sanson—Fifty-fifty has that attraction of fairness, but we keep coming back to saying that maximising the engagement of both parents as much as can happen in the particular circumstances is the desirable outcome. 'Fifty-fifty', if we were to use the term at all, is very much a symbolic figure.

Ms GEORGE—Does the research point to the quality of the time spent and not necessarily the amount of time spent as being the more critical factor?

Dr Sanson—Absolutely, there is no doubt about that. The research is clear that it is the quality of the relationship between the parents—as in low conflict and a cooperative stance—and, more importantly, the quality of the relationship between parent and child which has the impact on children's wellbeing. Of course, you cannot have a good quality relationship without a certain amount of contact occurring; you cannot have a good quality relationship if there is zero contact.

Ms GEORGE—Finally, in terms of the law, could it be that the law is still predicated on the mum-at-home model when we are actually in a society where the majority of both parents are working and, while the maternal bond in the early phase of a child's development is obviously important, is it a case of the law not keeping pace with changes in society—that we have the cookie cutter template, because there is a mindset that has not changed?

Mr Smyth—Regarding one of the things that Mrs Hull was raising, certainly a mark of the change that is going on is that the fastest rising family type in Australia—and probably in many countries around the world—is sole fathers. Although at the moment that is only around 10 to 12 per cent, if you look at other countries and the way they are going, demographers will tell you that that group is actually the fastest rising family type. It is not much, but it gives you a clue that something is going on; you are just not seeing it across the board.

CHAIR—Your submission, it seems to me, has been reflective of and has recognised the changes in the way in which families operate—the way in which parental roles and responsibilities are changing and reversing at times et cetera. I found it quite heartening but, again, there seems to be the clear thought that we should not be mucking around with the status quo unless we have the results of some significant surveys. My worry is that surveys—and I mean no disrespect—in the past have not asked the most critical of questions about the roles parents play or exactly how parents parent but have rather been stuck on that status quo scenario of 'mum's at home'. It worries me that the research that we draw from may not be asking the most appropriate questions to reflect the changes in parenting that we have now.

I notice that section 5.3 of your submission is entitled 'Contact and child support'. At the moment you are the only organisation that is linking the two. We have come under a lot of criticism for linking contact and child support. My argument has always been: 'How can you not?' How much contact people get has become such a critical issue. People are tending to stay within the framework and to think: '109 nights gives us this amount of income. On top of family tax benefits part A and part B, I will be able to live. Then, with my exempt income of $36,000, whether I'm a female resident parent or a male resident parent, I come up with all of those things.' I was most interested in your relating the two, because that has been a criticism of ours. We have put child support issues with the family law issue in this inquiry. Could you expand on why you have done that?

Mr Smyth—There is a philosophical issue there and there is a practical issue there. As so many countries wrestle with fathers becoming more involved in children's lives, as there are moves towards, and encouragement of, co-parenting and as you look at what is going on between two households economically, it seems that as care shifts at some point financial shifts need to occur. This is the reality of having so much money to go around. At some point, those balance points and transfers need to occur. We are very interested in exploring that because that is the reality of co-parenting. At a practical level, work needs to be done at some point down the track to look at where those shifts occur. At a philosophical level, though, it is quite clear that there are issues around linking the two. That is the tension.

CHAIR—It is. Some of the difficulty that this committee faces in this inquiry is that the two have to be linked to some degree. But determining the outcomes for children in the initial stages should not be based on financial considerations; it should be based on the best interests of the children. The situation is the same in all of the submissions from organisations and in the many submissions from individuals that I am ploughing through. Even though we are looking at the best interests of the children—and this is why I am sceptical of the research that we are drawing from—everyone that comes before this committee always begins by talking about the best interests of the children and saying, 'You must find in the best interests of the children,' but each time they then say: 'This is what happened to me. This is my side of the story,' or 'This is what happened to me as the dad,' or 'This is what happened to me as the mother.' So I am finding it very hard to determine how we can continually look at the best interests of the children. How can mediators, enforcement bodies, the Family Court, family law practitioners and people from a whole host of areas come to the best interests of the children when it is quite clear that the primary problem is: 'Look what happened to me'? Do you have a comment on whether you are finding in your research and hearing from the people that you are asking that it is 'about me'? Are you asking the children where we should be going?

Dr Sanson—Certainly in our current research we focus as much as we can on the children.

CHAIR—So are you asking the children?

Dr Sanson—We are not asking the children. I think there are a lot of issues about hearing children's voices and how we do that in research. But we are certainly asking parents about how their children are doing—

CHAIR—But that is what I mean. When they come here, they are saying—

Dr Sanson—and we are asking teachers about how the children are doing. We are gathering as much objective information as we can about how children are going. In terms of children's own views about how things are and whether they are happy, we know that most children will say that they prefer their parents not to separate. Then, as Bruce says, they say, 'But I want my parents to be happy and I want to have as much contact as I can with each parent.' From reviews of the literature, we do not know that the quality of the relationship necessarily comes out more strongly than the amount of contact as being what predicts whether children do well on all our developmental indicators: educational, emotional, behavioural and so on. So I think that it is appropriate, and it is in the United Nations Convention on the Rights of the Child, that we ask for children's opinions. But, as the convention also says, we need to give appropriate weight to that information according to their age and maturity. We have to be very careful about not

putting undue onus on children to make decisions that should not be their responsibility to make. Adults should be taking care of that.

CHAIR—I agree. In one of our hearings the issue was: is it the role and responsibility of a child to make decisions for its parents? I think that is a difficult thing. At the same time, everyone starts with 'in the best interests of the children' time and time again. So what worries me is that the research you are drawing from is primarily being taken from parents who come before this inquiry. Time and time again, in every hearing, they start by telling us, 'We've got to do what is right and in the best interests of the children,' and then proceed continually to talk about 'me'. That is my major problem with what we are drawing from here. Is there any way you could devise a way in which you could research children without influencing and without exploitation et cetera? There must be some research that you could undertake to determine how you could research children to hear their voices in the most productive manner without putting a lot of stress on them. If all of these decisions have got to be made in that best interest and the only people we are talking to are the people concerned with their own interest, I find that is typically flawed.

Dr Sanson—Yes, we are certainly interested in the notion of hearing children's voices and how to do that, but I certainly would also caution against giving undue weight to that. What in the long term impacts upon their well-being is the other research evidence—what actually happens—that we see as part of our responsibility to bring towards the inquiry. Kids like junk food; it is not necessarily good for them. So I think we have to take that adult responsibility as well. But I agree that hearing the voices is important.

Mr Smyth—The last two studies that the institute has conducted around separation have both involved children. Certainly Kate Funder wrote a book that included children's voices. In the last study I was involved in, we had a dataset. I understand that our colleagues Patrick Parkinson and Judy Cashmore, who are due to appear in a minute or so, will talk about that data to the committee because they have been analysing it for the last year and a half. The other thing is that, with the current project, we have always planned in some way to try to go back to the focus group parents. If we could go back to those groups next year and then have separate groups with the children, that is what we would like to do. We are very interested in hearing children's voices.

CHAIR—That would be great.

Mr PRICE—Have you done a comparison between the poverty level of intact families with one income earner and sole parent families? What was the result of that?

Mr Smyth—The people to speak to about that are Paul Henman and Kyle Mitchell, who have been doing work on budget standards. I am not sure if you read their paper, Mr Price, but they have actually used the budget standards framework and looked at issues around single parent versus intact families.

Mr PRICE—I had better have a look at it.

Mr Smyth—Yes, it is a good paper.

Mr PRICE—Given that there is, I think, significant repartnering, do you see that there is a continuing justification for the difference between exempt income and disregarded income? Why should that not be the same?

Dr Sanson—That is something that I do not feel I have the expertise to comment on.

Mr PRICE—That is fine.

CHAIR—Could we all thank you for attending this morning. It has been very good and of great assistance to the committee to have your submission and to hear from you this morning. If you require any further assistance with the questions on notice, the secretariat would be only too happy to provide you with that.

[10.34 a.m.]

CASHMORE, Dr Judy, Associate Professor, Faculty of Law, University of Sydney

PARKINSON, Professor Patrick N., Professor of Law, Faculty of Law, University of Sydney

CHAIR—Welcome. 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 contempt of parliament. Professor Parkinson and Associate Professor Cashmore have made a submission to the inquiry, copies of which are available from the committee secretariat. I invite you to make an opening statement, after which I will invite members of the committee to proceed with questions.

Prof. Parkinson—On behalf of both of us I will make a brief opening statement. First of all, I should explain that Judy Cashmore and I have worked together very closely over many years on issues of children's law. Judy is a child psychologist. I am a family lawyer. Much of our work has been involved with child protection. We are currently doing a study of children's participation in decision making about residency and contact after divorce. We are in the second year of that study, interviewing parents and children about their views on children's role in making decisions. We are using a computer program to interview the younger children and we are finding that is quite useful. Judy in particular will be able to talk on the analysis of a study we have almost completed on teenagers' views on these issues.

If I were to set out the problems in family law that this committee and I, as an academic, are dealing with, I would say that they are these. The fundamental assumptions on which divorce was built 20 or 30 years ago have proven to be erroneous. Back in 1975, when the Family Law Act was passed, we had this idea that the role of law was to give dead marriages a decent burial. That meant that we pronounced the divorce, which was the end of the marriage, we allocated the property and we allocated the children. We allocated the children by giving one person custody and the other access. The parent who had custody—usually the mum—would have most of the responsibility for rearing that child after the divorce. The access parent had a residual role as a visiting parent only. The idea was that, once we had allocated the property and the children and once we had pronounced the divorce, then each of the parties could move on, start a new life, marry again, repartner and have new families and new children.

But what we have learnt over the last 30 years is that you can dissolve a marriage but you cannot dissolve parenthood. It has been a painful lesson for the family law system to learn that, while the children are still at home at least, parents remain married to each other after divorce. Parents who have never married remain married to each other after separation, in the sense that their lives are intertwined for as long as the children are living at home. Parents need to share the parenting of the children. They need to share parental responsibility and to be involved in the decision making. At least it is in the best interests of children that, where there is no violence or abuse, both parents remain actively involved in their children's lives. So parents cannot divorce in the sense that one can take over the sole responsibility for child rearing. We know that is not in the best interests of children.

The parents remain connected financially. The idea of the child support scheme is simply that parents should continue to provide, after separation, the same proportion of their income as they would spend on the children if they were living together in one household. We are seeing significant income transfers because parents remain married, and need to remain married, in a financial sense. So we have a situation where, even after divorce, people's lives are intertwined, and the challenge for us all—and the challenge for family law—is how to deal with that continuing relationship between the parents. I think that divorce no longer means the end of a marriage where there are children; it means the restructuring of a marriage into two separate households. How we deal with that is the fundamental challenge for us all. But while I think society has changed enormously—and that is revealed in our studies and in the studies of the institute—I think the court system has not changed. The court system is fundamentally predicated on the idea that there is one major issue to resolve sometime after separation: where the children will live. It is an inflexible system. It is an adversarial system. Waiting lists for a final hearing can be up to 18 months. A child who is three when the couple separate may be five by the time the court makes a decision.

The system is not well attuned to the fact that families are dynamic. One can make an order at the age of three and by the time the child is seven the situation is very different not only for the child but each of the parents as well. We have an assumption that we can make a thing called 'final orders'—orders the court makes at the end of the hearing—but no family law order can be final in regard to children. So I think we have some fundamental rethinking to do, not only about the law—maybe that is the easiest part—but also about the systems by which we adjudicate and resolve ongoing conflict between parents and children. Thank you.

CHAIR—Thank you very much, Professor Parkinson.

Mr PRICE—How should we do a fundamental rethinking?

Prof. Parkinson—One of the things we can do with children's disputes is to at least experiment with a more administrative process of decision making. Look at how we have dealt with the child support issue. Where there is a dispute about the formula, we have child support review officers who will sit in a room, talk with mum, talk with dad, and maybe talk over the telephone if that is needed, and they can make a decision cheaply, quickly and easily. That is then appellable to a court and can reviewed by a court. My research overseas suggests that a model like that would be much better for the ongoing conflicts that some parents have. We have mediation and counselling and they work very well. But some parents simply need a decision maker who will make the decision quickly. That decision maker does not have to be a lawyer unless there are issues around child abuse and neglect or domestic violence where there are serious issues of fact which have to be resolved.

So I think there are ways in which we can move to that. I think that what we call 'contact enforcement' is very often an issue that the orders were made at a certain time, they no longer fit the needs of the family, and we need to review those. If we can review those quickly and simply we do not need a judge and we do not need a magistrate. But of course in our system of justice under the Constitution we need such a power to be delegated from a court, because if one is making orders they must be at least delegated from chapter 3 judges under the Constitution. So that is the sort of model that I have seen work in Denmark, which I think we should look at. I

have not dealt with that in my submission, as such, but I certainly could do if you wish me to do so.

Mr PRICE—I think there are at least a couple of us very interested in that. You have thrown me a bit by suggesting that it is administrative, and I accept what you are saying about the child support agencies. But we do have an opportunity to at least pilot something in Western Australia given that it is a state based court. If you were to set up a tribunal you could do that in Western Australia should the government be prepared to consider it and not run into chapter 3 problems with the tribunal and accepting that not all cases would go there. But in terms of appeal, do you envisage a de novo appeal or only an appeal on matters of law? If we were to set up a pilot, say, in Western Australia and establish a tribunal which people could choose to go to that would deal with the range of issues, including property but in particular residency arrangements and disputes about contact and failure to contact, would you see such a tribunal being able to make those decisions and only have issues appealed where it has been a matter of law, or being able to appeal all of them?

Prof. Parkinson—What I have in mind is a little bit more limited than that. I do not think it needs to be a tribunal; it can be a decision maker. I would do it only around contact issues in the first place and I would see having a right to go to a court as a fairly fundamental right which would be in the background. Our experience shows that, if you have an intermediate decision maker like that, very few cases will need to go before a judge, but I think they must have the opportunity to do so.

Mr PRICE—I think the Chair is indicating that the committee would be interested in getting further information. I notice that you say in your submission we should not blame the courts or the family law system. But if we were to do a survey of people appearing before a civil jurisdiction of a court—it does not have to be a criminal jurisdiction—why would we not anticipate that there would be a high level of satisfaction, or is it in the nature of legal bodies that the parties involved can never be satisfied?

Prof. Parkinson—I think it is the nature of family law jurisdictions. Family law involves the deepest parts of ourselves. When we are dealing with property, it is all the property the parties have. When we are dealing with children, who are the heart and soul of people's lives, it is no wonder there is a lot of anger and bitterness when decisions do not go people's way. All I can say is that I have seen exactly the same dissatisfaction in New Zealand, America and England. Wherever I have looked, I have seen similar anxiety and antagonism towards family courts. Around the world, the Australian family law system is held up as a model for how to deal with these issues.

Mr PRICE—Gee, if they only knew! Sorry. Returning to the Child Support Agency, whilst I agree that the ability to appeal has been an important innovation that was not there originally, it does not strictly conform to good principles of administrative law in that it is still, essentially, an internal review of the decision. I am not saying there should not be an internal review, but why should it be different from, say, a disagreement about a Centrelink matter, in which there is an outside body that is arguably at arm's length from and external to Centrelink; and, for that matter, in regard to Veterans' Affairs and Immigration?

Prof. Parkinson—I think that any good system of law should have these quick and inexpensive informal ways of resolving things and there should be a right to go to court as a last resort. My understanding was that that is how the Child Support Agency system works as well.

Mr PRICE—For a Centrelink matter, I can go to Centrelink and they will do an internal review of the decision. I can then go to what used to be called the Social Security Appeals Tribunal. If I have the money, I can then pursue the matter in the Federal Court. Invariably I would not, but the ability to go to that external tribunal is very important.

Prof. Parkinson—Yes.

Ms GEORGE—You say that the system is inflexible and adversarial. Could you comment on the proposition that, before either parent has recourse to lawyers and the legal system, there might be some compulsory mediation? Is that feasible? If so, how would you perceive that operating in practice? Do you have any views about whether we can go down that route?

Prof. Parkinson—Certainly. We went down that route in the early years of the Family Law Act. We did not have compulsory mediation prior to filing an application but we had the possibility of pre-filing counselling. All the evidence was that it worked extremely well. I think that the earlier we involve people in counselling—and it should preferably be before they file any legal documents—the better it is, particularly if we can do so three or four months after separation.

Mr PRICE—To do so before that is even better.

Prof. Parkinson—Yes, although it does take some time for the anger to settle down. The role of lawyers is very often as gatekeepers to these other resources. English research has shown that, after separation, most people go to lawyers. They do so more than on any other legal issue. We need to see the lawyers as part of this but as gatekeepers to these other resources.

Ms GEORGE—The analysis that you provided to us in terms of what happens in the United States is very important, because I think there are a lot of myths about joint custody or joint parenting and the kind of semantic differences that mean a lot in practice. Based on your experience, you do not appear to me in your submission to support the rebuttable presumption of joint custody in a legislative way but you do look at options for change. One such option that others have raised is making amendments to section 60B. The concern I have is that the principles that are enunciated do not actually translate into shared parenting to the extent that one could imagine might be feasible. How would you go about restructuring the principles of the act to make possible a greater involvement of both parents, with safeguards, obviously, for domestic violence and other issues? How would we go about doing that?

Prof. Parkinson—Maybe I should do the law first. We need to recognise that the law has quite a limited role to play in this area. The practicalities around separation and divorce are far more significant in what happens in people's lives. But what I would like to see is a clearer statement in the Family Law Act that, at least where the parents have been married or have lived together, in the absence of violence and abuse the parenting should be shared between them. There are some good models in the United States for this. Iowa, for example, talks about the maximum possible contact. Many of the states talk about 'frequent and meaningful' contact. I

think it is those sorts of expressions which may help shift understandings in the law. What is most important is that lawyers in day-to-day practice understand the change of the message, because it is not what the court does which matters so much but what advice lawyers and others give out when people come to them seeking advice on separation. So 'maximum contact', 'maximum involvement' and 'active parenting' by both mother and father is the sort of language that could help send the right message to the community.

Dr Cashmore—I think we have got a lot of evidence now that non-residential fathers, residential mothers and children want more contact between the non-residential parent and the child. The issue then is how you go about making that happen and looking at what the constraints around that are. One of the interesting points that has come out of our analysis of the Australian Divorce Transitions Project interviews with children—there were 60 children, matched to one of their parents—was that what really makes a difference in terms of whether or not children feel close to their parents is whether they are able to stay overnight with relative frequency. But what affects that is whether the other parent has some trust that this parent can do the job and that the children are secure with them. So I think it is about how you work through those relationships.

Coming back to the issue of people's satisfaction with the process, there is a lot of evidence around procedural justice that people feel satisfied with the process when they feel as though they have had a chance to be heard. It is good if they can do that early and informally without getting lawyers involved—because it is at that point, I think, where they feel as though they are giving up control and that it is going down tracks that are preset, sometimes in ways that become increasingly adversarial once things get written on paper and they feel as though they have to respond. So I would agree with Patrick about getting in early and trying to put into the law some message about the benefits for children and the best interests, but not as a rebuttable presumption, so that children can spend more time with both parents and get a lot of benefit out of doing so. We know that.

Ms GEORGE—In this prefiling counselling, would a parenting plan be something that would be discussed at that stage?

Prof. Parkinson—Certainly. At the moment we have very good systems in place—the case management conference at the beginning of a family law proceeding and the counselling—which are about trying to develop a parenting plan. I caution, though, that it is not only about the period after separation. After separation, emotions may be raw; the levels of anger and bitterness may be very high. The level of violence may be quite high. I think we need to look at these things as being an ongoing process two years, three years, five years after separation as well. It may be that, in the early period, the relationship between the parents is so poor that we really cannot have much shared parenting, but that might settle down in two or three years time. I think we need to look at having relatively short-term orders and interventions rather than thinking that we can resolve something once, for the whole of childhood.

CHAIR—I am trying, with some difficulty, to come to grips with this disparity—and I know you were in the audience so you will have heard this—regarding the way in which we have fathers or mothers who are non-residents who want more residency with their children. In your submission the desire for more contact was quite apparent. In your submission you indicate that there should be more contact between children and their non-resident father. You stated that it

was significantly clear that most children want continuing contact, and more contact, with their non-resident parent. Having regard to Professor Sanson's information, it was significantly clear that the same thing was being required there. You are talking here about the children and, in the issues discussed by Professor Sanson, there was reference to the parents wanting more contact with the children

So if the parents are wanting more contact and more residence with the children, and in your submission you are saying that the children are wanting more contact with the parent, why is that not reflected in what is actually happening on the ground? It is just not tallying up. Are we not listening to the children when we are talking about what takes place when mum and dad live in separate homes? That was one of the issues that has been raised with us in the hearings. We have been told, 'Even though I say that I don't want to go there or that I want to be there, nobody listens to me because they don't seem to think that I know what I want, because they know what's best for me.' Can you explain to me why they are not tallying up? Why are we getting such a distorted outcome from what I see as such common research that indicates that that outcome should not be so distorted that it becomes 80-20?

Dr Cashmore—I think there are a number of reasons why contact does not happen as frequently as children and parents may want it to. First of all, it is important to recognise that what children are suffering at that point in the separation is some grief about the loss of day-to-day contact with the other parent. So it is not surprising that they say they want more contact. I think that is absolutely to be expected. We have a range of research that tells us the reasons that contact does not happen more frequently. The most obvious is geographical distance and relocation of parents. There are a number of practical reasons. Another is, I think, repartnering. We know that if parents repartner, the contact between parents and children tends to drop off. There is the matter of income. If you are splitting the resources of one family between two houses, one of the things that can make a difference is that you may not be able to have overnight stays because you may not have proper sleeping arrangements to accommodate children in both households to the same extent.

Certainly, when you get to adolescence, the research and analysis that we have done shows that it is actually the other commitments that both parents and children have. In some cases, what children are saying about their fathers is that they are not making enough time for them and they have to fit in around their arrangements. In many cases, they understand their work commitments, but in some other cases they say, 'I have to fit in around Dad's golf and all of the other things that he wants to do.' Then, of course, there is the child's own social life. They are trying to fit in going to school, seeing their friends, playing sport on the weekends and making time when they are not in day-to-day contact.

The other thing that came out very clearly, I think, in terms of the analysis of this ADTP data is that, when children stay overnight, what makes a difference is the trust that the other parent has in that parent—do they provide a good secure base, do they want the children to be there, will they be looked after properly, will they have proper routines, will they go to bed on time and will they get their homework done. The worst extreme of that is around dangerousness. The parent who sees the other parent as dangerous is very unlikely to want, in fact they certainly do not want, their children staying with that other parent. So I think there is a whole range of reasons why contact does not happen as frequently.

That analysis shows that, when children said that contact with the other parent was fair, mainly that was when they could see their other parent when they wanted to. If they are adolescents, they can vote with their feet a bit and make arrangements to get from one place to another as long as the parents are within a reachable distance. But, for younger children, that is often not the case and they have to wait to be taken or for arrangements to be made.

The other reason they say that things are unfair is when they do not have enough time alone with that other parent. That, again, is where some of the repartnering issues come in. Sometimes children might not want to spend their time with their other parent in the presence of the other parent's new partner and children. They want some time alone. So I think there are a whole lot of complexities about what children are really saying when they say they want more time.

CHAIR—I think you are right, but can I just come back to the comment you made that repartnering tends to reduce the contact. In the same terms, you say in the submission that repartnering by the resident parent appears to increase the extent to which children stay overnight with the non-residential partner. I think that is very critical and important. When we are deciding these issues, of course it is in the best interests of the children. It seems funny that, when the resident partner repartners and they want some more time with their new partner, they shelve the kid off to the non-resident partner so that they can get their time. Yet, when the orders were being made in the beginning, it did not matter that the non-resident partner had to put their life on hold 1,000 per cent. They work all week and have no social life at all and no social interaction with their friends and buddies—and, if they are female, with their female friends et cetera—because weekends have to be set aside for the children. Then the children do not like it if daddy or mummy goes to play golf or goes to the hairdresser or something like that. But they have a life as well. So I think that the person who gets the 20 per cent really has to commit 100 per cent of their life to the child, but they get 20 per cent of activity with the child. They cannot have a life outside of that because the only opportunity may be on a weekend and that is when their life is with their children. So everything else goes on.

At the same time, the other partner has normality in life, so to speak, if you can have normality under those circumstances. Then on the weekend they can start to lead their life outside of that. I would like to hear your comments about why, if this order was made in the best interests of the children, when I find myself a new partner it is suddenly in the best interests of the children to send them over to the other partner for more overnight stays and more contact. Why is it that suddenly he is more trustworthy?

Prof. Parkinson—Could I answer that question from the research. Bruce Smyth and I, as you may know, analysed the data from a thousand parents, and we did find that repartnering had this effect on contact and particularly more overnight stays. I think it may be an effect of the geographical changes which follow repartnering, particularly if the mother remarries to somebody who lives in another city or whatever. When you have greater distance between the parents, then it is more sensible to stay overnight. So it may just be in many cases an effect of the—

Mr CADMAN—And more likely psychological warfare decreases.

Prof. Parkinson—The more time goes on, I think the psychological warfare tends to decrease.

Mr CADMAN—And repartnering would be a very significant part of that, I would have thought.

Dr Cashmore—That is possible, because the focus of activity changes, as does attention, affection and so on. So, yes, it is quite possible that that is part of the picture.

CHAIR—It is just that I see the most contradictory evidence all through. It just seems to be that all of this research says this, but the actual outcome is something totally outside of what any research says.

Ms GEORGE—Just following up on that point: in your submission, you say that there are a number of reasons why contact may not be more frequent. You say:

These include an acceptance of standardised and formulaic contact arrangements whether or not they are regarded as optimal ...

The argument goes that, in the shadow of a court, decisions are made down there that have this influence on what might be consensually arrived at or where people just give up hope. Could it also be linked into the child support formula, where it is a monetary issue that has nothing to do with what is in the best interests of the child? The threshold is 109 nights. We got figures from the family law court on Friday which showed that the great bulk of contact time just cut out at 104 nights—under the 109 threshold. Is money distorting the principle of what is best for children? If you think that might be having some role, how do we unhinge the two? How do we decouple money from the principles of what is best for the child?

Prof. Parkinson—I think there are two factors going on. First of all, I think lawyers have a tendency to package families into certain categories. We do it with property. However different and varied family circumstances may be, in negotiations you tend to come down to a number of stock options—60-40, 70-30, these sorts of things. I think we do the same with children. The easiest way to resolve a case is to say, 'If you go to court, you'll just get every other weekend and half the school holidays, so why don't you just settle with it.'

CHAIR—Exactly.

Ms GEORGE—That is exactly what is happening.

Prof. Parkinson—I think it is what is happening.

Mr CADMAN—This is some of the best and most practical evidence we have had, I have to say.

CHAIR—Exactly. Keep going.

Prof. Parkinson—Although enormous hostility is sometimes expressed to the court, it is largely misplaced. The court deals with so few of the cases, and there are 50 or so judges who are all different. They all have their idiosyncrasies, quirks and biases, I am sure, but you get quite a range of outcomes from Family Court judges. It is what happens in legal practice which matters, and most couples who cannot resolve things for themselves will at some stage seek a

lawyer's advice. So the key thing I think is to change the perception of lawyers in terms of what children need and to emphasise the latest research—which is that, for young children, frequent contact involving quite a few transitions seems to be optimal and that what children need is active, authoritative parenting, not visiting.

Mr PRICE—You avoided the issue about the impact of money in the formula.

Prof. Parkinson—I had not avoided it; I was coming to it.

Mr PRICE—I beg your pardon.

Prof. Parkinson—I did not want to respond in a way which saw it as the only issue.

Mr PRICE—That is fine.

Prof. Parkinson—The 30 per cent threshold is undoubtedly an issue. There are many who would say that men just want more than 30 per cent of the nights in order to reduce their child support. You have exactly the opposite view being put—that women resist the 30 per cent limit because they want to keep their child support. What happens in practice very often is that men will say, 'We'll keep the child support as it is'—below the 30 per cent level—'as long as that is not a barrier to increased contact with the children.' It is a very common concession for dads who get more than 30 per cent of the nights to say, 'It won't affect the child support,' and then that barrier disappears.

Mr PRICE—Is there an income demographic for the fathers who give that response?

Prof. Parkinson—I am afraid that is not based on systematic research; that is an anecdotal but continual thing that I hear—certainly in Sydney—about what happens. I think that if we had some sort of tapering off from 10 to 50 we might be better off, because there would be no one point—

CHAIR—Exactly.

Prof. Parkinson—at which—

Mr PRICE—There is a dramatic effect.

Prof. Parkinson—there would be a dramatic effect. Or we need to recognise that women who do not repartner are significantly at a financial disadvantage and we would have much the same level whether or not the parenting was substantially shared. In other words, rather than tapering off, we would simply have the same level across the board. That would be the other option.

Mr CADMAN—I can only thank you for the clarity with which you have expressed yourselves and the quality of the submission that you have given us. The area that interests me is the difference you highlighted between the physical and the legal factors. It seems to me that, despite the way in which the Family Law Act is written, nobody is giving any emphasis to the legal factors in any determinations before the court or in the lead-up to a court decision. Could a tribunal of some type, like the one you have described, list the factors that ought to be taken into

account? And, if so, would a tiered structure of mediation and perhaps then even arbitration before the court process work, in your experience?

Prof. Parkinson—Could you explain what you mean by legal factors and physical factors? I am not quite sure what you mean.

Mr CADMAN—The legal factors are the guardianship factors, and the physical factors are the residential factors.

Prof. Parkinson—Thank you. I think the legal factors are not much in contest, because the Family Law Act already says you both maintain parental responsibilities, so we have taken that out of the equation to some extent.

Mr CADMAN—But fathers are whingeing about that. That is the thing that makes them the most angry: they are never consulted on any of the decisions about the children. That is one area that really stands out—that to fathers not only the physical thing is important but also a capacity to have a say in the child's future, education and all those sorts of things.

Prof. Parkinson—And I think that would be one of the easiest things for us to fix. I am a member of the Family Law Council, and the Family Law Council's submission recommends that we actually codify in law what it means to have joint parental responsibility. As you say, it does mean consulting on these issues, and I think it would be very helpful to do that. In terms of the model that you have put, the three-tiered model, that was very much the view that I put at the beginning. I am not suggesting to you a tribunal; I think that is still a legal model of doing things. It seems to me that when we are dealing with contact disputes in particular there is very little law involved and that what we really need is a decision maker, who could more ably be Dr Cashmore than me in terms of understanding—

Mr CADMAN—Yes, I trust you two; I think you would do pretty well!

Prof. Parkinson—There is no reason why we should have a system dominated by lawyers unless there is fact finding to resolve. Now, where there is an issue of dangerousness—and there is in many families, due to drug abuse, mental illness—then I think having a more legal fact-finding process is important. But for many of these decisions, if we could just sit them down in a room with somebody who could discuss it and try to reach an agreement but, if not, make a decision, I think we would take the heat out of a lot of these disputes.

Mr CADMAN—Okay. What about making the decision stick, though?

Dr Cashmore—In relation to that, I think UNIFAM and some of the child-inclusive mediation processes are making a difference. What can be very helpful for parents is actually to hear their children's voices back to them—what makes a difference to them—and to hear that in a non-threatening way and without putting children in the position where they are carrying the burden. That process tells the parents: 'Get a good eye on what effect your conflict is having on the children. This is what the children say that they would find very helpful. Can we get our focus back onto that sort of issue?' I think that sort of process could be very helpful in making those decisions stick. UNIFAM, for example, are doing that. It is not evaluated as yet, but they are doing that with cases that are referred to them from the court as difficult contact matters.

According to their own figures, they are having pretty good success. So I think that a number of things can be done to make things stick, down the road. But as Patrick said, the whole thing is a process and things change over time. Children's needs, interests and availability change. Parents move from one place to another, and they re-partner. So it is not a matter of making one decision that stays forever; it is about having some flexibility and practicality about what those decisions are.

Mr PRICE—Where are UNIFAM doing that—in Sydney?

Dr Cashmore—Yes, in Parramatta.

Ms GEORGE—Who would be qualified to help in that mediation process? What kinds of qualifications would people need to be able to sit down and assist parents to work this out?

Dr Cashmore—As a psychologist, I do not want to sound like someone who is beating their own drum, but I think you do need someone with some social science background who understands child development and children's attachment needs, who can talk with children in a sensible, not paternalistic way and who can manage the conflict between parents and pass that information back. As Patrick said, I do not think lawyers are best placed to do that sort of work. It requires a more practical version, in a sense, of what court counsellors are, but coming in earlier and taking a very practical view of how we can make these arrangements work.

Interestingly, sometimes it is the children who come up with solutions that work. Although they want to be with their siblings, in some cases they have come up with solutions by saying, 'I don't have to be with Dad when my brother's there. In fact, it's quite nice to have some time alone with him.' So they can split that and also have time together. Anecdotally, we have heard about a number of cases where children have provided practical solutions where their parents have been at loggerheads and have not been able to see what might work.

Mr CADMAN—You have skated around the enforcement process a little. A major matter of contention is people making commitments and not keeping them or making commitments that they have little intention of keeping but that they use as a process to provoke the other person. Perhaps that is the best way of describing it.

Prof. Parkinson—I agree with you that enforcement is a very big issue, particularly for men. We need to look at that very carefully. In a contact dispute—and I am really talking about ongoing conflicts which happen two or three years after separation, or longer—as circumstances change, the first thing we should be doing is to be sitting with people, in a room or by telephone, trying to work it out and seeing whether the arrangements are practical. That is the sort of model that I would like to see.

One of the mothers we interviewed in our study had spent $7,000 on legal fees. The situation was simply that the mother had moved from Sydney to the Hunter Valley and the contact arrangements were not working anymore. It is madness that it should have taken months and a lot of money to resolve what was simply a practical issue. If we had a more informal and immediate way of resolving these problems, I would like to see those decision makers identify what are real enforcement issues then have a public body take responsibility for the enforcement. In criminal law it is the police who prosecute. In child support it is the Child Support Agency

that takes the action. If there is really a violation of court orders, rather than having an ongoing, festering dispute, we need to act firmly, quickly and hard.

Mr CADMAN—What sorts of penalties do you see? You cannot put the mother, who is the carer, in jail.

Prof. Parkinson—I know it is extreme, but a federal magistrate in Parramatta has done exactly that quite recently and sentenced a mother to seven months jail. This was reduced to three months on appeal but there was still a custodial sentence. What happened was that, in complete violation of court orders, she took the child with her new partner to Queensland and hid for many months. There was no justification, no excuse, there was no history of violence or child abuse—none of those things. The magistrate jailed her. I think sometimes we have to be tough if what we have got is an enforcement issue.

Mr PRICE—But in every other case where that has been a woman jailed she has been released on appeal. It is an interesting development and obviously a very extreme case, but the prior history was that in effect, even when a judge did order a jail term, on appeal she was instantly released.

Prof. Parkinson—I think what you are saying is right. There is a long history of judges being reluctant, for very good reasons usually, to go down the enforcement track. Part of the reason is that we have not separated out festering disputes with enforcement. What happens at the moment is that there is a dispute. It may be simply that the contact arrangement is not working because circumstances have changed, but it is processed as an enforcement issue. That means that it becomes adversarial and legal because the offence must be proven beyond reasonable doubt or close to that. There is a risk of penalty. What is often going on is simply that the family dynamics have changed. If we can find a way of separating out those issues from enforcement and then dealing with enforcement issues rigorously, I think we will have a better way. At the moment we have magistrates and judges afraid to deal with any enforcement issues harshly because they are used to the fact that what they really have is an unresolved contact problem and they treat all of them as if they were of that kind.

Mr CADMAN—That helps, because as you are speaking a number of mechanisms spring to mind such as a reduction of maintenance payments and increased contact for the non-residential parent. You can apply a graduated series of penalties, I would have thought, that would have the offender, usually the residential parent, change their ways.

CHAIR—But that may impact on the child if you look to a reduction in child support. I would like your point of view, Professor Parkinson, on introducing a range of measures such as more contact with the non-residential parent; the less contact you give we order more contact or less child support available to you to be able to care for the child. Could I have your views on that a range of practices?

Prof. Parkinson—I think the historic reluctance to enforce contact has been because of this concern to not impact on the child. But if you think about it, there are all sorts of things we do in society which impact on the child. If I drive too fast, I may certainly be fined heavily and lose my licence and I may not be able to drive the children to school or to swimming. All sorts of things we do to uphold the law impact on children. In Oregon, for example, I have seen an

expedited enforcement process which has the sort of range of options you were referring to, Mr Cadman. I think it is appropriate that if we really are dealing with enforcement issues, not an unresolved domestic violence issue, an unresolved child abuse issue or unresolved issue where the contact order should never have been made as it was in the first place, we really are dealing with flagrant violation of the law and we should respond in the same way as to any other flagrant violation of the law.

Mr CADMAN—I bring up the issue of perjury—I am putting a few dead cats on the table. Perjury is one that the Family Court in evidence had real trouble in dealing with but it is a factor that, from what people are saying in our electorate offices and from evidence, we are hearing all the time. People are making of stories and to disprove them is beyond the capacity of their opponent whether it be male or female. Both sides do it but it seems that it is a type of environment that encourages people to make exaggerated claims. I do not know whether that is right or not.

Prof. Parkinson—I am just wondering whether any legal environment is one which encourages exaggerated claims!

Mr CADMAN—You could be right.

Prof. Parkinson—I think we have to be careful. I began by saying that Dr Cashmore and I both have a great deal of involvement in child protection. I am aware of enormous concern and enormous anxiety amongst mothers in particular where they really do believe that their children have been sexually abused and that the court system is unresponsive. It is hard to disprove child sexual abuse, but it is also very hard to prove it too. I think if we come in with heavy penalties for perjury, we take a risk that the failure may not be in the person who has said what they have said, the failure may be in the legal system to resolve the issue. I suspect a lot of the issues which are being heard in electorate offices concern complaints of abuse and this sort of thing.

Mr CADMAN—Yes, but they also relate to income, assets and a whole range of other issues as well.

Mr DUTTON—Professor Parkinson and Dr Cashmore, I am sorry that I missed some of your earlier evidence. I had another commitment. I will certainly read the *Hansard*. I apologise if I go over ground that you have already covered. We were talking before about the fifty-fifty arrangement and were speaking with Dr Sanson about conflict and how it cannot work in those circumstances. Is a lot of the conflict born out of the system because, as you say, it is often an inflexible tool, whereas final orders, as you term them, should really be a living document? Is that what festers a lot of the anxiety and problems that create conflict between couples? If we took that away, would that go some way towards answering part of this problem?

Prof. Parkinson—It might Mr Dutton, but I doubt it is a big factor. Some 28 years ago we abolished fault in family law, but I do not think the community has ever abolished fault. When a marriage breaks up and when a relationship breaks up, in my experience there is usually a leaver and a left. The leaver is often two years or more ahead of the left in an emotional sense—

CHAIR—They have been going to do it for some time.

Prof. Parkinson—They have been going to do it for some time and for the left in particular—maybe it is the woman but more often it is the man—there can be shock, anger, grief and bitterness. That is what the family law system starts with: very raw emotions which go to the heart of our being. I do not think for one moment that the legal system helps when we go down the adversarial track. But we do as much as we can currently to have counselling, mediation and case conferencing to try to avoid going down the adversarial track until it is clear that there has to be a judicial resolution.

Mr DUTTON—I appreciate that and I think it is very wise. One of the concerns that I have is that the Family Court facilitates or is a vehicle for that anger. It is to do with human emotion. One party might feel betrayed or bitter, or whatever the case may be. They are not able to move on and decide to use the children as a tool or decide to use the Family Court as a process to essentially bankrupt the other party and expend tens of thousands of dollars. I understand what you are saying about those human reactions which are natural but there seems to be, under the adversarial process at the moment, a system where people can facilitate that anger.

Prof. Parkinson—Yes, I think that is true. The legal system does give a lot of opportunity for harassment and intimidation. The study of the Family Law Reform Act 1995 did demonstrate that there were some families where that was going on. It is very difficult to know what to do about that.

Mr DUTTON—What if we restrict contact between the parents so that the changeover—for argument's sake with school-age children—might involve picking up or dropping off at school as opposed to meeting at a particular point for the changeover? Mum could drop the children at school in the morning and dad could pick them up so there is really no contact. There does need to be some means of communications—for example, a communication book is one thing suggested at one of the committee's hearings. Is that something that could practically work?

Prof. Parkinson—Very much so. And I think it already works; it does happen. In my experience, family lawyers are pretty attuned to these issues and one often sees arrangements of that kind—picking up Friday from school and dropping off Monday at school. Contact handover centres are also very important parts of the equation. All the evidence is that there are not nearly enough of those.

Mr DUTTON—Can I ask one follow on question? If there were a tribunal, for argument's sake—this has been spoken about—that was able to deal with the ongoing and changing circumstances of these situations would that reduce some of the conflict so there was not a perpetual argument between the parties? The tribunal need not be prescriptive in nature but they would spell out the exact times of pick up and drop off and what not if there was to be an increased contact arrangement with the non-custodial parent.

Prof. Parkinson—There is not much difference between a court doing that and a tribunal doing it.

Mr DUTTON—Except that a tribunal might be able to revisit the changing circumstances on a more regular basis, perhaps.

Prof. Parkinson—Absolutely. I was suggesting not even a tribunal but an individual decision maker to do exactly that—a person who does not have to be a lawyer. That would be a very important strategy. I would also say that we should never think that we are making long-term orders. All the research that I have seen tells me that with 35 per cent to 50 per cent of all orders there is a significant change within about three years.

CHAIR—Just to follow on from exactly that, the issue you have raised with the leaver and the left is significant; you are right. I have been sitting here thinking about it. The person who is leaving has usually gone through the grieving and all of the separation processes in their mind long before they have left. They have gone through the grief and they have gone through the death of the partnership. They have gone through all of those processes and they have readjusted themselves and got themselves stronger to face the rest of life. That is the process.

The person that has been left may have absolutely no idea of any of this taking place. They probably do have a very limited idea that something like this is happening. They might question what is taking place in the relationship and might attribute it to a whole host of different things but are absolutely astounded when that person actually walks out the door and says, 'I'm leaving and I'm calling this quits.'

To follow that process, you find that within three years contact arrangements change markedly or can vary significantly. Would there be value in trying to have a process put in place initially that recognises the huge disparity between the attitudes and acceptance of each partner so that ultimately you could start to bring those two—with time—back to a similar or balanced level? Is there some argument for recognising this factor in determinations with respect to children's outcomes in an interim process?

Prof. Parkinson—I will refer this to the psychologist.

Dr Cashmore—You are completely right about the leaver/left aspects of it. The other part of that is that the person who is leaving has some choice and some control over it. The person who is left usually has neither and it does come as a shock to them. The way in which people deal with that is something that happens over time.

But putting final orders on something probably makes it worse if they feel as though the decision has been made at that point rather than it being part of a process and that things will change—as we all change—as circumstances change. I guess the danger—and I would want to refer this back to Patrick—is that if you set it up as more an interim process you might be leaving people with a sense of uncertainty as opposed to one of flexibility. That can make them even more uncertain about where they are going and what control they have over the process.

CHAIR—I will let Mr Price follow on. Right from the outset, right from the time the person actually leaves, the leaver is in the process of determining an outcome. They are basically in control of the ultimate outcome of this. They are in the position—and have been for some time usually—of being able to factor all of these things into consideration. That control is distorted and that status quo factor starts well before a relationship breaks down.

Dr Cashmore—Can I respond to the control aspect? I was not necessarily referring to legal control—

CHAIR—I am, though.

Dr Cashmore—I am referring to psychological control. When we feel as though we have some choice and some control over what happens to us, we usually feel happier about it even if the circumstance we are moving into is not great. It is that issue of psychological control that I was really referring to. Patrick might want to refer to the legal aspects of that.

Prof. Parkinson—I want to make a comment picking up on Judy's point. It is probably important to designate a primary residential parent, a primary carer, as something which may change but is not just interim. It is the level of contact and the way in which parenting is going to be shared that I think should be seen as a stage-by-stage thing. If children felt they were going to be uprooted from one home to the next over two or three years, it could create a lot of insecurity for them. That might happen with changes. I think we can change the contact arrangements and the ongoing parenting arrangements much more readily and make them more flexible by seeing it as a staged process.

Mr PRICE—In response to Mr Dutton you said that you did not see much difference between a tribunal and a court. What if a tribunal was acting on the basis of conciliation and, perhaps as a final resort, arbitration? The advantage of a tribunal is that you can allow the parties to get over the grieving issues—the fact that someone walked out and allegedly did not give the other a chance to reconcile—and, although those issues in no fault divorce are irrelevant, they are hugely relevant to the people in dealing with the loss of the relationship or marriage. I would disagree fundamentally. I think the tribunal has a huge advantage in—apart from a whole range of other things—just allowing the parties, as it were, to get the dirty linen of the relationship on the table. The tribunal would not want the whole thing to be dominated by that, but it would not chop them off at the knees the way the court does.

Prof. Parkinson—I think that depends on how the tribunal is set up and how it operates. The reason I said to Mr Dutton that I did not think there was much difference is that the process is still fundamentally a legal one. If one has a tribunal there is a different format, a different structure, but if we have affidavits, evidence and lawyers then I think we are still stuck in—

Mr PRICE—Sorry, I should have made it clear that I meant there would be no lawyers.

Prof. Parkinson—We agree there, although I am doing my students out of their employment! I think sitting in a room with somebody—possibly on different occasions, where there has been violence in the relationship—and talking the issue through is the kind of decision making that I have in mind for these ongoing contact disputes. It may not be very different from what you have in mind, but I just did not want us to go down the track of affidavits, evidence and lawyers.

Mr PRICE—You mentioned that Professor Cashmore was better placed to talk about the issues of contact and what have you. Why isn't someone of her background much better placed to be involved in the initial arrangements following the death of the relationship or marriage? Why is it the legal profession?

Dr Cashmore—I think that is actually what court counselling was originally set up to do—to try to negotiate some of those issues and to work out what was in the best interests of children. I do not think lawyers have the best training to do that sort of work. They do when it comes to

issues of evidence and fact. Tom Altobelli has written a really interesting paper for lawyers—one which we have cited in our paper—which summarises and draws together useful lessons for lawyers about their precedents. We were talking before about what some of the reasons were for why contact is not more frequent, and I think common acceptance of the legal precedent of alternate weekends has been—

Prof. Parkinson—It has been set in concrete.

Dr Cashmore—It has been set in concrete as the standard against which things operate, rather than having a more flexible view and seeing it as shared parenting. It is a matter of who does what and maybe, as Patrick says, trying to sort out the particular decisions which need to be made, who will make them, how they will share, how they will consult on these things and how that will change over time as children grow and change.

Mr PRICE—Are the stats still the same; about two-thirds of women are the ones who have agonised about the relationship and then walk out of the relationship?

Dr Cashmore—As far as I know, they are.

Prof. Parkinson—That is my understanding, too.

Mr PRICE—Usually, as part of that process they have been able to talk to other women about it, seek advice and get emotional support—not that every situation is the same but, if we were trying to characterise things, how do we get men to start doing some of those things? We talked about counselling immediately after the death of a relationship or marriage, but how do we shift it up the relationship tree so that we are getting some of this happening while there is still blood in the relationship?

Dr Cashmore—I think that comes back to basic differences between men and women. Women are more prepared to talk to friends and to seek counselling, whereas men often see that as a sign of weakness and say, 'I'm not going to go and see a counsellor.' Not calling it counselling might be one way to start—maybe set it up as a problem-solving process, trying to find solutions and trying to make decisions. But I think there are some things about labelling, whether you call it contact and residence, whether you call it shared parenting or whether you call it counselling or making decisions and coming to a resolution about issues.

Ms GEORGE—You mentioned earlier, when we talked about mediation, that the prefiling counselling under the Family Law Act had worked well. Is it possible to structure the future in a way that has even the counselling, which was previously done under the auspices of the Family Court, separate? I fear that even in the prefiling period, if you are doing it under the umbrella of the Family Law Act and the court, there will inevitably be winners and losers, so from the beginning you are setting up a situation where one or other is going to feel that they have won or lost. Firstly, could we separate all that out, so you leave the court there only for contested matters, but have everything else done in a structurally separate stream? I would like your comment on that. Secondly, I do not understand the Family Court and the federal magistracy.

Mr PRICE—You are not the only one!

Ms GEORGE—I get the impression that, with recommendations 9 and 10 that you make about reviewing the resources, perhaps it is not clear exactly what it is both bodies should be doing in a way that is most efficient and most timely in the use of the funds which are available. I would like your comment on that and whether we could hive off everything away from the courts so that you only go to the court for a contested matter.

Prof. Parkinson—I think that would be a very serious mistake, and let me explain why. The biggest issue when one sets up services for the community is how to access them. How do people know about them? How do people know that they are available? To give you an illustration from Victoria, for years there have been problems with conflicts between parents and adolescents, which end up with kids running away or being thrown out. For social workers this is a really big issue. In Victoria they set up a Children's Court advisory service in the body of the court. People access court because that is a visible place to go to where they say, 'Tell my kid to do this; tell my kid to do that.' When they set up that Children's Court advisory service in the body of the court—and you could not go before a judge until you went to that service—the number of disputed cases went down to almost zero.

I think it illustrates the importance of having a visible entry point for the receipt of counselling. I do not think, in the experience of the Family Court, that there has been a winner and loser mentality coming from the counselling service. They have been very professional and able. It would not matter where the access was; it could be somewhere else, as long as it was one of those very visible places where people can get help. I think the Family Court has done very well in structuring a process whereby you cannot get anywhere near a judge without first going through a structured process of mediation and counselling. That is why I think it has always worked well to have it within the court. It becomes a funnel through which people can come.

In terms of the Federal Magistrates Court and the Family Court, essentially we have two competing courts with overlapping jurisdiction. There is a difference in property but that only matters in Sydney or possibly in Melbourne, where $700,000 is not uncommon. In other parts of the country the federal magistrates almost have complete jurisdiction. In children's matters they have the same jurisdiction. So we have two rival courts, in a sense, who cooperate well but who are both trying to achieve the same thing.

One of the burning issues in family law is interim hearings. This is a critical issue where there are child abuse concerns or domestic violence. It would be ideal for the Federal Magistrates Court to deal with all interim matters within two months, but that is not how it works. The Family Court does its own interim matters and does them very poorly, by its own admission; the Federal Magistrates Service does its own interim matters—and that seems to me to be madness.

Ms GEORGE—And you could legislate to change that arrangement?

Prof. Parkinson—Yes, this is purely a matter of government initiative and structuring.

CHAIR—We talk about income levels, child support and the combination of the two with respect to residence and some payment as a responsibility for children. In your submission, you have said, 'Income levels may also be a factor in determining whether more frequent contact is possible' et cetera. I assume you are talking about geographical distance and a whole host of different things. I put it to you that income levels may also be a factor in whether or not it is

acceptable to the residential parent to enable more residence with the nonresidential parent—again, because of this formula we have that Ms George has spoken about. You have said, 'The critical issue for the Committee is whether any alteration in the law to include a "presumption of joint custody" could bring about any change in these factors and increase the amount of contact' et cetera.

Having brought those two issues together with income and the presumption that an alteration in the law could change those circumstances, would it not be the case that, if you did have a presumption of fifty-fifty, it certainly could bring about a change in circumstances with respect to income? It could certainly decrease the amount of income that goes to the residential parent and increase the amount of disposable cash that is available for the nonresidential parent as well. How do we get away from that factor—the significant issue of child support and residence? Could you give me some idea as to how we could remove that factor, thinking of residency of children initially?

Prof. Parkinson—That is the $60,000 question, isn't it? All the research tells us that women who do not repartner are likely to be much worse off after divorce. The reason is simply about investments. Men tend to invest in career and the world of employment—and women may do as well, but when the children are young they typically organise their work around their family commitments. As long as the relationship lasts that is a wonderful way to organise family life, and many of us do it—me included. But if a marriage breaks up the man continues with his earning capacity and the woman who has sacrificed her earning capacity is left in a very vulnerable situation. All the research tells us that that vulnerability lasts as long she does not repartner. If she marries again or lives in a de facto relationship, she gets back to the position she was in before the marriage broke up—the problem is resolved. Whether we call it child support or spousal maintenance, I think it is very important in that situation that we structure into our system ongoing income transfers from the primary earner to the secondary earner, otherwise we severely disadvantage women after divorce. It is much better to call it child support, because men are happier supporting their children than they are supporting their former spouse. That is what we are talking about—ongoing income transfers. Where is the room to change that? I think we can look at the issue afresh when a woman repartners, because another income is in the household.

CHAIR—That is right.

Prof. Parkinson—I am not suggesting that I have thought all this through, but it may be that you simply have the same percentage of your income going in child support, whatever the level of contact with the child, and then look at taking into account the resident parent's partnering when factoring the formula.

CHAIR—Professor Parkinson, you say that the overwhelming research says that the woman is worse off until she repartners. But the overwhelming perception out in the marketplace is that she is much better off because generally she has picked up a fair percentage of the home or the home, she gets to stay home, she gets a family tax benefit and then she gets child support on top of that. It is not always the case but at this point the male overwhelmingly is left to try and restructure and rebuild. They have got no home; they are trying to put together a home; they still have the obvious outgoings as well; and then the more they earn, the more they pay. So they overwhelmingly believe, opposite to the research, that the woman is the person who is more

likely to be in poverty. Due to the fact that the research shows how many children are resident with their mother rather than with their father, they believe that they are the people who are experiencing the major poverty trap.

That is in recognition that there are start-up costs again and that, if they want to have a quality existence with that child, even in the eighty-twenty scenario they will have to have a home to take them to. They cannot provide their children with quality experience if they have to sleep in the back seat of a car when they come to visit on every second weekend, school holidays or whenever it is. They still require a motor vehicle; they still require gas, electricity, telephone and other overheads; and they still require sheets, towels, pillowcases et cetera. It seems that they overwhelmingly oppose research which says that the woman in residence is in the poverty trap; they believe they are.

How do we look at that scenario with a new view? Do we look at the issues of that person having to re-establish? You are saying that the woman has put aside her career or any earning opportunity in order to raise those children while the father may have continued with his career. He still has to readjust, re-establish and restructure, and he is not left with the same amount of money to be able to restructure.

Prof. Parkinson—May I give you two answers?

CHAIR—Yes.

Prof. Parkinson—The truth is that both of them lose. We said in our submission that family law was about distributing loss, and when you go from one home to the other there are significant losses on both sides. So it depends whom one is talking to. Single mothers' financial issues are often desperate, and I think they are for fathers as well. Look at the assets they have—$124,000 on average, in a 1997 study. That is not much to create two households. The second reason why I think we need to be a bit cautious about the research is that it actually was based on an outmoded model of what happens after divorce. The Institute of Family Studies research back in 1983, which was very fine research, looked at income against needs and it valued needs in terms of what it means for a dad without kids. But as you pointed out the dad has kids and he wants to see the children. He may only need a one-bedroom apartment—

CHAIR—For himself.

Prof. Parkinson—for himself—but if he wants to continue actively parenting he needs a lot more than that. The research that says that women's income declines precipitously after divorce and men's increases is in my view fatally flawed. I think both of them lose out, but all of the rigorous research seems to me still to say that women's losses are greater than men's and it is because of women's orientation of work around family, whereas men tend more to organise family around work, and in the longer term they are stronger swimmers. I think we have organised family law on the lifeboat principle. The lifeboat principle is women and children first, and the reason is the feeling that in the longer term men can bounce back financially.

Dr Cashmore—Of course, the problem for many men is that if they want to go on and have another family of children then they have the expense of setting up for those children as well, and quite often there just is not enough money to go around in order to do all of that, whereas the

mother, often with the children resident, does not often do that—or if she does, she is repartnering with someone—

CHAIR—She has already got a structure above—

Dr Cashmore—and she has already restructured in order to have the resources to do that.

CHAIR—Exactly. That is right.

Ms GEORGE—And the formula does not take into account the repartnering, does it?

Dr Cashmore—No.

Mr DUTTON—Can I just clear up a few queries in my own mind. You are talking about the separation point, where one might be left in poverty. A lot of the people that we see are probably middle-income earners, in particular those who might have repartnered; they come in with their new spouse and talk about their budget and how difficult it is. It seems to me that there is a sustainable argument that some people who are left in poverty were in low-income situations pre separation anyway and their partners might only be contributing the minimum $5 a week, which I think is a disgrace.

We see quite decent people who might be earning a reasonable amount or who earn some overtime. If they have a higher income, they are paying—CSA would be able to tell us the figures—upwards of $1,600 a month tax-free to their former partner for one child, as one contribution. I think $400 a week to raise a young child is ridiculous. We are then disadvantaging them in a second situation. Even if they do not repartner there is still a huge financial burden. Is it possible that there are two separate arguments about poverty? When we look at the figures we see that some people are worse off—and there probably is a category who are. But a lot of those who come to see us who feel most aggrieved are those whom, by the time the health care card, government concessions A and B and everything else are taken into consideration, we are providing with almost a financial incentive to operate in a single-family situation.

Prof. Parkinson—I think broadly what you are saying is probably correct. It seems to me, first of all, that we have just not done any research in Australia on this issue of comparative living standards, and it has to take account of all the factors you have mentioned—government benefits, tax benefits and so on. That research simply is not available as far as I am aware, and we need to have that sort of research.

I cannot comment on the $1,600 a month figure; I do not know. The way it was set up was that people had worked out roughly what percentage of one's income one spends on raising children, and the idea was that that should continue after separation. So if you spend that proportion when it is an intact marriage, it should continue after separation as well. That is at least the philosophy of the Child Support Act. It was based not upon the base cost of raising the child but on what children benefit from in higher income families and having that continue after separation.

Mr DUTTON—Isn't that where a lot of the animosity is created, though, in middle- to higher-income people? As for the division of the assets and the matrimonial home, or whatever

the case may be, one spouse might have paid over 50 per cent, for argument's sake, so they are saying, 'I provided my former spouse with a new start in life and she has received in excess of the 50 per cent; therefore I have compensated for the period when she has been deskilled in employability terms. And yet now I am paying, in addition to child support, a big component of spousal support'—as you quite correctly pointed out before. These people do not mind paying reasonable amounts to raise their children. They accept that moral obligation, but where they become aggrieved is where they feel that child support really is former partner support.

Prof. Parkinson—I think that is absolutely a source of great anger and frustration. There is no differentiation between child support and spousal support. It is all part of the household income. I come back particularly to the 'leaver' and the 'left' and that source of anger and also, as has been said, the issue of forming a second family. What child support systems tend to do is to prioritise the first family, and it can be very difficult to then establish a new family and start afresh. These are real issues.

Mr DUTTON—In that same vein—you might have been asked this question in my absence before—is there an argument to try to quantify the cost of raising a child and having that as the core payment? For example, you could say that it costs $200 a week to raise a two-year-old and $300 a week to raise a 15-year-old. It could be a graduated scale. If we implemented that and removed the 109 nights that we take away, then there would be a financial incentive to either gain extra access or deny access—depending on what your motivation is. I think people are driven, in a financial sense, by wanting more or less contact—a disgrace in this whole argument—but those who simply want to spend more time with their children should be able to do that without financial incentive or disincentive.

Prof. Parkinson—There are two basic ways, as I understand it, to structure a child support scheme. The first is to look at costs and allocate the costs. I think that is what you are referring to. The second is to look at incomes and allocate incomes. We made a policy choice, whether consciously or not, to go down the second route and say, 'A percentage of your income should be made available.' So the higher the living standard of the parent, the higher the living standard of the child and the other family.

If we went down a cost route, as the English did in the Child Support Act 1991, unless we are very careful, we will find that low-income fathers—nonresident parents—will end up paying a much greater proportion of their salary. In England it was, frankly, a disaster. What happened was that the government essentially took the social security level for a single mother and one child, two children and three children, and said, 'That is the debt owed by the nonresident parent to the government. Suppose that was £10,000. Essentially they took all of the nonresident parent's income, barring his single parent component, and said, 'All of that goes in child support.' The animosity was horrendous. So I think we can go down a cost model as long as we find some balance for lower income families. In the English case the problem was that they were really trying to limit government expenditure and reimburse social security.

Ms GEORGE—But you could make up that cost balance by a greater government contribution, couldn't you?

Prof. Parkinson—I think so.

Ms GEORGE—If you do not take it all out of private. There is one thing about this that I do not understand. When we have asked this question, the theory goes something like this—that the formula was predicated on keeping the same standard of living that applied to the intact family in the new family. From everything you have said, both parents are losers, so this kind of theoretical model that everything remains the same even though you have separated just does not seem to figure. Yet when we ask, 'What is the cost of raising a child?' we are pointed to various and differing studies that all seem to conflict with one another and are subject to further verification and analysis. It just seems to me to be surprising that, as of today, we cannot get a clear answer to the question, 'What is the cost of a single parent raising one, two or three children?' It is confounding.

Prof. Parkinson—It comes down to what is included in the cost. My child does not eat much although his toys are very expensive, but if I factor in the housing costs of having a child and bedrooms and so on and of having a motor vehicle and so on, then the costs become higher. But those resources are shared with the rest of the family, so it is very hard to isolate the direct cost of children against the broader shared costs. There are economies of scale, obviously the more children one has.

Ms GEORGE—We were told earlier in the day that NATSEM and one of the universities were doing some modelling. Can you point us in any direction that can be a bit more specific?

Dr Cashmore—I thought the Social Policy Research Centre had done some work on the costs of children and the different models, but I would need to seek further advice on that. Coming back to the issue about the costs of children and the community expecting that children will continue to have the same standard of living as they did beforehand, I think you are absolutely right—you cannot divide one household into two households and expect it to be exactly the same. But the issue is also, if you just do it on a cost of living or a cost of raising the children per se, then children at different income levels do have different styles of living—they have different sorts of after school activities, lessons and so on. That would need to be factored in, as would where they live.

Mr QUICK—But we have a basic wage when it comes to compensation and the loss of limbs—the amount of money is quantified. Is it all too difficult to say that there is a cost of living to raise a child in Australia depending on whether you live in Sydney, where housing costs are different to Tasmania, where I come from? We seem to do it easily for workers compensation if you lose an arm.

Ms GEORGE—For the minimum wage.

Mr QUICK—Yes, the minimum wage. Surely to goodness you could quantify within $100 or $50 what it is going to cost. You could say to most parents to look at their grocery bills, school fees, clothing and whether they have a mobile phone.

CHAIR—You might get more people living in the country if you quantified based on that. They would have to move to the country and bring up their children.

Prof. Parkinson—They might all move to Tasmania.

Mr QUICK—They are at the moment.

Prof. Parkinson—I think it would be possible to work out a very base cost of having a child in a household based upon the expenditure which is obviously additional with a child. But if we organise the child support system only on that level, then it would deprive children of the benefit of the higher-income, non-resident parent's standard of living.

Mr QUICK—Is it really child support, when there is $800 million owed to families and when there is no responsibility for the person receiving the child support to actually quantify where the money has gone? We have heard evidence that, in some cases when second relationships of the custodial parent have improved finances markedly, that money is banked and used for a variety of pleasures for not the children but the parent. And there do not appear to be any sanctions.

Prof. Parkinson—The higher the income level, the more that issue arises. What we are really talking about is family income transfers.

CHAIR—Exactly. With regard to child support itself, there has to be some understanding of the cost of raising a child generally. Forget the income levels of a parent. What does it cost, on average, to raise a child in the home? What are the costs for food et cetera? We should maybe establish a child support formula that looks at that. On top of that, you could start to look at (a) whether the children want to go to a public school or a private school, (b) the fact that they may live in Vaucluse rather than Wagga Wagga, and (c) the issue of the over and above costs, such as the accelerated cost of living in a particular city as opposed to what it might be in another area. That would start to get to the truth of the matter. Now we just have an ambiguous formula for child support and, while it looks like it takes all of that into consideration, ultimately how can it? I could have an extremely profitable business in Wagga Wagga—I might earn $3 million or $4 million a year—and I would pay child support commensurate with a certain level, but then I would be expected to dish out other money as well. It just does not seem that that is an equitable way or a valuable way in which to get harmony happening in a family during separation.

It is almost like truth in sentencing, isn't it? If you were to put the truth of the issue on the table and say, 'That's what you're paying for, and these are the things that have been taken into consideration,' then perhaps there might not be so much animosity about spousal maintenance and what it is going to cost to take care of a child. As the child grows and ages, it will perhaps cost more, but there may be less spousal maintenance because the spouse will be more able to return to the work force after a period as well. Is there a case for that?

Dr Cashmore—I think the issue comes back to transparency and people being aware of what they are paying for, as well as the issue of control. If you have no control over the process, you at least would like a little bit of say in how it works. You would like to be consulted or to have some sort of honesty and transparency about what it is that is actually in the picture. I certainly do not feel that child support and that sort of issue is really within my expertise.

CHAIR—But it is part of the equation on this issue. Part of the equation is the income levels that you talk about; that is part of child support.

Dr Cashmore—Interestingly, the data from the ADTP study showed that what predicted where the children stayed overnight was not the residential parent's views about perceived

fairness of child support. That made no difference to whether the children stayed overnight or not. What did make a difference was whether they trusted the other parent as a parent. So the money in that sense did not make so much difference.

Mr DUTTON—But it does after the 109 nights.

Dr Cashmore—Yes, I think so.

Mr DUTTON—Then it becomes very much a determinant in people's minds. I think the Family Court evidence last Friday week ago showed that.

Dr Cashmore—We certainly had one parent in our study who was very angry that his ex-partner seemed to have been extremely aware of what the requirements were and when she was going to tip over and cut out just before that.

Mr QUICK—It becomes a battleground.

Mr DUTTON—Do we run the risk of criticism if we say that we are going to take into account the income of the new partner in the relationship? Would some argue that that provides a deterrent for people to repartner? Say they have met a lady with a couple of children, and they know that they are going to be subject to CSA investigation or scrutiny, they are going to have to provide their income details and their income is going to be taken into consideration in relation to what their new partner is going to receive from their former partner. Is there a downside to that?

Prof. Parkinson—Yes, there is.

Mr DUTTON—But is it insurmountable? I suppose that is what I should ask.

Prof. Parkinson—I think it is a cost-benefit analysis. It seems to me that, if we are talking about family income transfers—and let us use that expression for a moment—then what we have to look at is household incomes and not individual incomes. Yes, there is a risk of some deterrence—it is not a question of the new partner paying more; it is just a question of reducing child support.

Mr DUTTON—But if we take into consideration the incomes on both sides of the equation—both the new female partner and the new male partner—then doesn't that equalise it a little bit?

Prof. Parkinson—I do not think there is any other way of doing it; I think one has to look at re-partnering on both sides. My feeling would be that that would be a more obviously rational approach than basing it purely on biological parentage. Again, all the research shows us that women are very vulnerable when they do not re-partner. Of course, the older they are, the less likely it is that they will re-partner.

Mr DUTTON—This is why the current belief is flawed, isn't it? It is not relevant to talk about trying to maintain the lifestyle that that child would have enjoyed had the relationship remained intact because at the point of separation all bets are off. That child's direction in life is now headed in a different way. If the father, who was on a good income, decides that he wants to

provide that child with a certain lifestyle—and, for argument's sake, send that child to a private school, buy him or her a car, or whatever—then they are decisions that are going to be made independent of that new circumstance, aren't they? The direction of that child's life would then be very much dependent on, as you say, whether the custodial parent re-partners. She may marry a multimillionaire or someone who is on unemployment benefit. That is what really determines the child's future in life, isn't it?

Prof. Parkinson—I think that is absolutely right. The circumstances change so enormously that one must take account of those changes. I would like us to move to a situation where we talk about minimum child support and minimum contact and basically encourage parents to go way beyond the minimum—to have more contact than the orders require and pay more child support than the orders require. I would have thought that the best guarantee of a non-resident parent contributing to his or her child is having an ongoing strong relationship with that child and caring about that child. That is the nexus, I think, between contact and child support: the parents with more contact do seem to be more regular payers.

Mr QUICK—How do we keep the lawyers out of that?

Ms GEORGE—We talked about that when you were absent.

CHAIR—Yes, we did.

Ms GEORGE—I would like to go back to the formula. My constituents ask me, 'Jennie, why is it that the child of the first marriage in the formula is valued more than the children of my new relationship?' The formula is structured in a way that children are not being valued equally by the system. If we could come to some basic minimum about what it is to raise a child then we could build in some other factors for the formula to take into account. I am concerned that you do not leave separated women who are resident mothers with their children in abject poverty, but I think that is a joint responsibility between the family and the state, as it were. I can imagine that what happened in Britain was partly the result of the government not being prepared to put in the money to make sure that children did not live in poverty.

Prof. Parkinson—I think it was a Treasury driven scheme. Just to be clear, though, the formula does take account of new biological children but it does not take account of stepchildren adequately. So if a man re-partners and the woman has children from a previous relationship, the system should work fine—or well enough—if the biological father of those children is paying. But if he is not then there is a cost there and it is a bit difficult to modify the formula.

CHAIR—It is hard for them to work it out, though. We know it takes this into consideration—because you see a drop in the percentage but then you see a rise in the family tax benefit. It is so complicated and convoluted that it is very difficult for somebody to see that ultimately their new biological child in their second relationship has got a similar weight in monetary value. You then get your family tax benefit, as I said, plus a drop in the percentage that you pay. Because it is done in such a convoluted way, it is hard to understand. It is understandable to see why people think that the child of the second relationship—

Ms GEORGE—But if they are not eligible for family tax A or B, they do not get that offset.

CHAIR—But they do: they become eligible because of the fact that they have got a new family.

Ms GEORGE—But if they are over the threshold with their joint income if the two parents are working—

CHAIR—Yes, you are right.

Ms GEORGE—It is complicated.

CHAIR—Yes, it is complicated. We do not underestimate the complexity of the issue. If it is so complicated for everyone to explain it to us, the decision makers, how on earth are people out there in the general public supposed to absorb and understand it and feel comfortable that their needs are being cared for and looked after as well?

We can all be very interested—and we certainly should be—in the interests of the children but, if the parents are in a position where their emotional stability is not good because of a whole host of these factors, that is not in the best interests of a child either. I think we have to go far beyond just this one issue of the interests of the children and neglecting the apparent wellbeing of the parent, because the apparent wellbeing of the parent certainly must impact on the interests of the children as well, whether they be a resident or non-resident parent.

We thank you for spending the time with us this morning. It has been a considerable amount of time that you have allocated to us. It has been very helpful to us in the decision-making process; it has been excellent. I thank all who have appeared this morning. It has been very valuable for us.

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

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

Committee adjourned at 12.22 p.m.