COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS

Reference: Child custody inquiry

FRIDAY, 17 OCTOBER 2003

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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS

Friday, 17 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, Ms George, Mrs Hull, Mr Price and Mr Cameron Thompson

Terms of reference for the inquiry:

To inquire into and report on:

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

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

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

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

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

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Committee met at 8.34 a.m.

DEWAR, Professor John, Chair, Family Law Council

CHAIR—I declare open the sixteenth public hearing of the House of Representatives Family and Community Affairs inquiry into child custody arrangements in the event of family separation. This inquiry addresses a very important issue which touches the lives of all Australians. Today we will hear from the Family Law Council; the Child Support Agency, included in the Department of Family and Community Services, and Centrelink; and the Lone Fathers Association. About 4.5 hours have been set aside for the hearing.

I welcome the Family Law Council to today's public hearing. Professor Dewar, the evidence that you give at this public hearing is considered to be part of the proceedings of parliament. I, therefore, remind you that any attempt to mislead the committee is a very serious matter and could amount to contempt of parliament. The Family Law Council has made a submission to the inquiry, and copies are available from the committee secretariat. If you would like to make a short opening statement, I will then invite members to proceed with their questions.

Prof. Dewar—I would like to begin by thanking the committee for the extension of time we were given to prepare the submission. Council consists of members and observers who between them represent a wide range of expertise in and around the family law system. Council includes lawyers, judges, magistrates, state and Commonwealth public servants, academics, researchers, service providers and law reformers, so we are unambiguously an expert body whose role is to advise the Commonwealth Attorney on matters to do with family law and its administration.

As you will know from having read our submission, council oppose the introduction of a presumption of equal time following divorce or separation. We summarised the arguments as succinctly as we could in the submission, but I would be happy to expand on that this morning. I emphasise that council were unanimous in their views. In fact, the challenge we faced was to boil down the number of arguments against to those that appeared in the submission.

Turning to the other terms of reference, council believes that, so far as contact with non-parents is concerned, the existing provisions are in general adequate, including those relating to grandparents, but there may be a need for further and better education of the community about those provisions and perhaps better resources available to enable appropriate individuals to take advantage of them.

Turning to child support, council support the general principles in forming the child support scheme and believe that in general the scheme works well both for children and their primary carers and for government. Council would be opposed to any direct link being introduced between contact and child support. We would also suggest that any change to the formula would need to be carefully modelled in terms of its impact on families and the government's revenue. However, council do believe that there have been a number of social, economic and legal changes in the 20 or so years since the formula was first introduced that may justify an evaluation of its operation now.

We have tried to be constructive in our submission and we have tried to offer some suggestions for areas in which we think there could be improvements. I begin by saying that

council strongly support the objective of helping and assisting both parents to remain actively involved in parenting of children after divorce or separation. We have made suggestions in areas where we think that could most helpfully assist. They really fall into three areas. The first concerns improving contact enforcement processes to help those who have orders for contact to enforce them. The second relates to the language of the legislation itself. We think that the act could be worded so as to spell out more clearly what the consequences of joint parenting actually are and further to reduce the win-lose mentality that may still be associated with the outcomes of residence and contact disputes. Finally, we suggest that more resources or infrastructure could be provided to support and encourage parents to remain actively involved. We have made some fairly brief suggestions as to where we think that could be done. Council would be very willing to assist in developing those ideas further, provided of course it was consistent with our statutory obligations to the Attorney.

I am appearing as chair of the council and I will answer questions in that capacity, but if I need to step out of that role and answer questions in my own capacity as an academic then I will indicate when I am doing that. I will try to confine my comments to the views of the council.

CHAIR—Thank you. It is very good of you to come along. Each of us has read your submission and we understand that you have put a lot of time and effort into preparing it. There are many things I would like to ask you about; we will get lots of opportunity this morning. In your submission you speak about the case where, if you were to have a presumption of equal time parenting as a rule of thumb, equal time parenting would be all the family law that many in the community would know. On page 10 of the submission you say:

> ... while it is the case that the presumption is open to rebuttal in court the presumption is likely to very quickly take on a life of its own in the mind of the community. As a rule of thumb 'equal time parenting' will be all the family law that many in the community will know.

What would be the difference between the community knowing of equal time parenting and them currently knowing that it is an 80-20 split? That is the perception; whether it is reality is another thing. It seems that all the community know at the moment is that if you are a father you get 20 per cent and if you are a mother you get 80 per cent. It is not the truth but that is the way it is perceived in the community. That perhaps could start animosity and anger even before somebody can look to having an amiable breakdown of a partnership that involves children. What would be the difference between that and having a thought out in the community that it is 50-50?

Prof. Dewar—There would be a different perception of what the outcome would be.

CHAIR—What would be the problem with having the majority of the community thinking that if you have a breakdown it is a 50-50 split?

Prof. Dewar—The problem could lie in the effect that that would have on decisions that people made. We try to spell it out in the submission. For example, the way they would make decisions about whether to stay or leave a family situation. It is particularly a risk in most cases where there are issues of violence. If a mother were to leave a home in which she feared a partner, her decision making about whether to stay or to leave might be affected by the outcome in terms of child caring arrangements if she were to leave. If she were concerned about the

effects of an equal time split and children spending a lot of unsupervised time with a potentially, in her mind, dangerous partner that might affect her decision about whether to go or to stay. That in itself could be undesirable.

In terms of the effects on decision making more generally the effect could be to place inappropriate pressure on women who may not fully understand the nature and effect of a presumption. Presumption is a lawyer's concept, if you like. The point we were trying to make in the submission was that a presumption that can be rebutted in certain circumstances could very quickly become an ironclad rule and people would inaccurately interpret the presumption to be the inevitable outcome in all cases.

CHAIR—That is the issue I have. That is what has happened now. We have an 80-20 rule out there. It seems that it is an ironclad rule. We were supposed to have initially a presumption and now it has basically turned into an 80-20 rule. It seems to be an absolute rule of thumb and, even if it is not, the perception in the community is that it is.

Prof. Dewar—But it has no statutory basis.

Mr PRICE—Professor, the reality is that you can have about 94 per cent confidence in the fact that the decision will be for sole custody. If you are saying that it is legalese in our terms of reference, I think it is fair to say that many committee members would like the starting point for discussions between the parents to be shared custody—50-50. Everyone has accepted that 50-50 is not going to suit 100 per cent of the population, and it certainly will not be appropriate for abusive relationships. But, that aside, why can't you have a starting point of 50-50?

Prof. Dewar—The bulk of our submission is directed towards addressing that question. I would be happy to run through that.

Mr CADMAN—I do not think you do, I am sorry.

Mr PRICE—You are saying, in response to the chair's question, that the way the terms of reference are set up is that it is a rebuttable presumption.

Prof. Dewar—Yes.

Mr PRICE—Let us throw that out. Let us not have a rebuttable presumption. Let us start again and say that we maintain all the objectives of that section in the Family Law Act, but we strengthen it even further and say that the starting point for issues of residence should be 50-50. What is wrong with that?

Ms GEORGE—That is what you are suggesting, in effect, isn't it? You are suggesting that we could get to that outcome by changes to the act, as specified on page 20, without actually having in place a legislative basis.

Prof. Dewar—We are suggesting that that could be increased in significance in the legislation as a factor to which a decision maker might have regard. I would be happy to speak to the individual arguments we make in the submission against—

Mr CADMAN—We had evidence just within the last few days from the Family Court that said that the interim orders can affect the final decision in a hugely dramatic way. You argue that the interim orders are so quickly made that to have the presumption at that point would be wrong. Let me tell you that the Family Court itself is saying that the delay between the order and the final decision is so significant that the decision is already made. You do not deal with that issue.

Mr PRICE—We are getting away from the point I think the chair is making, which is: if we change that section in the Family Law Act without making it a rebuttable presumption, why can't we make a very strong statement that we believe that, in the negotiations between parents—and if it becomes litigious—the starting point should be 50-50?

Prof. Dewar—That would be a presumption. It would quickly become understood. Where the chair started was the point that we were trying to make: legislation is imperfectly understood in the broader community. Family law legislation has to be understood by a very wide range of people. Some of them are specialists operating at the heart of the system, in the courts, but there are an awful lot of people who have to work with the legislation who are not experts but who have to place meaning on it. The point we are making in the submission is that, while it may be evident to lawyers that what we would have would be a presumption that could be rebutted in certain circumstances, what we could very quickly end up with is a rule, in effect, that people would apply to their own circumstances inappropriately, and that could lead to bad outcomes for children.

CHAIR—Professor Dewar, I was trying to get to the basis of your assumption that people understand family law intention as it sits now and as it rests now. In your whole submission, which is very good, you assume that people understand that they can do all of these things in family law—that they can have a fair hearing in family law; that they can get a greater percentage of time; that in, say, a non-residential parent's case, whether it is a male non-residential parent or a female non-residential parent, they can go to family law, debate or argue their case and get a fair outcome. You assume that that is what people are thinking out there in understanding family law.

Overwhelmingly, in our experience in the inquiry and in the submissions that I and, I am sure, many of the committee members have pored through, that is not the understanding of separation that is out there. The understanding is quite clear that there is this unwritten rule that there is an 80-20 split and that it can cost you many hundreds of thousands of dollars to try to challenge that—and people do not have the money. Some of our witnesses have said, 'We've spent $180,000. We had no more money and then, after we had exhausted all of our finances, we sat around the table and made a decision. Yet we were trying to do that through a family law court process to get a greater percentage of time with the child.'

It has quickly become an unwritten rule now for the general populace to believe that there is an 80 per cent award of residence for a child to its mother, supposedly the primary caregiver. All of the submissions seem to say, regardless of the change in the way in which people now parent, the mother is still the primary caregiver. People are saying to us at the moment that there is this 80-20 rule; you are saying, quite obviously, you do not have that rule and that you have this open-ended court process that can have any outcome, but that is not our experience with the people.

The question I am asking is basically: if there is an unwritten rule out there now for 80-20—or there is a perception in the community that it is 80-20—what will change if a perception comes into place that there is going to be 50-50? I understand that, as you say, that might put women in a different circumstance—they might not leave an abusive household. But, if you did not have an abusive household and you are one of, say, the 95 per cent of supposedly non-difficult people out there who could supposedly organise their own affairs in some form or another, could it not be a way to have less anger in the process because we are not fighting for this unwritten rule of 80-20?

Prof. Dewar—I suspect not. In fact, one of the points we make in the submission is that we could be increasing expectations beyond the point at which they are realisable. I understand what you are saying about the existing perceptions about what the law currently says. I think that probably signals a failure on the part of those responsible for the legislation and its administration to get the message across of what the current legislation is trying to achieve. I think the 1996 changes have probably not worked in terms of trying to get the message out.

I think the difficulty with legislating a joint presumption is that you could end up with either people who feel very angry because they are not getting what they see as their right or entitlement, in terms of a share of the child's time, for reasons that are beyond the parties' control—it might have to do with work patterns, lack of child care or lack of family support—or people who, for whatever reason, are unable to get the full half feeling that they were somehow inadequate or a failure as a parent. I think there is a real risk that we could raise expectations by introducing a presumption of that sort that could actually make things worse and could make people even angrier with the system for not delivering what they see as their rights.

Mr PRICE—Should there be a presumption toward shared parenting?

Ms GEORGE—Can we use the word 'shared'?

Mr PRICE—I think the point the chair is making is that the statements in the Family Law Act are marvellous. Everyone agrees with them. I have never had one witness come before us and say, 'They are awful. We need to radically change them. They are contrary to community expectations.' But, as the chair points out, you can have a 94 per cent confidence level that sole residency will be awarded, and I think the committee is of a mind that that is unsatisfactory in 2003. As legislators, we do not want to create unintended consequences. The committee understands the issue of violence and abusive relationships and, whilst that has been put up as a problem, I think it is fair to say that the committee would see it as an exception which needs to be dealt with specially. So, what can we do to break out of the straitjacket of sole residency? If you object to us putting in 'joint', what about 'shared'?

Prof. Dewar—One of the suggestions the council makes on page 19 and 20 of its submission relates, I think, to that issue—namely, the wording of the act.

Ms GEORGE—Could you take us through that?

Mr PRICE—Whilst we can agree to going through and specifying the expectations of parenting and what the responsibilities might be, I do not think we are going to get away in this inquiry without a bolder statement about outcomes. That is why I am asking you, in your

capacity as chair of the council: how can we put something in there that gives effect to our wishes, given your reservations about the rebuttable presumption of joint residency?

Prof. Dewar—Can I just make a general point and then go into the specifics of the proposal?

Mr PRICE—Go for it.

Prof. Dewar—As I said earlier, family law legislation speaks to a very broad community. It is only a very small percentage of people who end up in front of a judge or magistrate, requiring a decision. Most people self-apply the legislation. Most people make their own arrangements in the light of what they understand the rules to be and how they see their own circumstances. That is one of the reasons why we have to be careful about the messages that are sent out. That is an important point, because a lot of decision making in family law is not by judges; it is by the people themselves or with the assistance of third-party intervention.

Ms GEORGE—And in the shadow of precedents set in the Family Court.

Prof. Dewar—I suspect that it is more in the shadow of the folklore about the precedents set—

CHAIR—Exactly.

Prof. Dewar—but also how people see their own situations and what they are capable of providing for their children. Parenting after separation takes place in the context of a much broader set of social and economic structures over which the individuals and we, as legislators in this area, have relatively little control. But, to come to the suggestions we make, on page 20 we suggest that the act could be amended to direct decision makers' thinking—and I use the term 'decision makers' broadly to include those who self-apply the legislation—to the fact that the best interests of children would be promoted by the significant involvement of both parents in the care and upbringing of their children, unless there are exceptional reasons why both parents should not have such an involvement. That would go beyond what the current legislation says. The current legislation simply talks about children having a right to know and be cared for by both parents. The current legislation looks at it from the child's point of view, which is entirely appropriate, but our formulation looks at it from the parents' point of view and makes clear the importance of both parents being able to be actively involved.

If you go down to paragraph (c), the other strand to this is an attempt to get away from the current language of 'residence' and 'contact'. That language itself replaced the old language of 'custody' and 'access'. Ironically, perhaps, that new language of 'residence' and 'contact' was an attempt to get away from the win-lose mindset that was associated with 'custody' and 'access'. I do not think it has achieved that at all. In fact, a lot of people have not noticed that the language has changed. We still hear talk about custody. We are proposing that we abandon that language altogether and just talk about 'parenting' or 'parenting orders'. Parenting orders, under the act, would determine the detailed arrangements for a child so that we could get away from the idea of sole or joint residence, for example. That would cease to be an issue because you would not identify a resident parent and a contact parent; you would just have parents with particular obligations or involvements with their children.

Mr PRICE—Come on! You would still have to have some method of classifying them. It would be no good just changing the wording to 'parenting orders'. I am receptive to that suggestion, but you are still left in the logjam of one parent being the sole parent and only about six per cent of parents having forms of shared parenting.

Prof. Dewar—Language is powerful, I think. We know that from the 1996 reforms. Again, it was one of the things that informed our concern about folklore. One thing that the 1996 reforms did was to introduce this notion of a child's right to contact. That was a new formulation. That has had a very powerful effect, certainly on people's expectations. Often, those expectations have not been realised and that has been a factor that has led, we suspect, to growing dissatisfaction with the system. But we think language can be an important vehicle for getting some messages across. I think that, if we moved away from 'residence' and 'contact' and simply described the outcome in terms of 'parenting orders' that both parents have, it could help to take some of the sting out of outcomes that may not be equal in terms of time.

Mr CADMAN—But that is done on the papers at an early stage, isn't it? I do not know how you can bring about a satisfactory result doing something like you are suggesting on the papers.

Prof. Dewar—That would certainly be the case at an interim stage in a court process.

Mr CADMAN—I refer specifically to orders.

Prof. Dewar—If we are talking about orders being made as part of a formal court process, certainly at an interim stage they would be made in the light of very limited information. If they are being made by consent, they would be made on the basis of the evidence presented by the parties. Generally, the fact that orders are proposed to be made by consent is evidence that the parties have at least agreed to those orders being made in those terms. Most orders would be made by that means. We are trying to get away from a situation in which 'sole' or 'joint' matters at all, and to simply describe the outcome in terms of orders that each parent would have. That may not lead to equal time, but elsewhere in the submission we say that equal time is not necessarily the best thing. Equal time is not necessarily a precondition of an active engagement by a parent in the life of a child. A lot of research now is suggesting that what matters is not quantity but quality of time, and we are suggesting that there are various supports that can be put in place that might assist in achieving that objective for those parents who are unable to achieve quality time, as it is called, with children.

Mr CAMERON THOMPSON—Are you saying that the description makes all the difference? You are not going to get away with calling them parents. For all the purposes of child support, schooling or whatever, how are you going to separate the resident parent from the other parent if you are just talking about parents? How are you going to describe them? Whatever you call them, you are going to have to give them separate categories. It is just window-dressing to try to call them a parent.

Prof. Dewar—Parenthood is a significant legal status, no matter what amount of time you spend with your children. You mentioned schooling. A parent has a significant status in relation to decision making about schooling, no matter what amount of time they spend with the child in question. In fact, that is something we suggest could be clarified in the legislation as an area of decision making in which both parents would have to be involved.

Mr CAMERON THOMPSON—But the teacher would say to the child, 'Which is your residential parent?' They cannot say, 'Which is your parent?' No matter what window-dressing you give it, they are going to be saying, 'Which one is the one that has sole custody of you?'

Prof. Dewar—It is possible. I think it depends a good deal on how much community education there is about what the legislation is trying to achieve. As I said earlier, most people have not noticed the shift away from the language of custody.

Mr CAMERON THOMPSON—You can use child support language and talk about payers and payees.

Prof. Dewar—You could but I do not think it would be appropriate.

Mr CAMERON THOMPSON—No, but my point is that you just cannot call them both 'parents'. If you have not changed the nature of the time they are sharing—if it still remains the 80-20 type model—then one is still going to be the residential parent and the other one is going to be something else.

Prof. Dewar—That is true, but I do not think that is necessarily a consequence of what the legislation says. The fact that children spend more time with one parent than the other is more often the result of a whole range of factors. It is partly to do with logistics and resources. Supporting genuine joint-parenting arrangements requires a high level of resourcing and a high level of cooperation between the parents. I do not think it is necessarily what the legislation says that would lead to that imbalance; it is a whole range of societal and economic factors that push people.

Mr CAMERON THOMPSON—You seem to be saying that if you use a form of words to describe it, it will belie the fact that you have this inequality of responsibility for the child. That just does not add up to me.

Prof. Dewar—I think a lot depends on what we see the role of legislation to be in this context. I suggest it is a blunt instrument to lead social change. It is a good instrument to enable parents, who are predisposed and able to do so, to make arrangements of a particular kind, but I do not believe that it is something that can be used to bludgeon a community or a society into changing the way it does things. At the moment, primary caring is a gendered activity during and after relationships—that is a social fact. I do not think having legislation that prescribes otherwise is going to change that readily. There are other areas we need to pay attention to, if we want to drive that social change, other than child custody legislation. The welfare of children—and I think the council would share this view—is too important an area to be used as an arena for social experimentation of this sort.

Mr CAMERON THOMPSON—Do you agree with the studies that show that, regardless of gender or whatever, everyone wants the father to have more access, more contact. We have had these stats and it is overwhelming—everybody is basically in agreement that this has to increase. You cannot come down to talking about the way you describe parents as being the way to fix that.

Prof. Dewar—No, that is not going to fix it on its own. It comes back to what we think the role of legislation is. What legislation can do is create a language and framework within which people who want to have different forms of arrangement are able to do so without feeling they are boxed into a particular set of circumstances following separation.

Mr CADMAN—Have you had a look at the New Zealand Guardianship Act?

Prof. Dewar—I am dimly familiar with it.

Mr CADMAN—What do you mean by that? Have you looked at it well enough to offer an opinion about its applicability to Australia?

Prof. Dewar—I am familiar with some of the provisions relating to violence, for example. I would not say I was intimate with all the detail of it.

Mr CADMAN—You list a number of matters you think that parents should almost mandatorily be required to consider as joint issues. Does that come within the description of guardianship?

Prof. Dewar—We have moved away from that language.

Mr CADMAN—I understand that but let us say we are going back 50 years or something.

Prof. Dewar—Yes. The items we list on page 21 would be items that in a previous life would have been considered aspects of guardianship.

Mr CADMAN—Do you think the court pays enough attention to those factors?

Prof. Dewar—That list is an attempt to put into simple form an existing court decision in the case of B and B, where the full court said that there are some cases where parents should consult each other. This is our understanding of what the effect of that ruling was—namely, that in important issues affecting children parents should consult each other. This is an attempt to draw out what is already implicit in the court's interpretation of the legislation.

Mr CADMAN—You consistently refer to the court as if it may be the only process available to people discussing these issues or trying to determine them, but you also on page 22 talk about the development of primary disputes resolution. What do you mean by that?

Prof. Dewar—I think I said earlier that the court is a small part of all the decision making that goes on in this area. Primary dispute resolution is the term that is used to refer to a whole range of dispute settlement methods, including conciliation, mediation and counselling. I think we have made it clear in our submission that we regard those as extremely important mechanisms that should be further supported as ways of assisting parents to settle these issues between them. A lot of parents currently do settle issues in that way, depending on their level of conflict and their need for third-party intervention. It is really only a very small minority of cases that end up coming before a judge or a federal magistrate.

Mr CADMAN—In that mediation environment, do you think the concept of 80-20 is significant?

Prof. Dewar—I guess you would have to talk to people who are more familiar with—

Mr CADMAN—We have, and they think it is.

Prof. Dewar—In which case that would be the answer to your question.

Mr CADMAN—I wonder whether the council has done any work in that regard.

Prof. Dewar—We have not specifically looked at the informal understandings that mediators apply, although I think there has been some work done in other jurisdictions on how the mediation process works from the inside. It is not an easy area to research, but there has been some work done overseas. I would have thought the informal understandings of mediators as to what a court outcome would produce would be balanced off against the capacities of the parties they are dealing with. Mediators, from my experience, take very seriously the children's best interests but also tailoring a solution to the needs and capacities of the parties. It goes back to a point I made earlier: while equal time might sound in principle a fair outcome, for a lot of people it is simply not practical.

Mr CADMAN—We are not talking about outcomes, really; we are talking about a commencement point. I think that is what presumption means, doesn't it? You presume something as a starting point for mediation or even arbitration.

Prof. Dewar—Yes, but I think this goes back to where we started, which is that the power of language—

Mr CADMAN—With mediation, we are talking about a non-legal situation, aren't we?

Prof. Dewar—Yes, but even mediations take place within the shadow cast by legislation.

Mr CADMAN—You are making an assumption now. You said a few moments ago you had no indications about whether the 80-20 factor was an influence in mediation. You are now assuming that 50-50 would have?

Prof. Dewar—Yes, I am.

Mr CADMAN—So you must also then agree that 80-20 does?

Prof. Dewar—I think I said that it would be a matter of asking mediators what they think the law currently says. You said that that was their understanding.

Mr CADMAN—Are you sure you are not prejudiced in this point of view? The point I am getting at is that you seem to use different words to describe the process depending on the perceptions there.

Prof. Dewar—The difference I am trying to point to is that currently there is no legislative prescription of 80-20. That is folk lore or a rule of thumb that seems to be out there, according to the evidence that you have heard. If you were to include in legislation a starting point or presumption of equal time, there would be absolutely no doubt that that would be very quickly translated in a lot of people's minds into the outcome—not a presumption to be rebutted but the outcome. That is the point we make about folk lore. We do not think people would be sensitive to the legal niceties of a presumption. If there is a rule of thumb operating at the moment without any statutory backing, how much more powerful would that rule of thumb be in people's minds if it did have a statutory foundation?

Mr CADMAN—That may be the case, but to leave it in never-never land is not a solution that the community seems to want.

Prof. Dewar—We are dealing with a body of law that historically has avoided quite deliberately prescribing particular outcomes. There are good reasons why that has been the case. We are dealing with decisions about the future not decisions about the past. Commonly, legal presumptions are applied to past events. Usually rules of evidence are used to draw assumptions or inferences from past facts about what actually happened.

Mr CADMAN—True.

Prof. Dewar—To use a presumption about future events is to apply it in a completely different way. On the whole, the law has avoided trying to prescribe in advance what the outcome of these very difficult cases should be, so we would be entering very new territory. The other reason why the law on the whole has avoided trying to prescribe outcomes in advance is that the welfare principle or the best interests principle, which is very indeterminate—it means you cannot predict in advance what is going to happen because it says that you have to attend to the best interests as they appear on the evidence—is very strongly supported in these cases and has been since the early 20th century.

Mr CADMAN—But compared to other jurisdictions internationally—in Europe, Britain and the United States—the emphasis of the court in presuming to act for the child is at odds to many other jurisdictions where the effort of the court seems directed at having the parents come to a solution for the best interests of the child. Australia seems at odds with all other Western processes. All the commentaries I have read indicate that.

Prof. Dewar—I would not agree with that, I do not think, on the evidence I have seen.

Mr CADMAN—I will send you the papers. I would like your comment on them.

Prof. Dewar—I would be happy to respond. The Family Law Act and the Family Court in its processes do place a heavy emphasis on parents agreeing. In fact, the court—and the Federal Magistrates Court—has a very high success rate in bringing parties who initiate formal legal processes to an agreement, either through counselling or through registrar interventions. The legislation itself makes it quite clear that parents have a responsibility to try to agree between themselves. In that respect, I think the Australian legislation is quite consistent with what happens elsewhere.

Mr CADMAN—That may be the case, but I do not think you are responding to my point that the Australian court is more focused on the child and acts for the child, more than other jurisdictions.

Prof. Dewar—I am most familiar with the UK and North America. I would say that the best interests principle has almost complete dominance in those jurisdictions.

Mr CADMAN—I will send you the papers for your comments.

Ms GEORGE—I have found the proposals you put to us considering amendments to the act a very useful beginning point. My worry is similar to that expressed by my colleague: that we saw in 1995 that a change in words did not lead to the outcome the people who changed it presumably had in mind. While I accept your arguments about why we should not go down the route of mandating rebatable presumption at 50-50, I wonder whether a change in words will in itself have the impact that is desired. What role could parenting play? You talk about parenting orders. What could we institute in the earlier processes of separation that would give more effect to the principle of shared parenting? Can we mandate parenting plans, for example, at the point of separation or prior to separation?

Prof. Dewar—The parenting plan concept is one that has a lot of potential. I am speaking off the submission, because we have not addressed this directly, but there is a lot of potential in the parenting plan concept. My feeling is that it would be inconsistent with the concept as we currently understand it to make the plans mandatory.

Ms GEORGE—Why?

Prof. Dewar—We recommended in this document that parenting plans cease to be registrable with the court because that seemed to be inconsistent with the notion of a voluntary arrangement that was binding on the parties in honour only. Your more general question was about what can be done earlier in the process to promote joint parenting. If we go back to the 1996 changes, I think one of the reasons why they did not have the impact that they could have had is that they were introduced with relatively little fanfare—relatively little promotion of the new concepts that they were trying to encourage. It was a significant change. It was an attempt to move away from the old-fashioned notions of guardianship, custody and access and promote a more cooperative approach to parenting. We lost an opportunity then to try to get that message across to the community. I think some mistakes were made in the drafting of the legislation. In retrospect, that could have been done differently.

The Family Law Pathways Advisory Group made a number of recommendations in its report about early intervention. It placed a heavy emphasis on information and education. It placed a heavy emphasis on an early assessment of needs by whatever point was the first point of contact with the system and an emphasis on a common tool for assessing needs at the point of intake. There is still a lot that could be done to explore those ideas about early interventions so that we can get a more coherent response in terms of giving support and information to people that might help overcome these folklore rules that have developed and encourage parents to think about the range of options open to them. Again, legislation will only take you so far. There have to be a range of interventions that are properly coordinated if it is going to work. On the other hand,

legislation does have a role in setting out a framework and sending out some important messages about what is expected of parents. I think we could do more than we currently do in that respect.

CHAIR—I am impressed by pages 21, 22 and 23—the final pages of your submission. The committee has had issues brought before it and has considered a range of submissions. We have thought about a tribunal such as the one you are perhaps proposing. You are talking about an alternative or primary dispute resolution intervention. We have thought about a process whereby people go to the tribunal, to mediation and then perhaps to arbitration prior to going to any family law court. We have looked at the possibility that there is a very strong need for a tribunal.

We looked at the possibility of a tribunal. You seem to indicate that there should be further development of alternative or primary dispute resolution processes, which is probably what we are talking about—when people have not had a satisfactory experience or if their circumstances change. We recognise that basically every two years of a child’s life their circumstances change. We see the need for some process that can take you back each time the child’s or the parents’ needs change, such as when there is re-partnering or when the child goes to a different school. What would you think about having an independent tribunal, with a panel of three or so experts, and moving away from this adversarial process? Perhaps a couple would not be allowed to go through this adversarial process until they had gone through a tribunal process, with the whole focus on a plan for parenting, and how they will manage their lives in consultation and in conjunction with their children’s lives.

Mr PRICE—In the state jurisdictions there are things like guardianship boards, which in New South Wales comprise three panel members. There are also landlord and tenant tribunals and small claims tribunals. We have experience of them, and I want to add that as context for the chair’s question.

Prof. Dewar—I will begin by saying that, in my view, any additional amendments to the system that made it more responsive to the changing needs of families over time would be thoroughly welcomed. This is elaborating on our submission in a way that is going beyond the submission, so I am speaking on my own behalf now. Our current system so far as formal orders are concerned is not well attuned to adaptation over time. People either adapt by moving away from formal arrangements—in other words, they are able to agree to their own changes to formal orders without coming back to the formal system to get those approved—or, if they cannot agree, the current system does not provide them with much support to come back and get them changed. It can be a rather daunting procedure to come back to the court to get a fresh order or to enforce an existing order. I think any process that is more responsive to the changing needs of families over time is to be welcomed.

As far as a tribunal concept is concerned, I think we would have to be clear about what its function was. It seems to me there is a basic difference between a decision-making body on the one hand—tribunals make decisions according to law; even though they are called ‘tribunals’, it is another word for a legal decision maker—and on the other hand a forum for supporting parties to reach their own agreements. Arbitration is a way of doing that. Even though it is an imposed decision by a third party, arbitration is conventionally understood and is a process that both parties have agreed to no matter what the outcome. So it is still an exemplification of an assisted agreement; it is just a different way of reaching the agreement. The point is that there is a basic difference between a decision-making tribunal on the one hand and a supportive process that

assists parties to arrive at their own decisions on the other. It is not clear to me why you would introduce a tribunal in a decision-making sense, given that we already have a federal magistracy that has made great strides in terms of being a speedy, responsive, informal, summary process to get decisions made quickly.

CHAIR—I am sorry to interrupt, but we are talking about a non-adversarial process. When you go into a Federal Magistrates Court or a Family Court, you basically either represent yourself—and I really am concerned about statistics of people representing themselves—or you pay to have representation. What I am trying to get to is that, perhaps in the interests of the children, when you are looking only at the interests of the children—residency, contact and the affairs of the children between the two partners, whether they have lived together or not—you could look at a family tribunal process that took away that adversarial aspect. Then if you are looking at the property settlements and things like that they would go on to the Federal Magistrates Court or family law court.

You say that you would be duplicating the role of the Federal Magistrates Court, but I have to say that we would not. The court, by its very nature, is an adversarial process. It determines that people will enter, and one person may not be represented but the other person will generally be represented. That is the difference with the tribunal—the perception that we are talking about—where you remove the adversarial process completely from the decisions about the child.

Prof. Dewar—What you are talking about is essentially a shift to a more inquisitorial process. That has been debated at some length within the existing court and magistrate systems as a way in which the family law system might evolve. If you had a tribunal that was a decision making tribunal, it would still be part of a formal legal system. Its decisions would still have to be, to some extent, subject to review by a higher authority; it would still be operating within a framework of legal rules.

CHAIR—Why would it have to? Why couldn't it come under a totally different regime? If you want to take it out of the legal system, the adversarial system—which the evidence we get seems to suggest is where is the major problems lie—why would it have to go through a legal framework? Why couldn't it be a family and community services issue? It is about how the family operates into the future; is not about legal issues. It is about how they interact with one another over a period of time and change from when children are small. It really should not be a legal issue, so why should it come within a legal framework, other than to adhere to the process of ensuring the safety of the children?

Prof. Dewar—I guess it depends on the role that one created for the tribunal. If it were making decisions about where children should spend their time and with whom, it is hard to see how it would do that without doing it within the framework set by the Family Law Act. I do not see what alternative framework there would be for making those decisions.

Mr PRICE—One of your colleagues made a comment which startled me somewhat. He suggested that contact and residency could be viewed as an administrative decision. That opens up a very interesting avenue to exploit. Has your council or have you personally thought about that?

Prof. Dewar—We are aware of models overseas that are not common law based systems which would be more inquisitorial in their methods than ours is, where some of these decisions have been devolved to essentially administrative officers whose decisions are subject to only a limited form of review. It is difficult within a common law system to tack on an inquisitorial model, but it is not beyond the realms of possibility. There certainly is a system like that operating in Denmark, where they use it for contact enforcement. They do not use it for decisions about what we would call residence. That is regarded as a sufficiently important decision to be exercised by a judge or somebody exercising judicial power. It is certainly possible to think about devolving specific decisions to essentially an administrative officer. This is associated with our suggestion about streamlining and improving contact enforcement processes. That is the sort of thing we had in mind.

Mr PRICE—For my sins, I once got a law paper done on what was called a 'Commission of the Family'. It was where you could put the Child Support Agency and have a lot of public education programs being run, giving a real focus to family violence and stuff like that. Also you could have hanging off that this administrative wing, if you like, that was dealing with contact and residency. The model I am inclined to prefer is a model where you try to resolve the thing via conciliation—that is, bringing the parties together—and then only finally arbitrating a decision where there appears to be a gulf. Without trying to give you a running commentary all the time, I think one of the great weaknesses of the Magistrate's Court and the Family Court is that parents do not get the opportunity to get non-legal issues off their chest and be a little more interactive. That really does not help the rectitude of any decision arising but it helps that parents get over the grief of the breakdown of the relationship. What do you think about a 'Commission of the Family'?

Prof. Dewar—It is a very interesting idea. Anything that draws together a range of different support and services for families would be welcomed. That is very much in the spirit of the Pathways proposals I think.

Mr PRICE—The Chief Justice of the Family Court has come up with an interesting proposition of extending the role of the Family Court to include all the other elements like juvenile justice, guardianship et cetera. I smiled a little bit because the idea had been proposed in reverse—that is, given that you have in the states Children's Courts at a magistrate level established and a whole series of other things, why couldn't we tack on a family law jurisdiction there? It would give us far more flexibility. I guess from a Labor perspective, and we are not being partisan on this committee, historically our view was that there should be consistent national laws and having the Commonwealth do it with the exception of Western Australia seemed to be the way to go. It does not seem to me to compromise that position if you are then looking to go in the reverse direction. We have the opportunity in Western Australia to at least have a go at some of these issues should the government there be of a mind to be cooperative about it without having it imposed. We could at least test it out, as it were.

Prof. Dewar—Council have looked at the Western Australian system because we were interested to see whether the fusion of jurisdiction essentially, which is what I think you are talking about, was producing better outcomes.

Mr PRICE—Is it fused over there? I do not think it is really fused.

Prof. Dewar—No, it is not really. That is the conclusion we arrived at—that, although they have both family and child protection systems under the same legislative authority, they have not fused the jurisdictions and taken advantage in the way that one might expect. We were quite surprised that there had not been greater synergies developed between different arms of the system. There have been some, but I do not think one can assume that simply returning what is currently federal family law jurisdiction to the states would inevitably result in a nirvana of fused jurisdictions.

Mr PRICE—No. But, if we were convinced that, as the Chief Justice believes, having that fused jurisdiction was worthwhile—and I think there are a lot of arguments that strongly recommend it—then we would have an opportunity, with cooperation from Western Australia, to implement it totally or partially to see how it might work, without huge legislative inconvenience. We could then get a feel as to what impact it was making. Does council have view on the Chief Justice's proposal in terms of the Commonwealth Family Court?

Prof. Dewar—Council recently published this report that I am holding up, *Family law and child protection*, which addresses part of the question that you were talking about—the split of jurisdiction between the states and the Commonwealth over child and family law matters. We have taken as a given that that split will continue. We canvassed as a possibility a fusion, either at federal or state level, but regarded it as such an unlikely outcome in the foreseeable future that we proceeded on the assumption that the split would continue. We regard this split in jurisdiction as one of the most pressing matters affecting children in Australia. There is evidence suggesting that it can lead to terrible outcomes for children. So any move to bring them closer together would have our full support. We have not had an opportunity to respond specifically to the Chief Justice's suggestions, although I think he has made them known on a number of occasions. Whether child protection, adoption and other state matters would be best vested in the Family Court is a complex question that would take some time to consider.

Mr PRICE—Everyone is entitled to a view. So let me say, while I respect what the Chief Justice has advocated—and, as I said, I think it makes a lot of sense—I think there is a zero possibility that the Family Court would be given that, and that if we are serious about those proposals, and I think we should be, then fusion at the state level is the way to go. If council or you personally have anything else you would like to offer, I for one, as a member of the committee, would be most interested in hearing it.

Prof. Dewar—I think all I could offer at this stage is the view that, if one were to return that jurisdiction to the states, it would not be a guarantee that you would see the outcome you wanted.

Mr PRICE—That is true. But, if the Commonwealth Attorney-General sat down with the Western Australian Attorney-General with the view of trying to see how it could be established in one of the courts in Western Australia, even as a pilot project, it would give us all an opportunity to see whether the advantages are there and how it might work.

Prof. Dewar—There is a very good example of how it does work in the United Kingdom, where they have had a single jurisdiction over both private and public family and child matters for some time.

Mr PRICE—But they also have a different attitude to family violence—which we call domestic violence—under that jurisdiction. They tend to treat that more as the starting point, as I understand it, of a breakdown in a relationship than as a criminal matter.

Prof. Dewar—That is true. The range of remedies available for domestic violence is much more closely integrated with other family law remedies.

Mr CAMERON THOMPSON—I hear what you are saying about the jurisdictional split and its impact on children, but surely the main game is the split that we have with family breakdowns and the accelerating number of family breakdowns. I want to put to you that the current system, with its focus on sole parenting, creates a huge incentive for couples to split. There are cases where someone encounters a midlife crisis or just wants to run away from their families, has a fling and decides they want to ditch all their responsibilities, wants to use their kids as a weapon against their partner, finds that their partner or their kids suddenly become irritating to them or perhaps ugly, wants to exclude their partner from their kids' lives or wants to have the kids all to themselves.

Surely all of those people in all of those selfish categories are tremendously encouraged by the great preponderance of sole parenting today when it comes to the outcome. We have this tremendous incentive for those people with those narrow, selfish views. They can run away and avoid all responsibility to their kids. They can get total responsibility for their kids and exclude their partner. The system allows them to do that. They are encouraged by it. If they have those narrow focuses, if that is what motivates their life, they can get it under this system.

Prof. Dewar—I guess that brings us to child support.

CHAIR—It does bring us to child support. We have not gone to child support yet, but—

Mr CAMERON THOMPSON—No, I am not discussing child support.

CHAIR—I know you are not, but it would seem that that has to have some fit in there as well.

Mr CAMERON THOMPSON—I want you to tell me about this family law that provides the basis, the fertile ground, for that.

Prof. Dewar—I think it comes back to the point I made earlier about what we can achieve through legislation. We cannot make people behave as good parents. We cannot make people cooperate with each other. We cannot make people put their children's interests above their own.

Mr CAMERON THOMPSON—Hang on. We are talking about a law that supposedly is in the best interests of children. We are told that it is in the best interests of the children when they get access to both parents.

Prof. Dewar—Yes.

Mr CAMERON THOMPSON—I presume that would happen when they stay together in the first place. This law is providing the opportunity for people. It is not requiring people to put their responsibility to their children first in any way whatsoever. If they have those selfish views, this

system provides for them. If there were much greater responsibility—you do not have to have 50-50 to do that; maybe you could have 60-40 or something—they could not run off to the Bahamas with their girlfriend with that kind of scenario.

Prof. Dewar—I am looking forward to the first application brought by a child to enforce their right of contact with a parent who is reluctant to exercise it. That has not happened yet in Australia. But, if we are talking about a child's right to contact, it is surely implicit in that right to contact that the child could enforce it against a parent who is reluctant to exercise it. The reality is that—

Mr CAMERON THOMPSON—How could a child have any hope of success in that scenario, where, as you said, the wallpaper tells you it is 80-20?

CHAIR—No, you did not say that.

Mr PRICE—I think the question on 80-20 has been more than adequately answered, to be honest.

CHAIR—You did not say that. I said that. Ultimately, with respect to 80-20, I think the professor was accepting what we were saying as evidence that we had heard.

Mr CAMERON THOMPSON—I am putting to the professor that there is an incentive in the system that encourages people who have that selfish attitude to leave their partnerships, and it is destroying families and the relationships that kids have with those families in increasing numbers.

Prof. Dewar—I do not think I made myself very clear. We have not yet arrived at the point where we see contact—as we currently call it—as not just an entitlement of a parent but a right of the child. We say that but we do not actually implement it. Contact is often seen as an optional entitlement of the non-resident parent. It is something that they can either choose to enforce or walk away from. When they walk away from it, the other parent or the child has no effective redress. It is a one-way street at the moment. The sort of situation you are envisaging, as I understand it, is one in which there would be an enforcement, if you like, against the recalcitrant parent. That would be a sea change in our thinking.

Mr CAMERON THOMPSON—You are jumping ahead. I am asking: do you accept that—

CHAIR—Just one moment. Just ask the question more clearly so you can get the response that you need.

Mr CAMERON THOMPSON—Do you accept that this current system provides that incentive to people who have a narrow view like that and does not put any obligation on them to give any consideration to their responsibility to their child?

Prof. Dewar—The current system would certainly find it very hard to change the behaviour of the sorts of people you are talking about. Most systems would find it hard, no matter what they said, to change the behaviour of the sorts of people you are talking about. Certainly, the

current system is not one that would make it clear to people that they have an obligation to interact with their children as opposed to a choice to do that.

CHAIR—You have raised a very good point and it is one that has not been raised here before, and I have been at every hearing, and that is that the child has no right to take action against a parent to get their rights for contact with their parent. That has not been raised with us before. In essence, if you were considering making recommendations on a system change, should there be—and I am suddenly being confronted with that—a recommendation that enables or could look to enabling a child to have a right to take a parent to task for the fact that they are not presenting for contact with them?

Prof. Dewar—I would be speaking way off the submission in answering that question, so I would be answering entirely for myself. It is not an entirely novel idea. There are other legal systems that are much more developed than ours in giving children access to legal proceedings. We are quite paternalistic in our system towards children. There is much more scope than we have currently recognised for giving children a voice in family law proceedings, including by enabling them to bring their own proceedings. I would say that that is an area that could be developed.

Mr PRICE—I am very attracted to your proposition. If we put that in the law and the child was able to take that action would we be back into enforcement issues? Alternatively, do you see a damages regime applying? What would be the remedies?

Prof. Dewar—You would be looking at enforcement probably, or at the very least a child having an independent voice in the proceedings.

Mr PRICE—You mention time and time again in the earlier part of your contribution the lack of knowledge or the lack of the public being aware of the law et cetera. What are your views on section 121? Very briefly, section 121 was introduced to provide publicity. It did not succeed in that. It is a de facto prohibition, in my view. The former Attorney-General was committed to changing the law and got the McCall review into 121. Has the council got a view? Do you have a private view?

Prof. Dewar—I do not recall council discussing section 121 specifically. I do not have a strong personal view about it. I can understand that if there is a perception that these things are done in private then that may not be healthy. It is certainly not something to which I have given a great deal of thought.

Mr PRICE—My point is that the community has shifted a lot since 1975. There would be obvious safeguards surrounding alteration to 121 but if you want the public to understand there has to be publicity.

Prof. Dewar—Yes, as long as that was the motive rather than anything more prurient.

Mr PRICE—Yes. Has the Family Law Council any idea of how much people spend on family law litigation annually? In other words, we know what the family law court costs us and the court in Western Australia, and we know what we are spending on legal aid but what are litigants spending privately with solicitors and barristers who appear and act for them?

Prof. Dewar—I could not answer that question.

CHAIR—Are there any statistics or research available that you are aware of?

Prof. Dewar—Not in the private sector. I am only aware of research that has been done in legal aid commissions about the cost of delivering legally aided services, but not in terms of the private sector.

Mr PRICE—There was a shift in the mid-nineties towards alternative dispute resolution. To be frank with you, I have lost track of how effective it has been and to what extent it has taken up or made a place in the system. Would you be able to give us a sketch on ADR?

Prof. Dewar—I think the ADR sector is extremely healthy in Australia. It is very diverse. Legal aid commissions have become major providers of primary dispute resolution services. Again, even within that sector there is considerable diversity. I come from Queensland, and Legal Aid Queensland has been a pioneer of putting its resources into PDR services, such as conferencing and now arbitration. Other legal aid commissions have similar programs in place. They are not always the same as each other. Certainly legal aid commissions have come to the fore in the last five to 10 years, I would say. The community sector is obviously an important player, as are Relationships Australia and similar bodies, some of which are federally funded and some not. The court has, for one reason or another, pulled back from primary dispute resolution, partly for budgetary reasons and partly because of deliberate policy prescriptions coming from the federal government that there should be a shift away from court provided PDR to community based PDR.

My overall assessment would be that it is thriving. The legal profession is actually supporting it. There are many referrals to mediation or to court based counselling that come from the private profession. Many practitioners are themselves qualified mediators. I think there is still a way to go in terms of a regulatory framework for it. There are still competing definitions of what PDR is and who has to be qualified to do what, but that is being worked on. I would say that it is hard to point to numbers because it is so diverse, but it is at least as healthy as it has ever been if not more so.

Mr CADMAN—You have an interesting section on the enforcement process in your submission, and in fact you head up your suggested reform with that section. You do not go into a lot of detail, and you say you have got additional papers on that. Yes, we would like to have them, but I wonder if you would give us an outline of what you think might improve the current situation.

Prof. Dewar—I will be frank and say that the council has not had a great deal of time to think about this as a council. Individual members have some ideas. I think what you see in the paper is accurate as to our general thinking. The current system appears to be one-sided in that, while maintenance collection, enforcement and assessment is undertaken by a well-funded government agency, contact enforcement is largely left to the individuals to sort out for themselves. What we are suggesting is that there could be more government assistance provided to those who have enforcement issues, particularly around contact. As to how that would be achieved, one possibility is to go with the sort of administrative process that we were talking about earlier, along the lines of the Danish model. Another possibility might be a body that does not have a

formal decision-making role but that has a role, first of all, with assisting parents that cannot agree about a dispute to arrive at an agreement and, if that does not work, to assist the parents seeking to enforce to take that through the formal decision-making channels.

Mr CADMAN—The two cannot really be separated in some ways, because the financial settlement or maintenance, or whatever arrangements are entered into for the children, does impact upon contact and vice versa. I do not know whether we can notionally separate them. Do you have any views in that regard?

Prof. Dewar—The council is strongly of the view that contact and child support obligations should not be formally linked, the assessment of child support should not be linked more than it is currently, to levels of contact. However, we recognise that dynamics are at work that do link those in the minds of people, which would probably have to be understood in any enforcement system.

Mr CADMAN—Let us speak hypothetically. An instance that occurs frequently is that contact is denied on successive occasions for what appear to be flimsy reasons, so the maintenance factor is not complied with. Immediately the CSA bounces down on the person, and is obliged to do that, but the cause of the problem is the contact factor. How can you deal with those two issues in separate boxes?

Prof. Dewar—I understand the question to be how can we avoid the child support thresholds being drivers of behaviour in denying contact.

Mr CADMAN—Yes, and somebody seeking to resolve that issue. Say we notionally establish two separate processes, one CSA and a theoretical one not yet in existence, what is to prevent bouncing backwards and forwards?

Prof. Dewar—That is a difficult question. One answer would be to say that you completely sever the link between levels of shared care and child support obligations. In other words, you take out the thresholds, remove them completely from the legislation, and make child support assessments completely independent of levels of shared care. But my understanding is that they were introduced in order to respond to concerns that levels of shared care ought to be reflected in the costs recovered. I think I would need to take that question on notice.

CHAIR—You can take it on notice, if you would like.

Mr CADMAN—There is a follow-on question that relates to the enforcement process. Some of the evidence we have taken is that, if there is a failure to meet obligations, the penalties that start to be imposed are reduced contact and, with regard to the payment factors, a notional separation of the lifestyle proportion of the payment compared with the child maintenance portion of the payment. So the lifestyle portion of any payment could be regarded as an area where penalties could be imposed by reducing payments for successive breaches of contact.

Prof. Dewar—I think the council would oppose that degree of linkage between contact and its reality on the one hand and child support payments on the other.

Mr CADMAN—But there is a proposal by a mother to put somebody in jail for their consistent breaching. That seems to be the ultimate.

Prof. Dewar—Breaching of contact?

Mr CADMAN—Yes.

Prof. Dewar—I am aware of that.

Mr CADMAN—Would the council also be opposed to that?

Prof. Dewar—I think the council recommended the retention of imprisonment as an ultimate sanction, so I do not think we would oppose that. I think what we would oppose would be inappropriate cases, and they would have to be very rare. What council would strongly oppose would be an overt link between behaviour in relation to contact orders on the one hand and child support payments and liabilities on the other. Child support is a principle founded on parents' capacity and obligation to contribute to their children, and that should not be affected by contact.

Mr CADMAN—We are only considering the lifestyle proportion of that payment.

Prof. Dewar—That is a new concept to me—the notion of a lifestyle proportion.

Mr CADMAN—It seems to be in common use. We hear it commonly talked about: what is the cost of maintaining a child and what is the lifestyle expectation?

CHAIR—Could you take the question on notice? I will have the secretary provide you with a copy of the question.

Prof. Dewar—We will do our best to respond to that. It is a really difficult question: how do you take that dynamic out of the system?'

CHAIR—Coming to child support, it is a significant process in a family separation. Returning to the independent tribunal structure that might take the adversarial process out of the contact or child orders—anything to do with how the future of your child is to be determined in relation to each parent—you have indicated that you think that at this point the child support agreement works well, and that we should be careful if we are going to review it. But, since 1988, when I think it was put in place, lifestyle and parental responsibilities have changed markedly in association with workplace practices. Once, we had a weekend—once upon a time. We did not have shops and everything open on weekends. Perhaps, even in 1988, you did not have the majority of weekend trading taking place that is taking place now, so non-residential parents did have a weekend. But now lifestyle has changed dramatically. If you have, say, this specific 80-20 split, it might mean that it is a very difficult thing for one partner to be able to devote that weekend, if they are required to work on weekends.

Looking at the child support issue and the tribunal issue, can you comment on whether or not you could determine the time spent with the child and then, later on, after that parenting plan or time spent with the child has been determined—hopefully amicably, when it can be—apportion the payment of child support for that apportionment of time, rather than having this specific 109-

nights category where, if you have them less than 109 nights, your child support remains the same and above 109 nights you start to reduce that? Can you think of a way to look at the child support issue with respect to removing those barriers—those set times that would encourage the process of: 'I'm better off, income-wise, if I have them a stipulated amount of time, because that way I know what I am getting in my income,' rather than considering the benefit of the child?

Prof. Dewar—I do not believe council would support the particular proposal you have just put, that child support obligations would be decided once the allocation of time had been resolved. As I said, we would need to take on notice the question of what suggestions we would make for addressing that, but I think it would have to be on the understanding that council, in its current thinking, would not support an overt link—beyond those that are already in the legislation—between actual time spent with a child and child support payments.

CHAIR—Say I have a person who has shared care, week about, has three or four children and basically has all the children's clothes, shoes et cetera in their hand. This person pays for child care for his children, he pays child support for his children because of the income difference and he has the children as well. That seems to be a position of no win for that person: he has the children, he pays all of the costs and also he pays child support because his income is higher.

Prof. Dewar—But the formula would recognise that at the moment. If there was genuine shared care, that would be taken into account under the current formula.

CHAIR—I would suggest that that person is under the current formula and is still doing that. If we could have a response as to the areas and anomalies that seem to exist in the child support formula and agency agreement, with respect to your submission, that would be very helpful.

Prof. Dewar—We have a meeting in November and we could set aside some time to consider that. I understand your deadline is December, but we could certainly come back to you in mid-November with some thoughts on that.

CHAIR—Mid-November would be very helpful.

Mr PRICE—Getting back to the treating of contact and residency as an administrative decision, I would be very grateful if you, Prof. Dewar, or the council could just flesh that out and give us our options on where we could place it et cetera.

Prof. Dewar—We would be happy to devote our next meeting to these issues—to a similar timetable—as they are important.

Ms GEORGE—I have a quick question on parenting plans: you say that the council recommended against the registration partly because enforcement issues would arise once it was legally registered. Looking at contact and residency issues as being outside the auspices of the Family Court, could you also outline in your response back to us a method for dealing with parenting plans in a more administrative context—where the enforcement of those would be done on an administrative basis.

Prof. Dewar—The proposal we made would achieve that. They are currently registrable and enforceable as court orders. What we are proposing is that they cease to be either, and that is in the current Family Law Amendment Bill 2003.

Ms GEORGE—So that is covered in there? I have not had a chance to look at it.

Prof. Dewar—Yes.

Mr PRICE—One criticism that could be made of our system of family law, and also child support, is that the weight of the system does not encourage the parties to get together. You will argue that many parties do, outside of the court, and I accept that, but the system does not have a reward system based on encouraging parents to make mutually satisfactory and responsible arrangements for themselves and their children. How do we give effect to that? With the Child Support Agency, we reward parents with maximum payments and not minimum payments. It seems to me that it should be the other way round: that where parents have sat down and done the hard yards together and have good, workable mutually satisfactory arrangements away from all sorts of agencies, there should be maximum transfers there and not in a system where we have had the full majesty of the law or the rigour of an agency hunting and pursuing them.

Prof. Dewar—I would go back to the point I made earlier about what we can realistically expect from a system of legislation. These are issues that have to be tackled on a very broad range of fronts, and not just through legislation.

Mr PRICE—Can I leave you with one thought that you might want to respond to personally later on, and that is that committees tend to look backwards at what is wrong and then try to make incremental changes to fix it. Where do we want family law to be in 10 years time and where do we want the Child Support Agency to be? In some ways, the committee ought to try to do that in its recommendations rather than patching and weaving and what have you.

CHAIR—Rather than trying to answer that today, you could make comment on it when you respond to the other questions. That would be very helpful. Thank you for coming before us this morning. In your response to us, could you look at any adverse outcomes there might be with the removal of child orders from the family law situation and into a tribunal situation. That would be very helpful. Hopefully, we will receive some information back from you in mid-November.

Prof. Dewar—We will do our best.

Proceedings suspended from 10.15 a.m. to 10.27 a.m.

ARGALL, Ms Catherine Ann, General Manager, Child Support Agency, Department of Family and Community Services

BIRD, Ms Sheila Margaret, Assistant General Manager, Child Support Agency, Department of Family and Community Services

CURRAN, Ms Patricia Lynne, Assistant Secretary, Family Payments and Child Support Policy, Department of Family and Community Services

KALISCH, Mr David Wayne, Executive Director, Family and Children, Department of Family and Community Services

SULLIVAN, Mr Mark, Secretary, Department of Family and Community Services

BENDER, Mr Keith, Business Manager, Families, Centrelink

HURRY, Mrs Teresa, Business Manager, Family Payments and Child Support, Families and Child Care Segment, Centrelink

CHAIR—Welcome. The evidence which you give at this public hearing is considered to be part of the proceedings of parliament. Therefore, I remind you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. The Department of Family and Community Services has made a submission to the inquiry and copies are available from the committee secretariat. The submission covers the Child Support Agency. I invite the Child Support Agency and Centrelink to make a brief five-minute statement prior to members proceeding with questions.

Mr Sullivan—Thank you, Chair. It is the Department of Family and Community Services of which the Child Support Agency is a part, and I will make an opening statement. Centrelink is a part of the portfolio but a separate agency; the Child Support Agency is a division of FaCS and I represent the department at this hearing. Thank you very much for allowing us to appear before you for a second time. The committee raised a number of issues at the hearing on 15 September, primarily in relation to child support matters, and we have provided a supplementary submission on the main issues. The committee also made a written request for information on 8 October. That request, in part, involves considerable modelling in relation to after tax incomes and exempt and disregard incomes, which inevitably will take some time. But we will push hard to provide as much information as soon as possible, cognisant of the committee's time frame.

Today we would like to focus on the principal issues raised at the last hearing that warranted further consideration. I also want to suggest some possible areas for change that the committee could consider and is considering. Firstly, the supplementary submission includes additional details in relation to cost of children research and the child support formula. The committee can be assured that there is no one simple way of determining the cost of a child at any age in either intact or separated families. FaCS concludes that, on balance, the administrative simplicity and impact of the child support formula as it currently operates is broadly well based when compared

with costs of children research. However, there is some basis for considering a change for payers at high-income levels.

Full information in relation to the change of assessment processes is included in the supplementary submission. Less than three per cent of families, some 16,271, have an assessment based on special circumstances, as determined through the change of assessment process. That number is comparatively small; however, applicants have about a 50 per cent success rate. Whilst the formula remains flexible enough to meet the needs of almost all separated families, there is room for improvement in the promotion of the change of assessment process to parents, and we have some suggestions for the committee's consideration.

The committee asked us to undertake some modelling of the impact of a greater incidence of 50-50 shared parenting. The estimates suggest that, for every 10 per cent of the child support population shifting from the current arrangements, $120 million a year less in child support will be transferred between parents, reflecting the impact within the current formula of increased direct care by the payer, and that taxpayers will pay an extra $52 million in government benefits to parents. The cost to taxpayers would be higher if the government introduced legislative changes to make parenting payment available to both parents or to reduce Newstart allowance requirements.

In relation to the idea floated at the previous committee hearing of including the income of new parents in assessing child support liability, we have concluded that this is difficult to progress. In brief, it is difficult because the nature and dynamics of new relationships are complex and changeable. Research shows that most people re-partner with like people, producing little change in child support outcomes at a significant cost and complexity. Re-partnering with someone who has a high income is an exception. This would be a fundamental shift in the nature of child support.

We are conscious not to be, and we are not seeking to be, overly protective of the existing arrangements; rather, we have provided the committee with the best information available that is pertinent to this issue and our considered advice. Based on the range of input provided to the committee to date, FaCS would suggest that the committee could productively consider changes in a number of areas that would improve outcomes for children and parents. For example, to increase effective contact of children with both people we would suggest the committee could consider building community expectations and capacity for increased contact, promoting flexible models of care that do work in different circumstances, strengthening support for parents to build their capacity for parenting cooperation, and promoting enhanced contacts for a range of measures such as alternative administrative models for determining and enforcing contact, with court action being the last recourse.

In the area of child support, you could consider the previous policy changes for recognising increased contact and changes to the cap on child support income, enhanced enforcement powers for the Child Support Agency—for example, the use of credit reference agencies to obtain information about parents' capacity and non-compliance and the reporting of delinquent child support—and administrative improvements to promote the availability of the change of assessment process to address in particular the legal and re-establishment costs for parents, including priority or fast-tracking of such claims. Again, the officers of the department,

including the Child Support Agency, and the officers of Centrelink are here to assist the committee in any way we can. We thank you for the opportunity to appear again.

Mr CAMERON THOMPSON—I want to put a couple of proposals up and ask what the ramifications of such things might be. We have asked about the cost of children. I have not had a chance to go through your supplementary submission to get my head around all that, but one of the issues that seems to come up is that of people who have businesses and therefore claim an income based on their business. Sometimes that income can be very low, so the amount of child support paid falls away. I am wondering if, for example, there could be a default based on the actual cost of raising a child that could be used when the amount of income meant that the payment would fall below that cost. What would the administrative issues associated with that be?

Mr Sullivan—That proposition makes some presumptions. One is that we know what the cost of a child is and therefore we could have a default. Another is that a person's low taxable income in every case does not preclude a capacity to pay the amount of money which we have fixed as the cost of a child. A lot of people who are in business and who have low taxable incomes report those low taxable incomes honestly and properly. They are two issues that I think would be raised with us. At the moment, if you believe, as a payee, that the income reported by the payer does not reflect capacity to pay, we do have a process whereby we will make an assessment based on our determination of what the capacity to pay is. That is often around people who have very low taxable incomes but who have a much greater apparent capacity to pay.

To generalise that rule across everyone, at the moment the law provides that a person on a low income shall be required to contribute $260 per annum to their child. That in no way resembles any research whatsoever on the cost of a child. I guess the other presumption in what you are saying would be that, as a minimum—unless you are saying that it is only for non salary and wage earners or non-welfare recipients—you would need to strike a far bigger amount. That would cover a lot of people in the child-support system because the people who make up our greatest single case load are those who pay $5 a week towards their child.

Mr CAMERON THOMPSON—I accept all that. A lot of those businesses that have that low income would be claiming seasonal type impacts causing that, I presume. I am wondering whether there could be a system like the HECS system that enabled people who were subject to seasonal fluctuations to iron out their capacity to pay over that time to provide a more constant form of support for their child. The money could be advanced and paid back in better times and that sort of thing.

Mr Sullivan—That relies on a proposition that a lot of low income businesses are seasonal in their nature. A lot of low income businesses are low income businesses full stop, and they remain low income businesses for a long time—until they either improve their income or go out of business. We do have this arrangement in place, but I would caution against any generalisation that non salary and wage earners in business understate their incomes.

Mr CAMERON THOMPSON—But we have to caution against the idea that just because you are in business you have a lesser obligation to your children. Certainly, if people separate and you were able to support the child before, and if we have a default that is based on the actual

cost or pretty close to the actual cost of raising a child, then why should that not be taken into account?

Mr Sullivan—The first proposition I agree with fully. One thing we have to keep coming back to is that the basis of the current child support scheme is that a child deserves to share in the means of their natural parents. We have, and you have, connected child support to the cost of children. The majority of child support payers make a contribution that does not go near the cost of a child. It is about the sharing of means. I agree fully with the proposition that we have to be confident and there should not be a default system that does not say, ‘We understand the means of parents reasonably well.’

Our default for understanding the means of parents fairly well is the tax system. The tax system is the driver of understanding means. We then have a separate process that says that, if you do not believe the tax system reflects fairly the means that a parent has, approach us and we will make a determination of that means. That is an area where we can have some room for discussion and whether it can be improved. All I am cautioning against is not to introduce a presumption that the taxable income of a non salary or wage earner is not a fair representation necessarily of a person’s income.

Mr CAMERON THOMPSON—I am concerned about the areas in which people try to dodge their responsibilities, and people sometimes use different types of false mechanisms to do that. I am just exploring opportunities where there is perhaps some evidence that there is lack of good faith being exhibited by people. I have spoken about the business angle. The other is when the jungle drums tell you that they go on the dole to avoid their responsibilities. They can be on big pay and they suddenly leave that and go on the dole. I know they have all the obligations of Newstart and those associated things but, just as someone involved in a business might be using some kind of mechanism to deflate their income for the purposes of avoiding child support, I also wonder whether there is evidence that someone is taking a deliberate course to get onto Centrelink, for example. Perhaps those people should also be subject to a loan type scheme that enables them to continue to provide support until they are able to find alternative employment.

Mr Sullivan—That is fine to look at. The use of deferred payment schemes or loan schemes such as HECS is something which commentators across a broad spectrum of policy areas think about, including even for the payment of welfare payments generally or whatever. That style of thing has been commented on. I do not want to say anything more strongly than that. I agree with the term you use—that we hear the jungle drums beating that people leave high paid employment and go on Newstart to avoid paying child support. Beyond jungle drums, it is very hard to distinguish evidence of people deliberately leaving high paid employment to go onto Newstart. It is very difficult.

Ms GEORGE—How do you deal with those people who do that?

Mr Sullivan—I like the expression Mr Thompson used that the jungle drums say that this happens.

Mr PRICE—Has research been done? Have you commissioned any research? Are you aware of any research?

Mr Sullivan—Our research capacity is that people state when they go onto Newstart why they left their employment. I could say that we have reviewed our research and nobody states that they leave to avoid child support.

Mr PRICE—Be fair, that is not what I am saying. You are making a very important point, 'Don't jump to assumptions'; but, given that a lot of members are told face-to-face, 'This is what I have done,' I am wondering whether any independent research has been done to try to scope the problem. Is it a significant problem or, as you say, are the jungle drums portraying the problem to be much bigger than it is in reality? But there is a proportion there, Mr Sullivan.

Mr Sullivan—Others can comment, but I would say—without getting into a policy debate about the Job Network—that a person who is in good paid employment and leaves that paid employment on a voluntary basis is now immediately subject to penalty in respect of taking up Newstart. He is immediately required to register with a Job Network provider. He is immediately required to enter into active participation to seek work and is in a group of people—that is people who come out of the work force with skills—which is in the most highly re-employed group of individuals who go to Job Network. Job Network does least well for people with multiple disadvantage. If you are Indigenous and you have a problem with substance abuse, they will not do well. If you have a good employment history and have recently left employment and registered with the Job Network, I would be happy to explore with DEWR the success rate of placing such a person in employment. I think empirical research is very hard. I do believe that the jungle drums seem louder than in fact they are.

CHAIR—Mr Sullivan, the members here have indicated to you that those people are not just saying that they are going onto Newstart but saying they are going onto lower paid employment or onto unemployment benefits. Ms Argall, would you like to comment on that?

Ms Argall—The supplementary submission that has been provided to the committee contains a lot of detailed information, following on from our discussions at the first hearing, around the assessment process.

Mr CADMAN—We got it last night.

Ms Argall—I realise you have not had a chance to consider all the detail. The current child support system includes flexibility at the present time to consider the circumstances that you are raising. One of the 10 grounds under a change of assessment is that the assessment does not count for the income-earning capacity, property and financial resources of one or both of the parents. In that circumstance the current arrangements already comprehend that there are opportunities for parents to arrange their financial affairs in such a way that their taxable income does not necessarily reflect their income-earning capacity. The process is one that involves taking information from both parents, considering that information and making a decision in the light of that information about the income-earning capacity of those parents. In the last financial year there were almost 23,700 applications against that ground, of which 14,000-plus were successful in having a change made to the child support assessment based on income-earning capacity.

That ground is open to either parent. They can apply to have those circumstances considered and a determination made which varies from the application of the standard formula approach.

In addition to parents being able to apply to have that consideration made, the reforms introduced in July 1999 allowed the registrar to initiate a change of assessment process where we felt that parents were minimising their income such that their child support assessment did not reflect their capacity for child support. So there are already those mechanisms in place that operate reasonably well to comprehend the circumstance that you are describing.

CHAIR—I just raise the difference in interpretation of what the child support formula is to do. It has always been my understanding that the child support formula is designed to ensure that children are treated in the ways and means they would be if their parents were living together with respect to income. How can you have a situation where child support looks at the children as if they were in an intact relationship—that they should benefit from income as if it were in an intact relationship—when you actually do not have an intact relationship and you actually have two homes? It is just impossible to assess a child as though the parents were living together when in fact they are not and the cost of living is dramatically different for both parents. How can you justify a child support assessment that determines the fact that your child gets what it would if you were living together when in fact you are not?

Ms Argall—I do not think that that is what the formula does too. David, did you want to comment?

Mr Kalisch—There are a number of dimensions and certainly in our supplementary submission we have provided you with details around the specific objectives of the formula as the government agreed to them and amended them in 1997. In terms of the understanding that I think you are trying to bring, the child support arrangements try to seek an arrangement where the child will receive support that is broadly comparable to that which they would have received if they were in an intact family?

CHAIR—Yes.

Mr Kalisch—I do not think there is this exact precision that you seem to be inferring. The formula does not just bring the two incomes together and therefore assume that they will benefit from those two incomes because, as you quite rightly point out, there are other costs of having dual households and working et cetera for both parents. So there are some quite different arrangements, and that is why the formula really just does look at the capacity to pay more than the arrangements of trying to crunch the incomes together and say that the children will then benefit from that, because that is not the case.

Ms GEORGE—It is more capacity to pay rather than an attempt to quantify both the direct and indirect costs.

Mr Kalisch—It certainly does not seek that precision.

Ms GEORGE—Thank you very much for your supplementary paper. I have just had a cursory look at it, but it is very helpful. The group that developed the formula did not outline the amount they allocated to each of these items—that is, the direct and indirect costs—and quantifying them is difficult. You go on to say that it may also be important to consider whether the formula should continue to consider these factors or whether they are more appropriately accounted for by other means. If you wouldn't mind, I would like you to elaborate on the intent

behind that statement. It seems just in a recent review that was circulated to us, the Henman analysis, there is a very strong argument that the costs for the non-resident parent are in fact higher than the original architects of the scheme had anticipated. Perhaps you would comment on those two issues.

Mr Kalisch—On the indirect costs that you talk about, what we were alluding to is that there are other means available to government in terms of policy levers that get at some of those indirect costs. There are the ways in which government assists people to look for work and the way it subsidises some of the costs of working, particularly with regard to child care. Some of the discussion that is happening in the public debate around maternity pay is quite pertinent, again, to indirect costs. What we were saying to the committee is that child support is not the only lever that you have at your disposal in recommending ways of dealing with the indirect costs of having children.

Ms GEORGE—But if we were to suggest alternative means of dealing with those costs there would be an argument that those costs, however unquantifiable they are at the moment, ought not to form part of the child support formula. Is that what you were saying?

Mr Kalisch—To some extent we were saying that it is difficult to identify these costs, particularly given the very precise nature in which child support works on a family basis or according to certain individuals. There are other policy levers with a broader approach that are probably more applicable and more appropriate to use in these circumstances.

Ms GEORGE—The dilemma I have in trying to get my head around it is that no-one can state with any authority the actual cost of raising a child or children at different income points. It goes round and round—we have one analysis that appears not to include factor X and we have NATSEM saying one thing and the universities saying another. We as a committee have sought to try to get a handle on what is happening in other countries. I understand that in some countries—I think Britain is one of them—they actually specify a figure and do not use a formula. Do you have any comment to make on where else we might go to get some more objective markers about the costs of raising children at different income levels?

Mr Kalisch—This really goes back to what Mr Sullivan talked about in the opening statement: that there is no simple way of assessing the cost of children. To some extent, anything you do is going to be based on a judgment. There is going to be quite a strong normative element to whatever you come up with. Hopefully it will be determined on the basis of the best available research. That research, as you have pointed out, gives you some different results and there is a normative element to that.

Ms Argall—We have looked at the formulas that are used in a wide range of countries and individual states or provinces within countries, and we have not been able to find one country, state or province that actually says, ‘This is the cost of a child,’ and uses that for its child support formula. The vast majority use a percentage of income. The types of income that they use vary, but that is the general approach that is used in all the jurisdictions that we have looked at.

Mr CAMERON THOMPSON—In one of those studies—I looked it up before and now I cannot find it again—there was a statement that the low-income ones were paying less than they would have when they were together, less than the cost of raising a child as an intact family, and

the high-income ones were paying more than the cost of raising a child as an intact family. That tends to support the jungle drums that say people bail out of the high-income stuff and take a lower paid job or even bail out onto the dole to avoid that. If that is correct, does it not imply that people are reacting to market forces—hip pockets—there?

Mr Sullivan—I think we have got to be careful about this. We are dealing here with an area that is conflict ridden. The situation where someone decides to both significantly penalise themself—and overwhelmingly themself—and penalise their former partner, with the knowledge that it will penalise their child, is a fairly extraordinary set of circumstances. First you must damage yourself. There is no situation where reduced incomes and, therefore, lessened child support obligations will result in higher disposable income for you to live on, so you are damaging your financial status and your capacity to continue. You then have made a decision to damage your former partner—and that sometimes happens—and then you are making a decision that says, 'I'm going to damage my child.' While I agreed that there were jungle drums around that some people did this, I again do not regard that as being normal human behaviour, even in times of considerable conflict. But it does happen.

Mr CADMAN—I have to say that I think the jungle drums are almost a military band, because I know of advice givers who suggest that to their clients: 'Change your position or become unemployed.' I know that it is very hard for you to determine whether that is done purposely or not, but I wonder, from a Child Support Agency point of view, how many defaulting payers you have been able to identify who have contact problems.

Mr Sullivan—Just before Catherine answers that, with some of the evidence we have—we will get out of the drums—we have seen over time an increased movement to private collect arrangements between parents not requiring the intervention of the Child Support Agency. That improvement would counter the argument that we are seeing a resounding increase in numbers of people attempting to avoid their child support obligations, because now over 50 per cent of all arrangements are private collect arrangements between the parents. One of the great successes of the Child Support Agency is that we have moved from private collect arrangements being hardly there to now seeing over 50 per cent private collect arrangements.

We see 87 per cent of cases which are the formula with no variations. I believe the improvement and increase in private collect arrangements is a very strong indicator that this is not a major occurrence of people who are, as I say, deciding to take a reduction in their own living standards to incur a reduction in the living standards of their ex-partner and the child.

Ms GEORGE—But your figures at the lower end of income levels are disproportionate to what the situation would be outside the auspices of the CSA, so your rates of people who are unemployed or earning very low incomes are disproportionate. What is the explanation for that, if you do not believe the jungle drum theory? Do they only divorce in low-income families? Is that the suggestion?

Mr Kalisch—At the last hearing we did in fact make the point that there was a much higher incidence of unemployment amongst people that are separating and divorced. So there is an element and, while we may jest about that, certainly the evidence we have seen from the Child Support Agency records suggests that there is a very high proportion of very low income earners on entry to the scheme. This is not after they have entered the scheme; this is on entry to the

scheme. This is a particularly concerning issue. As I think we mentioned at the last hearing, we are looking a bit further into that information to see whether we can disentangle some of the impacts that you are investigating this morning.

Mr CADMAN—Could we go back to my question, please?

Ms Argall—What I would like to say is that the nature of the relationship between parents clearly impacts on their child support compliance. I think that is commonsense. Therefore, if there is a really positive relationship between the two parents around separation, or at least a working arrangement between parents then, there is likely to be a high level of child support compliance. That is why one of the strategies that we have put in place over the last several years has been to seek to encourage better relationships between parents when they first contact the Child Support Agency, to establish good arrangements up front which will be able to continue over the life of the case. The corollary of that is: where there are poor relationships between the parents—and one issue is contact, there is no doubt about that—compliance is more difficult.

Mr CADMAN—Commonsense would lead you to that conclusion, but you are the only ones who have the facts. Do you have any facts for us? I just want a few statistics about defaulting payers and contact related to payment.

Ms Argall—No, we would not keep statistics that showed a relationship between contact arrangements and compliance. I can give you some client satisfaction research that shows you that clearly the level of satisfaction with the child support scheme and the Child Support Agency is highly correlated to the relationship with the other parent and with contact. That is the sort of information that we would have available.

Mr CADMAN—Is it possible to gain that information?

Mr Kalisch—It is not a reason not to pay and so we do not collect it. You cannot say, 'I am not paying because my ex-partner is not maintaining the agreed contact arrangements.'

CHAIR—But they do say that, though, don't they?

Ms Argall—Yes, they do.

Mr Kalisch—Yes, I know, but we do not collect data on people saying they did not pay because of this. People do not pay because of all sorts of things. We do not collect data on why people do not pay.

Mr CADMAN—But members of the agency keep file records of this sort of stuff.

Ms Argall—What, on an individual case?

Mr CADMAN—The nature of the relationship between these two people is very much a fact known by the CSA.

Ms Argall—Certainly, in terms of our experience, which I have just been commenting on, issues of contact do determine compliance behaviours. There is no doubt about that. What you

are asking is whether we have statistical information that I can provide to you, and we do not have that sort of statistical information.

Mr PRICE—But you do extract it.

Ms Argall—On individual cases, yes, we record every contact that we have with both payers and payees that we deal with, on a daily basis. There is no doubt that, in talking to parents, they do present with those issues and concerns. So when we are talking to parents, we attempt to identify what are the barriers preventing them from complying and we seek to refer parents to community support, legal aid services or community legal services that can assist them in dealing with their contact concerns, so that we can get over that hurdle and achieve compliance.

CHAIR—Do you keep records and statistics on deaths of child support payers?

Ms Argall—On individual records, we would record information that became available to us about the death of either parent or the children.

CHAIR—I ask that question because it has been raised, as you might note, in submissions, particularly from the Lone Fathers Association, that indicate that there is a significant proportion of male payers who suicide over the issue of child support and contact—and I understand that child support is not associated with contact and that that is not your issue. But it has been raised time and time again in these submissions that there is a significant amount of despair happening, particularly in male payers, in relation to child support, when they cannot particularly afford it or they cannot see a light at the end of the tunnel with respect to their financial circumstances and maybe if they are in a new relationship. If there have been deaths or suicides, can the Child Support Agency extract this type of information? I do not how we can refute the claim that is constantly being made. Is there an ability to extract that sort of information?

Mr Sullivan—There is no doubt there is an issue of increased suicide rates amongst separated males. I think some of the best material that we can provide in support of that is that we, as a department, managed a set of trials of men's relationship programs. There is an evaluation of those trials. We will make sure that we give you the evaluation document.

CHAIR—That would be very helpful.

Mr Sullivan—There is no doubt that separation, and everything that goes with separation, does influence suicide rates in males. One of those factors is child support. It does not provide evidence for or against those who assert that the child support aspects of separation are the issue that drives men to suicide. The interesting issue that came out of the evaluation is that, with good counselling and good support services, you see a decrease in the suicide rate of males who are maintaining their child support payments. That is not conclusive but it is more suggesting that it is the issue of separation and the trauma of separation which probably needs to be addressed most significantly. We are seeing, out of those 10 or so services, significant positive results and certainly enough for the government to decide to now put in place continued funding for those services. I will get you copies of the evaluation of the men's relationship programs and anything else we have in the family relationship program area.

CHAIR—That would be very helpful.

Mr PRICE—Firstly, I apologise for not having absorbed the supplementary submission. I welcome the fact that you have brought forward some proposals to the committee, so thank you for that. I think we got off to the wrong start on taxation, so I will revisit that matter. Clearly, there are a lot of small businesses out there that work very long hours. They struggle and they do not make much money, and I accept that. But there is a significant difference between salary and wage earners, where the loopholes of negative gearing and fringe benefits have been closed off, as opposed to businesses where the tax office, philosophically, does not worry at all in which year it recoups its tax. In other words, you can claim a whole range—legitimately, I might say—of deductions in the 10th year, 15th year or whenever and the tax office will get its full measure of taxation. The year in which it recoups its tax is not a great issue for the tax office, but it is a huge issue in terms of child support. That is my point.

Mr Sullivan—I understand.

Mr PRICE—Looking at taxable income, there is an ability to legitimately minimise the quantum of child support. I accept that Ms Argall has pointed out that there are now ways of trying to address that issue. In terms of strengthening the agency's ability in that regard, I agree with your two proposals, but what about looking at some of the other issues that were recommended, such as the transfer of assets to minimise liability? I think there were a few others, too, that were proposed but never enacted. Are you looking for the full suite of those former powers or are there any recommended changes? Are there some that you feel you do not need?

Ms Argall—I think there are a range of additional powers that could well be useful in the sorts of circumstances that you are referring to. Mr Sullivan mentioned one of those.

Mr PRICE—He mentioned a couple, which is fair enough—which I strongly support.

Ms Argall—The range includes access to AUSTRAC—and there are currently some proposals before the parliament in relation to that power.

Mr PRICE—I did not hear the acronym.

Ms Argall—AUSTRAC, which is a financial institutions database.

Mr PRICE—Is that shorthand for a credit reference or is it a different thing?

Mr Sullivan—That is a government agency in the Attorney-General's portfolio, which basically—

Mr PRICE—It tracks cash; I see.

Mr Sullivan—Child Support does not have access to their data.

Mr PRICE—Really? Okay.

Ms Argall—Another one is the CSA garnishee powers. They can be used to collect current child support from non salary and wage earners. At the present time those powers only allow us

to collect arrears in that process. There is compulsory notification to CSA of insurers of settlements, for example. Collection from compulsory preserved superannuation funds is another. There is the possibility—and this is probably a little bit problematic, but it is in the area that you referenced—of being able to access joint accounts. That needs some very careful consideration because there are circumstances where a paying parent may transfer their assets and income into joint account names, and at the present time we cannot access those accounts. Other powers around cancellation of drivers' licences and other sorts of licences are used in other jurisdictions around the world. We have not sought to use those to this point in time, but they are possibilities for the very recalcitrant payers.

Mr PRICE—When you last appeared before us, one thing that really struck me in the table that showed the levels of care or residency was the high degree of private payment arrangements. That was an increase I had not expected. That shows that at least we are getting parents on the road to cooperating, which is a good sign. I guess the dilemma for the committee, or for me, is that there is a determination to get out of that logjam of sole residency—to bust out of it. Yet the formula, by looking at days of residency or what have you, almost keeps it in. We had a very interesting discussion this morning about what we could do to change the Family Law Act without necessarily going to 50-50 but stipulating quite strongly parliament's preference for shared parenting. If we do that in the family law and we do not address the formula, we have a serious disconnection. How do we get people out of 96 per cent or 94 per cent of sole residency, in formula terms?

Ms Argall—I think there are a couple of issues here. Mr Sullivan mentioned some of the previous measures that the committee might want to revisit to look at recognising in the formula increasing levels of care.

Mr PRICE—What were they, specifically?

Mr Sullivan—The Child Support Act at the moment recognises, in a formulaic way, shared care at 30 per cent.

Ms Argall—That is right.

Mr Sullivan—For instance, the family tax benefit recognises shared care from 10 per cent. If you have these defined points where the formula becomes critical, people get to understand what the defined point is, and that starts getting into the negotiation, if you like. One way to get it more understood and get it part of the culture of child support would be that, as care moves, even in a slight way, the formula moves with it. So you do not create critical points that say, 'If I go beyond every second weekend and school holidays, I'll hit this point, and it'll cost this much.'

One of the themes we have talked about is that we are in an area of conflict and we have seen the major conflict points move. The major conflict point when this regime was created was the payment of child support. The major conflict point today is contact. We have to be careful not to create a new, very major conflict point around whether the prescribed carer arrangement is being fulfilled. If you were to move towards that, it would have a gradual impact on the formula and its intervals are much smaller than they are now. People then say, 'I understand that. If shared care means 85-15, then there is an impact; if it means 83-17, there is an impact; and if it means 50-50, there is an impact.' If you prescribe that the only way we are going to do this is to go a certain

way, I can guarantee that the next conflict point will be around whether the prescribed care is actually happening. You will have a partner who will say, 'It says 50-50, but I've got the children 70 per cent of the time because they won't do it.'

CHAIR—With regard to the relationship between Centrelink and the Department of Family and Community Services, the anomalies in perception are that Centrelink deal with families and new partnerships et cetera in a far different way than say, the Child Support Agency deals with them. You have talked about some anomalies with respect to family tax benefit parts A and B and child support. Could I get an understanding from Centrelink as to what anomalies appear in their systems on a continual basis between the way in which we look at intact families, separated families and repartnered families and the way in which the Child Support Agency may look at separated families and repartnered families.

Mr Sullivan—I am happy for Centrelink to comment on that. I would just like you to understand that Centrelink are a service delivery organisation which, in dealing with families on about 90 per cent of the issues that Centrelink deal with families on, deal as an agent of the Department of Family and Community Services. The programs and policy advice come from Family and Community Services and result in us managing a series of programs under a variety of legislation. You only have to read the current discussion paper *Building a better system: a single working age payment* to understand that there are a whole range of anomalous situations in the various income security systems, which we are currently responsible for, and then we hand to our portfolio partners the responsibility for delivering them. I am more than happy for Centrelink to talk about that, but if you would like to understand more about the different ways separated parents are dealt with in income support policy—

CHAIR—Mr Sullivan, the issue I am raising is that, for the purpose of family tax benefit, you take into consideration the spouse, and maybe stepchildren, as dependants. You take into consideration the fact that you have a spouse and you have stepchildren. But, for the purposes of child support, you do not take into consideration the income of that partnered spouse nor the stepchildren, and that is the issue I am trying to work out. Why do we have two separate—

Mr Sullivan—That issue is quite easy. Family tax benefit is payed to a current family unit. That family unit will include natural children as well as stepchildren or others where children's income becomes relevant. If it is established that you are a family unit at a point of time, that is the basis of an assessment. Child support is based around natural parents and their circumstance.

The child support policy is basically that it only considers the circumstances of those natural parents, except in the situation we discussed last time whereby one of the natural parents seeks a change of assessment based on their obligations and their capacity to pay. We take those into account. The family tax benefit is about family units at a point in time today. That family is defined in the new tax system Family Assistance Act and, yes, we do have differences in definitions.

Mr Kalisch—Perhaps I can elaborate a little bit further on that: the family tax benefit is treated fairly consistently with the rest of our social security system. It is based around household means and the need for government to intervene where household means are very low. So it is quite a different structure and objective in that context that we and the government

are dealing with than in child support which, as we talked about earlier, is dealing with sharing incomes of natural parents.

CHAIR—But doesn't it warrant a similar kind of exercise in treatment if you are talking about families of low means when in child support we are talking about predominantly families of low means?

Mr Sullivan—But the interaction happens when those families of low means, after child support comes in around natural parents, are supported by the income support systems of the government. That is where we look at it. Certainly child support obligations and child support receipts are both accounted for in the income support systems which assist the family units intact today.

CHAIR—I ask if there are any comments that Centrelink would like to make on any perceived anomalies or what comes across your table with respect to the way in which we treat families for Centrelink purposes.

Mr Bender—I think the submissions cover those anomalies really effectively, and there is nothing further for Centrelink to add—other than that we have a range of products that we use to explain how a particular family's circumstances will be treated for family tax benefit purposes and in relation to child support and how shared care will affect a family's circumstances. So, other than to make the information available to customers so that they recognise what their entitlements will be and why they are what they are, Centrelink really has no further comment to add as a service delivery agency.

Mr PRICE—I will start where we left off. If the committee is determined to try to bust through the sole residency monopoly that we have at the moment, how can we smooth that formula out? Where would you suggest we start trying to smooth the formula out? As I say, there is no good us making the changes to family law if there is no consistency in the formula.

Mr Kalisch—As I think Mr Sullivan mentioned in his opening comments, we did recommend that you have another look at extending the formula change for where there is 10 to 29 per cent care—one way of recognising smaller amounts of care that are beyond what the formula does now.

Mr PRICE—Fair enough. Could you just walk me through that, then? If we made it consistent with family payments at the 10 per cent level—

Mr Kalisch—Recognising care above 10 per cent. There were some propositions put before the House of Representatives which were passed there, and they were rejected in the Senate a few years ago.

Mr PRICE—But the sticking point there was that there was a desire that the payee not suffer, that it be a neutral change. It would not be neutral for the Commonwealth, I add, but between the parents.

Mr Kalisch—And that change would not be neutral for the Commonwealth either.

Mr PRICE—No, I am saying it would not be neutral for the Commonwealth.

Mr Kalisch—The change that was put up by the government would have still had a cost to the Commonwealth.

Mr PRICE—No, I accept that, but it would also have a cost to one of the parents.

Mr Kalisch—Essentially what we are looking at here is a child support arrangement that talks about transfers between parents. This is part of the reality of that change. It would, by recognising the care and the costs of one parent, necessarily lead to some reduction in their liability, which would then not get transferred to the full extent as it is now. I understand the point you are making but I think there is little way of getting around that where you are dealing with child support.

Mr PRICE—Maybe we need to revisit it, as you suggest. I apologise, I think I was briefed on it at the time, but would you be able to give me a fresh lot of information that looks at the impact and the losses involved in such a change?

Mr Kalisch—We can certainly provide those to the committee.

Mr PRICE—And if you have a view or an idea about a halfway measure between what the government proposed at the time and the objections that were raised against it, that might also be helpful.

I would like to ask about prescribed payments. I understand that you have provided me with information, Sheila, but I wanted to get it on the record that this is where paying parents can pay 25 per cent towards worthwhile purposes without the consent of the payee. What is the incidence of that and how well do you publicise it? By the way, at hearings people invariably do not know what we are talking about when we raise it.

Ms Bird—In terms of publicity, there is a fact sheet that we provide to parents in hard copy—and it is also available on our web site—that explains to parents about non-agency payments.

Mr CADMAN—I would like to look at a copy of that to see whether it is comprehensible.

Ms Bird—It provides parents with information about the non-agency payments that parents can agree to and, if they agree, they can pay up to 100 per cent of the child support on anything they agree to. It also provides information about the prescribed non-agency payments. They were introduced on 1 July 1999 and they specify particular items for which parents can pay 25 per cent of their child support without requiring the agreement of the other parent on the proviso that the other 75 per cent of the child support is paid. The types of items include rent, mortgage, school fees, health costs and car and utility expenses. The take-up rate since it was introduced has increased quite steadily. In the first year there were 360 parents who applied. Each parent may have applied and been successful for more than one payment. The following year there were 678; the next year there were 982; last financial year it was 1,664; and so far this year it is 724 and we expect it to be about 2,900.

Mr PRICE—So this is in a sense a vicarious payments. For example, this month I am paying the health insurance. The prescribed payments do not allow me to say that I am always going to pay the school fees, the uniform, shoes and something else that adds up to 25 per cent as a permanent arrangement?

Ms Bird—The way it would typically work is that a parent may choose to pay all of the school fees and that would then get credited on a monthly basis until the credit for the school fees has been used up.

Mr CAMERON THOMPSON—I will carry on from that little bit. This is not what I was going to ask but I think I mentioned before that one of things that has occurred to me about that system of being able to mandate payments is that we have had various groups come and say to us, ‘You have got to link the visitation thing to the payment thing,’ and there has been trenchant criticism of that kind of link from within the industry, that it is a wrong thing to do. It occurs to me that, if a parent is being denied access to their kids according to the arrangements that the family law court has deemed to be appropriate, a higher degree of mandating could then be a way of encouraging the other thing into balance. Have there been many disputes over these mandating arrangements? Would there be a possibility of being able to mandate higher in certain circumstances, such as the ones I outlined?

Ms Argall—Are you talking about prescribed non-agency payments, as an example?

Mr CAMERON THOMPSON—I was talking about the circumstance that Roger Price was just talking about, where people can say, ‘I’m going to pay that.’ If you have a scenario where a person is being denied access to their kids under the Family Court arrangements—and this is linking these two things that everyone does not want to do—to link it by saying, ‘You can’t have access to your children, but while you are being denied that access’—because it has been documented or whatever and goes to proving that—’the way that perhaps we can seek to give you more input into the child’s life is to give you a higher level of mandate to enable you to go above 25 per cent, maybe up to 50 per cent or something, until that sorts itself out.’

Mr Sullivan—If that presumes that we are encouraging in any way the limiting of child support based on a contact dispute, no. We line up with everyone else who is trenchantly against the notion of linking contact, which is a dispute and conflict between adult parents, and payments.

Mr CAMERON THOMPSON—Did I say ‘reduce’?

Ms GEORGE—You said ‘increase payments’.

Mr CAMERON THOMPSON—I said ‘mandate’.

Mr Sullivan—But in saying that, you had presumed that payment had stopped and let us recognise that there is a contact dispute and we will increase the mandated payment.

Mr CAMERON THOMPSON—I am not saying that the payment has stopped. I am saying that if it was detected that this person was being denied access to their kids and that was confirmed under the arrangements—

Mr Sullivan—An arrangement for someone to determine these contact disputes in place? There is not such a thing at the moment other than the Family Court.

Mr CAMERON THOMPSON—I understand that. But the fact is that, despite what you guys in the industry keep on telling us, many people—

Mr Sullivan—I am not in an industry, Mr Thompson.

Mr CAMERON THOMPSON—I think you are.

Mr Sullivan—I am not in an industry; I am a servant of this government.

Mr CAMERON THOMPSON—That is my view; that is your view.

CHAIR—Could Mr Thompson just ask his question.

Mr CAMERON THOMPSON—What do you in the department believe would be the impact of a switch to a 50-50 arrangement on the rate of family breakdown in Australia?

Mr Sullivan—I have no idea.

Mr CAMERON THOMPSON—In speaking before to Professor Dewar, it became apparent to us that there is a range of things under the existing system where people can cut off contact to their kids or whatever. There is a sense that perhaps there are people who find cutting off contact attractive because they are having a midlife crisis and want to get away from their kids, and that that becomes an incentive for them to split—the fact that they do not have to take any responsibility at all for their kids. Do you feel that, by making people more responsible for their kids and having to take a direct responsibility for them, that would have any impact at all on reducing the rate of family breakdown?

Mr Sullivan—It would probably have an impact on the children. If you are forcing a parent who does not want to care for a child—and that is how you just described it—I do not think that would be in the interests at all of the children. We go back to fundamentals. We believe that relationship building, with a view that relationships stay intact and flourish, is something that is in the interests of everyone in this country to get behind and encourage. I think some of the parenting programs and some of the education around what it is to be a parent, what it is to be in a relationship, why a relationship at the first sign of crisis need not result in a separation, is very positive and we are very much behind that. I just cannot contemplate what you are suggesting, which is using as a lever, 'Don't forget, if you separate you are going to have to have half the care of this child.' I am not sure that that may deter you from taking what I sense was this lifestyle decision of, 'I don't want to be with the kids anymore; I'll get out of it.'

Mr CAMERON THOMPSON—I am telling you that, for people who think they can have no responsibility for their children and get away with it—that is, for those who want to chuff off to some resort with their new girlfriend or boyfriend or whatever and leave behind their family responsibilities—the fact that they seem to be able to do that under the existing system provides an attraction.

Mr Sullivan—I make no comment on that.

Mr CADMAN—I think this is a CSA question, and it goes to a second divorce or a second separation. It is my experience that you have a policy where, if there is a court determination for a payment on the first divorce, that proceeds; but that on the second divorce, as payments come through, the payments are split and there is a dual claim on the first settlement. That seems to me a strange arrangement.

Ms Argall—That is not quite an accurate description. Parents who separated prior to 1989, before the child support formula was introduced, had their child support determined by a court order. Since 1989, any child support from separation has been determined by the formula. If a parent has a formula assessment for one separated family and then separates again, the formula assessment now considers that that person is paying child support, for example, for two children. It works out the amount that would be payable if those two children were with the same mother and then splits the amount between the two children. A parent paying child support under the formula assessment for children of different relationships would not be paying any more than they would be if the children were from the same relationship. The complexity arises if their first child support determination was by a court order. The Child Support Agency cannot do anything to change that first court order but the parent can apply for a change of assessment and, when they apply for a change of assessment, we can reduce the formula assessment to take into account the fact that they are paying child support under a court order.

Mr CADMAN—Fine. You have given us some figures, on page 22, that indicate the proportion of income that is allocated to the child support of a single child, based on income. It appears that for low-income people about 40 per cent gets paid out and for people of higher income about 19 per cent gets paid. That is as best I have been able to work out in the time I have had. I can see that the formula you are working to for splitting the amount between former partners is pretty satisfactory for high-income people but I would have thought it was pretty disastrous for low-income people.

Ms Bird—Children from multiple separations in effect would receive the same amount as children in intact relationships. As you indicate, with a lot of low-income payers, the amount of child support that is actually paid is low.

Mr Sullivan—The formula takes a view that the formula will result in a payment from a payer based on a number of children, regardless of how many family units those children may be in. The majority are in a single family unit. It basically says, having the formula and having determined that this is the capacity of the payer to share their income with their children, the fairest way is to share that capacity amongst the children. It results in situations such as this: if you have a separated parent with the care of two children as opposed to two separated partners with the control of one child each, it is probably going to make it more difficult. It certainly will impose greater cost to the Commonwealth and it will have an impact on the child. The basis of that is to look at the payer’s capacity and then the best way to share the payer’s capacity, and that is to split it between the children regardless of their current family arrangements.

Mr CADMAN—Let us look at something hypothetical. If the two children were from the same previous partner, is the second child assessed to receive the same amount exactly as the first child?

Mr Sullivan—No.

Mr CADMAN—No, it is a lesser amount. When you have two relationships, the reduction for the first partner is pretty incredible.

Ms Argall—You are talking about 27 per cent if the children are of one relationship. That is what the payment would be. If there are two relationships, that 27 per cent is divided in two—so it is 13.5 per cent.

Ms Bird—If someone was receiving child support for one child they would be receiving 18 per cent. If that payer then had a new case that they had to pay child support for, that 18 per cent would be reduced to 13.5 per cent.

Ms GEORGE—Thinking aloud, if we look at changing the basis of the formula to take into account less than the 30 per cent care, inevitably there are going to be winners and losers out of any change we make. Among the losers there is a differentiation as well because the sole resident parent who has not repartnered would, as a generalisation, be closer to the poverty level than the resident parent who has repartnered. But the change in relationship arrangements is not taken into account; hence my desire to try to establish objectively some measure below which we would not countenance the resident non-partnered woman or man—predominantly woman—falling. I find it amazing that in this country we can define what the minimum wage for working people and their families should be and that we have a Henderson poverty line as a generalised measure—although there are academic debates about how relevant it is—but we cannot say to the government or to my party, 'This is the point below which no parent and their children in a civilised society should fall.' If we make those adjustments so that there are inevitably losers, how do we then appeal to governments to ensure that we do not leave people in this precarious position as a result of any change we make?

Mr Sullivan—The system we have at the moment basically says that, if you take the extreme position of no child support payment being made, the government will respond with eligibility for both parenting payment and family tax benefit. That is the benchmark. That is established. It is basically saying that no parent shall fall below an income level which is determined by their eligibility for income support payments, generally parenting payment, which recognises also a child, and family tax benefit to assist in the upbringing of that child. That establishes the minimum level of income that such a person will receive in the absence of any child support.

Ms GEORGE—You are saying that in other programs there is some quantification of minimum standards but there is no quantification of the cost of raising a child?

Mr Sullivan—No. There is no quantification of the cost of running a child, but there is certainly a benchmark that the government has established, which has been in place—

Ms GEORGE—Could it be that we are operating different benchmarks under different programs of your department?

Mr Kalisch—The benchmarks were set up for family assistance quite some time ago. From memory, it was probably around 1989 when benchmarks were set around family assistance, and at that stage family assistance was set at a proportion of the pension rate. Those benchmarks

have largely continued through and, particularly, have continued beyond the tax system changes when FTB was first introduced. So there is an implicit benchmark in there around the family assistance—the family tax benefit, in this case—providing a minimum level of support so that people on low incomes should be able to meet pretty much all the costs of raising children from those maximum amounts of family tax benefit. As you know, when income rises family tax benefit tapers away. Part of the difficulty of the discussion is that you need to look at the situation of these families and take into account both family tax benefit and child support. They are not independent of each other; they are to some extent interdependent.

Ms GEORGE—In answer to the criticism that we might leave behind a growing number of losers if we make any adjustments, your answer is that the public purse would pick up—

Mr Kalisch—It would pick up some of that cost.

Mr Sullivan—Definitely, the public purse will. As we model it, every 10 per cent will cost the government around $52 million in government benefits. We say in monetary terms that every 10 per cent shift will see $120 million of cash, which is currently transferred between parents to support children, reduce. So every 10 per cent sees a cash reduction. Of course, you are not picking up that, if the shared care is truly shared care, you are seeing a transfer of the burden of cost. I would think that proponents would probably argue that maybe even more is spent, so that, while you lose the transfer, you will see a greater contribution from the caring parent—

CHAIR—Exactly.

Mr Sullivan—or not. That is the argument. That is hard to quantify because you are basically looking there at behaviours we cannot test. That is to say that, if we are seeing a $120 million reduction in cash transfers between parents under our current model, you cannot jump to the conclusion that that is necessarily detrimental to the child, because you may say that now instead of being transferred it is going to be spent directly. The only thing we do know definitely is that, under current policy, $52 million worth of payments will be necessary for each 10 per cent of movement.

Ms GEORGE—I guess it gets to the crux of the arguments that are put to us as local politicians in terms of the argument to adjust the formula. Is it predicated on the desire to have the greater contact or is it more motivated by the desire to reduce one's contribution for the care of the child? They are the kinds of issues that are very subjective, aren't they?

Mr Sullivan—That is the $120 million question.

CHAIR—My question on the formula is: does it really discriminate against shared care? Say I have shared care week about. The children have all their clothes and everything at my house. I buy all their clothes and shoes and everything in this house, and the other house, obviously, does the same. Then I find that I end up paying $800 a month. For example, this one here is $846 per month. The person has shared cared since 1997 for three children. He pays $846.50 per month, when everything is in his house. He is paying child support and child care—and he has the children in his home for a shared care time—because his income is higher than his ex-partner's income. Does the current formula encourage shared parenting or, because we have this differentiation between the incomes of parents, does it actually detract from it?

Mr Sullivan—I think it is absolutely consistent. A higher income partner has 50 per cent of care and a lower income partner has 50 per cent of care. The basis of the calculation of child support is that the child should be the beneficiary of the incomes of their parents. A lower income parent does not have the same capacity to provide shoes, education and other things for their child. The child-support formula basically sees a transfer between the higher income earner and the lower income earner in a 50-50 care situation.

CHAIR—Doesn't it mean that, if the partner on the higher income has repartnered and has a wife with two children, it is not taken into consideration that he has to care for those children, and that, even if the partner on the lower income has a new partner that is contributing to their household, he still pays the cost of the children living in that home as if there was no other income coming in? Surely you do not come into a new partnership unprepared to contribute to some of the overheads such as gas, electricity, food and living expenses.

Mr Sullivan—Initially you might. If the first step in a major relationship was to say: 'Understand that when we take this next step, you are responsible and your income will contribute to the care of my children,' you may not see as many relationships formed. Let us go back to the first question. Some people have the notion that 50-50 care sees the end of child support. 50-50 care, when the parents have equal incomes, means that no child-support payments are made. When there is a disparity in incomes, a payment is made by one parent to the other parent reflecting their capacity to share their means.

CHAIR—Doesn't that come back to what we were talking about at the beginning—why we have so many low-income people paying child support? You keep coming back to the fact that, by repartnering, you will not disadvantage yourself, and it will not have an impact on you, your ex-wife or your children. But when you repartner, if you have 50-50 shared care of your children, you are paying all of the relevant outgoings whilst the children are in your house and you are still paying child support for the time that the child spends in the other partner's house, you might think: 'I'll just stay on this salary so that I do not go very far above the income level of my ex-partner. That way I will actually be able to get ahead'? If you sat down and did the figures, you would see that you would be able to get ahead like that.

Mr Sullivan—We have done a number of the figures, and they are in the attachment to the supplementary submission, which I know you have not read through. If you asked us to us to model the circumstances in which such behaviour would be encouraged, we would do it. Our modelling indicates that that does not occur.

Mr Kalisch—I also refer you to page 14 of our supplementary submission, which makes it quite explicit that the formula as it applies to each parent in a 50-50 care arrangement is exactly the same—the exempt income is the same. 50-50 care means that you have a change in the formula arrangements. The formula currently makes an adjustment so that there is no disparity in the exempt income amounts.

CHAIR—So why is it that the person I mentioned before pays an additional $846 per month?

Mr Kalisch—He must have a very high income, and she must have a very low income. As Mr Sullivan pointed out, even after those income disparities are taken into account, there is still a transfer. We made that clear last time.

CHAIR—Just say a female partner has the capacity to earn more money as a registered sister in a hospital but she does not take that position, instead she takes an EN position that keeps her on that threshold—what do we do to ensure that the capacity of that person to earn is looked at as well? Do we do that?

Ms Argall—In those circumstances the change of assessment arrangements that I mentioned earlier apply equally to the payee as they do to the payer. The ground eight for applying for a change of assessment is based on the income earning capacity, and property of either parent is not reflected in the child support assessment so—

CHAIR—It might be in the theory in the process, but in practice is it something that the Child Support Agency enforces if there is a parent who is not earning to capacity, whether it be a male or female? So if a female who has 50-50 shared care is not working to the capacity that she is trained for—

Mr PRICE—Because she is taking care of the child?

CHAIR—She has 50-50 time—

Mr Sullivan—The hardest issue here is a decision that is taken to care for a child. If you are telling the parent they have to put the child into child care and that is why, it gets into very difficult ground.

Ms Argall—And those costs could be taken into consideration as well. The costs to take care of the child could be taken into consideration as another ground for a change of assessment. In terms of the practical situations, do paying parents apply for a change of assessment based on a payee's capacity being not reflected in the child support assessment? Yes, they do. It is not a frequent occurrence, but it does happen and change of assessment decisions are made on those grounds.

CHAIR—Let me ask you this then: in equity and fairness if a father who has 50-50 shared care is not working to capacity and he is a stay-at-home dad whilst he has the 50 per cent shared care of his children, do we expect that he will work to his capacity and not stay at home?

Mr Sullivan—It is an absolutely relevant factor that he has made a decision. If he has 50-50 care, you cannot ask for a change of circumstance based on: 'He should put the toddler into child care and go out and work to get the income rather than take care of the child.' It is a relevant thing.

CHAIR—So it is definitely relevant.

Mr Sullivan—I will get the experts to confirm it.

CHAIR—I want to put this on record because this is a question that is raised with me time and time again: 'I am a father who has shared care, but I have to fulfil my role by carrying out a full-time job. It is expected of me in carrying out that role that I should not reduce my income in order to stay home to care for my child—50 per cent of the time, or whatever it is—and be the stay-at-home dad for that child. If I reduce my income to reflect that I am going to stay at home

when I have my child then I still have the capacity to earn and I could still be assessed as not earning what I could and should, because it is reducing the child support payments over to the other side.' However, a mum could indicate that she will stay at home and be a home mum for the 50 per cent of the time she has the children and she has the capacity—she is a qualified person—the other 50 per cent of the time to earn money. Would they both be considered on the same circumstances?

Mr Sullivan—Exactly the same.

Ms Argall—The guidelines apply equally to both parents in those circumstances and the change of assessment officer will take into consideration all of the circumstances of both parents in arriving at a decision.

CHAIR—What about if you were a 30-70 parent? If I were a 30 per cent parent and I decided to alter my work to stay at home—because we can alter our working practices—for the 30 per cent of the time that I had my children and I reduced my income accordingly, how would that be viewed?

Ms Bird—The same conditions apply for both parents. In looking at whether a parent actually has a capacity greater than the capacity that they are exercising, the decision maker will look at a whole host of different items. The significant one in this sort of case is: what are the care arrangements for the children? If the child is of an age or has particular circumstances where the parent needs to be at home to look after the child then they would not be expected to exercise their capacity to earn when they were caring for the child.

Mr PRICE—I want to talk about the administrative treatment of contact and residency, parenting skills, counselling, issues of exempt and disregarded income, the commission of the family and the additional 10 per cent costing $120 million. I will start with the latter. When you say 'if 10 per cent', do you mean that, if 10 per cent of people currently under the Child Support Agency move to 50-50, it will cost $120 million?

Ms Curran—Yes, but it is properly a cost to the Commonwealth.

Ms GEORGE—If they move from where to where, Roger—from the six per cent that are currently shared care to 10 per cent?

Mr Kalisch—From six to 16.

Ms GEORGE—I see. An additional 10 per cent to what is there now. It does not factor in what Roger was asking about—but you are going to come back to us with the costs for the 10 per cent.

Ms Curran—But could we also put on the record, Mr Price, that there are a number of caveats associated with that costing. We have them set out on page 11 of the supplementary material.

Mr PRICE—Caveat emptor or just ordinary caveats?

Ms Curran—We have made a number of assumptions in that costing and, if you were to change any of those assumptions, it would change the costing. It is important for us to say that.

Mr PRICE—Could I also take up where Jennie left off—that is, previously we had a system where there were nil assessments. In terms of the Centrelink benefits that went to a mother and one child, what proportion of those benefits constituted financial assistance for the child? I think we raised this last time we were with Mr Sullivan.

Mr Kalisch—When you look at parenting payment and family tax benefit—is that the dimension, Mr Price? Where there is parenting payment paid, in terms of income support, and family tax benefit, family tax benefit is the component notionally for the child and parenting payment is notionally the component for the adult.

Mr PRICE—So what is the minimum we would give?

Mr Kalisch—The maximum is probably the amount where you have low incomes.

Ms Curran—But if you have child support income it reduces by 50 cents in the dollar until you get to the base rate. The base rate is currently—

Ms GEORGE—Is there an argument that the rate of withdrawal, at 50 per cent, is much higher than it is for other benefits?

Mr Kalisch—It is, but there is also an additional free area. So, as I think I mentioned last time, it is not quite that simple. In terms of basic rates—

Mr PRICE—If you cannot do it easily today, would you be prepared—

Mr Kalisch—No, I can do it.

Mr PRICE—Thank you for that vote of confidence in us.

Mr Kalisch—For each child under 13, the maximum amount is $130.48 a fortnight. For a child aged 13 to 15, it is $165.48 a fortnight. That is paid on a per child basis. Basically, people with incomes below about $31,000 get the full amount.

Mr PRICE—That is helpful. A couple of learned professors have now, on two occasions, suggested that we ought to treat contact and residency as an administrative issue, in much the same way that we are treating the payment of child support as an administrative—as opposed to a judicial—issue. A logical place to put that, maybe, is with the agency, rather than creating a new agency. If we were to go down that path, do you have a view about where we should put it?

Mr Sullivan—I do not know whether we have a view of where to put it. I think we do concur. We believe that to put contact into a court or tribunal is difficult. It is the administrative solutions area which seems to have the most potential. We would point, as you do, Mr Price, to something like the Child Support Agency, which handled the payment side administratively and which has worked, and we would ask, ‘Would it be the same agency, or would it be a like agency?’ I think there are lots of arguments to say that an agency looking after the payment and looking after the

contact is a connection that would make it difficult. Would it be an independent body? Would it work, for instance, out of the network of family relationship agencies around the place? Having listened to people appear before the committee, as I said, I think we are like-minded with those whose belief that searching for the administrative solution is the way to go. We have not gone further.

Mr PRICE—I apologise, I can probably get this information off the annual report. Could you give me an idea of the money and programs that the department funds for parenting skills and relationship counselling? Have we got an idea of that? Are the states involved in that area at all, or are we exclusively the ones?

Mr Kalisch—In the interests of time, perhaps I can refer you to the submission that we made last time, which had some information around family relationship counselling, family relationship mediation and other services.

Mr PRICE—What is the sort of quantum? I am not after a precise figure.

Mr Kalisch—It is probably in the order of up to $100 million across the whole of the family relationship services program, but I can certainly get back to you. Sorry, it is $46 million across that total program last year.

Mr PRICE—What I am interested in by raising this is to what extent we are getting through. As I think I have mentioned before, I know there is a really good parenting program in my electorate dealing with the extreme end of need. How much are we impacting?

Mr Kalisch—With regard to those broader programs, in our last submission we did note the very positive outcomes that they made. We did also note within that submission that, despite additional resources from government to expand service provision, services are not always easily accessible across Australia and sometimes there is a waiting list for getting into services. So this is an area where we would suggest that some attention is quite positive.

Mr PRICE—Do the states run any similar programs? Do you piggyback on them?

Mr Kalisch—The states run more services around broader parenting rather than necessarily focusing on the conflict dimension.

Mr Sullivan—But they use some of the same service providers. The Commonwealth programs are largely run through a group of service providers. They are under the umbrella of Family Services Australia. They include elements of all of the key non-government welfare agencies around. They would certainly be accessing and often delivering state government parenting services and state governments are involved in parenting programs.

Mr PRICE—Would you be able to give us a bit of a map which shows the impact of both?

Mr Kalisch—In terms of the state services, it will be much less detailed, but we will give you whatever we can.

Mr PRICE—Getting back to exempt and disregarded income, you point out that if we go for 50-50 then they are both exempt or both disregarded—they are treated equally. In the figures you supplied, 74 per cent of the payees received zero to $20,000 or fell within that level. There has always been a strong contention about the extreme difference between the exempt and disregarded amount. What would be the impact of lowering the amount—I forget which is which—down to $20,000.

Mr Sullivan—You would not have much of a child support administration any more. You would probably remove most of the caseload.

Ms Bird—If you were reducing the payees' disregarded income—

Mr PRICE—Yes, that is what I am talking about.

Ms Bird—it would impact on roughly 26 per cent of payees. They would receive less child support. We have not actually modelled the impact of that, but that is one thing that you have asked us to do in that letter.

Mr PRICE—Another way of saying it is that, if we do bust out of that sole residency monopoly or virtual monopoly we are in, we have talked about smoothing out the night situation but we probably need to start to smooth out that difference as well.

Ms Bird—The exempt income that is used when parents share the care of their children increases for one parent and reduces for the other, so the exempt income changes to about just over $14,500 for both parents.

Mr PRICE—Yes, but that is 50-50.

Ms Bird—Yes.

Mr PRICE—Sorry, I was not clear. I understand that. If we shift your clients out of sole residency into patterns of shared care—but not necessarily 50-50—then, rather than having the $14,500 for both, we need to reduce that differential when it is 60-40 or 45-55.

Ms Argall—I think this is where we are suggesting that you review the proposals that were previously put which took a different approach. There were reductions in the formula percentage of two per cent for 10 to 19 per cent shared care and three per cent for—

Mr PRICE—But I think we have agreed that you are going to help us with that.

Ms Argall—Yes.

Mr PRICE—Just because I am a pedant, would you be able to do any work on that to see what the impact is? Even if you will rule it out, we will at least have had a look at it.

Mr Kalisch—We could certainly do some hypotheticals which would demonstrate some of the impact. I think that would be most helpful.

Mr CADMAN—Are you saying that one parent with half access is going to have a greater tax-free threshold than a single parent of $12,300?

Mr Kalisch—No, it is exactly the same.

Mr CADMAN—I thought you said they were each entitled to $14-odd thousand separately. That is greater than the lone parent with $12,000. I cannot see how you arrive at that figure.

Ms Bird—The $12,315 that we referred to earlier is the amount that a non-resident parent has exempted from their income before they pay more than $260 in child support. That is a parent that does not have the child living them.

Mr CADMAN—So a partly resident parent gets even more then?

Ms Bird—A parent with care of a child has more of their income disregarded for purposes of child support, yes.

CHAIR—From everything that we have got—we have not read the supplementary submission but we will, and we look forward to getting the answers to the questions that we have posed, and we thank you for all that support—to all intents and purposes it seems as though everything is working wonderfully well; the process and the formula are well designed and are still working very well. But at this point in time we hear of a very strong aversion to issues of child support. The majority of men want to pay child support. Their argument is not with child support; they want to pay for their children. I recognise that there are some men who will opt out of the system in order not to pay child support, but the majority of men want to pay child support. Their problem is that they are paying and they cannot differentiate between the nexus with contact and the fact that this is a child so, regardless of whether they see it or not, they have fathered it—or mothered it—and so they are responsible for its financial upkeep. Is there a capacity to look at the real issues associated with child support, the drop-outs from child support payment and the people whose stories come across my desk who consistently say, 'I've got no other choice but to remove myself from the work system or where I'm working now in order to get a lower paid job so that I can make a life for myself.' It is not all just perception out there. I do not sense that this is unjust feeling on their part. They come in with statements of their living expenses since the separation. They come in with the child support that they are paying. One recently came in with the average weekly income rise—he was a very low-income guy.

Mr Sullivan—It cannot be that low, because he would be paying $5.

CHAIR—It was low. He got the average weekly income rise—I think he got $10 a pay—which put his child support up. I think he was receiving $40 a month in income rise, but he got a child support payment increase of about the same. I do not know if that is possible.

Mr Sullivan—No.

CHAIR—I have put that to the child support people as well. They are looking into that situation. But the perception out there is clearly: 'I've got the cost of living. I've had to restart and resettle my life. I had nowhere to go. I had to get myself a house—or a flat or a unit or something—to have the children and I had to furnish it and get all the amenities; yet I cannot

afford to live and spend quality time with my children when they come for their weekend or second weekend access with me. I cannot do anything of a quality nature with them, because I have such a limited income.' I have seen all the fact sheets you have given me and I understand them, but the issue is that out in the marketplace people feel that the quality of their relationship with their children when they have contact with them is diminished because they are still paying for their children in child support to the other partner even when they have contact with the children. They find that difficult, because they feel it is a duplication. They think: 'I am paying twice. I am paying this amount of money and then I am having the child'—and sometimes they are having the child far more often than is stipulated, and they are happy to do that because they do not want to go through the rigours of going back to the family law court et cetera—'but I am still paying for it. I am paying for it again while I have got it.' How can we improve that scenario when it is the reality?

Mr Sullivan—It is not the general reality. There are those who say they have more contact than any contact arrangement sets out, but I think more have less contact than any contact arrangement that is put in place. We do not think the system is perfect. It is around conflict. The premise of the current system and the current formula is based on the child and on the sharing of available income to assist that child. There is another issue of contact. We are pro-contact. We would like to see more and more parents take more and more care and responsibility for the care of their children, which does involve contact.

The interests of the child have to override that, so we are opposed to prescribed contact. It is just not workable to prescribe contact. In terms of a benchmark of a prescribed formula—attempting to address the population against a formula—we know the system compares extraordinarily well with anyone else's attempt to do it. We have compliance. We have movement in the right direction of the number of people who say, 'We would prefer private collect arrangements over using the CSA collect arrangements.' We now have the level of private collect arrangements to the point where half the separating parents have private collect arrangements in place.

CHAIR—Could I interrupt.

Mr Sullivan—It is very easy in this situation to say, 'We have struck a payer who has this problem.' It is like striking a taxpayer who does not like the tax system: no-one does.

CHAIR—It is not just one payer. With respect, how can we sit here and say seriously that we are pro-contact when we make rules that say that you must pay somebody else even when you have the contact so you pay twice? How can we seriously say we are pro-contact?

Mr Sullivan—We suggest that this is one area in the current regime—which only applies once care is shared 30-70—where you should look at what regime we can put in place at lower levels than that. We agree that there should not be disincentives in the formula to contact. The formula kicks in at 30 per cent, which in practice is a high benchmark, but if it is a disincentive we encourage you to consider how to remove or reduce that disincentive by looking at the way less care can have an impact on the formula. We support that fully.

CHAIR—Thank you for very much for your attendance this morning. Also, thank you to Centrelink and the Child Support Agency for your attendance here. We look forward to getting the further information from you. Thank you very much.

[12.30 p.m.]

CARTER, Mr James Bernard, Member, Lone Fathers Association

WILLIAMS, Mr Barry, National President, Lone Fathers Association

CHAIR—I welcome the representatives of the Lone Fathers Association. 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 Lone Fathers Association has made a submission to the inquiry and copies are available from the committee secretariat. If you would like to make a short opening statement, I will then invite members to proceed with their questions.

Mr Carter—I have a couple of general points to make. They are covered to some extent in our submission, but it is probably worth while mentioning them again to provide the context for answering your questions. The general view of the people we represent is that the outcomes from the family law system that we see are not fully acceptable. The system appears to be leading to something like a fatherless society—which cannot be in the best interests of the children. Our assessment of that is that there is a need for change. The rules and the administration of the rules in this area must change. We see this in the context that, when children have been asked in various surveys—and this is a fairly consistent result—what sort of arrangements they would prefer if their families break up, 70 per cent of the children say they would like to have equal time with their parents. We have heard a number of organisations say that we really must ask the children what they want. That has been done and we know what the children want. That is what they say. That should be the basis, we suggest, for any further deliberations about this issue.

We did mention the adversarial aspect of the legal process being a major factor. We think that is certainly important, but one should not necessarily draw the conclusion from that that one would go straight to an inquisitorial system because one would need to be sure that such a system would work and that you would have the right people operating it in the right way so that you get a better result. The jury is still out on that one.

We have been critical of the Family Court, but the Family Court has to operate within the framework of legislation and sometimes the legislation is not fully appropriate. They do a very difficult job. In many ways they deserve a lot of credit. But they do have some rather old-fashioned ideas about the best interests of the child, which we believe do need some change to a more perceptive and balanced notion, which would lead to better social outcomes.

We were present at the hearing the other day when the Family Court was giving its evidence and we were somewhat perturbed to hear that there were a number of absolutely critical issues which were raised by the committee or the court itself to which they said they had no answers. One was the issue of interim orders which, because they are de facto and already in place, tend to become permanent arrangements whether or not they are in the interests of the children. The Family Court really did not know what to do about that.

The second key issue was enforcement of contact orders. It is terribly difficult for a court to do that. In the bad old days, when courts had the full responsibility of seeing that child support was ordered and paid, they did not do any better, because it was just something that the court by itself could not really achieve—and a similar issue arises with contact orders. Again, there seems to be a lack of ideas coming from the court.

The third key issue is perjury in family law cases, especially in cases of alleged abuse of children, which do not appear to be being handled effectively. If one looks at the results of appeals in these areas where allegations are made and have to be tested, there is quite a number of them which are not, in the end, supported by the court. This suggests that there is a measure of funny business going on which really should be dealt with in some way. Again, the court's answer to that was, 'Well, we gave that to the A-G's and we do not quite know what they are doing with them.' I guess what we are saying is that these are fundamental issues to which solutions must be sought, found and applied.

Our suggestions are that maybe the legislature has to explain to the court that there should be no judicial sanction for, in effect, the removal by one parent of the children with the objective of obtaining longer term custody. Suitable penalties should be imposed on all unwarranted failure to provide access. An administrative agency of some kind, which has been mentioned just in the last hour or so, should be established to provide the necessary bureaucratic support for enforcement. Perjury cases should be followed up to a greater extent than in the past, and penalties should be imposed. We believe the result of such a regime would be inevitably lower divorce rates, more responsible parenting and happier children. I have a number of other points, but perhaps we can raise those in the context of questions.

Mr Williams—I will make a few points too. I have gone a little bit further, and I think in fact that the Family Court is in breach of its own orders. The Family Law Act stipulates that children have the right to know and be cared for by both parents under section 60B(2). The Family Court could make shared parenting orders even without parental consent, but it has largely ignored the opportunity. In fact, the court has gone in the reverse direction as to the proportion of shared parenting orders, which have steadily declined over time.

What we are saying is that this is a conflict of law as envisaged by the parliament. They talk about the best interests of the child as paramount. How can a court ignore this, because having shared and equal time with both parents whom they love would be in the best interests of the child? By not granting shared carers, the court is actually discriminating against and disadvantaging the child. One would have to think the Family Court has a vested interest to keep the status quo, which allows one parent to win and the other to be a loser. Is this equality? No. Is this in the best interests of the child? No. It heightens the conflict further between the parents. If children sense or witness this further conflict, it causes them much trauma and psychological, emotional and social problems. Is this in the best interests of the child? We think not.

The reason I say that is that we are taking 30,000 calls per annum, and all these calls have to be documented throughout Australia. To listen to children who ring us without their parents knowing—and we have to virtually tell them that we have no right to talk to them unless their parents agree—and hear the children begging us to help them see the other parent is an emotional trauma. If we, as people who are trying to help them, feel it as emotional trauma, just imagine what the children must feel. Children tell us that, in many cases, the parent who is

denying the children has been the parent that has been violent to them, but they seem to end up with the children.

The concept of shared parenting is not a new issue in Australia, even though we are now having a parliamentary inquiry into it, which we welcome and congratulate you on. This issue has been around for 23 years, going back to 1980, when LFA made the first submission to parliament for shared parenting. We have been pushing that proposal ever since in all our submissions to parliament, but the Law Council, the Family Court, the legal profession and other vested groups have always opposed such a concept. Even the parliament and the Attorney-General's Department have opposed such a concept. We ask why, if they are talking about it being in the best interests of the child. LFA agrees that shared parenting would not work in every case, but those cases would be minimal compared to the cases that would work very well. Again, we have very good contact with the United States, which has shared parenting, and it says that what our courts are telling us here is in complete conflict with the real issues over there where shared parenting is working. Cases where serious violence would cause concern would have to be carefully dealt with. Other cases, where violence is put up as a protest against one parent, would have to be thoroughly investigated before shared parenting was disallowed. The suggestion by one parent that violence would occur should not be taken as the truth, especially where there has been no previous violence.

To alleviate this, LFA has long pushed for the establishment of a family assistance bureau that would assist both parents to come to sensible and fair solutions to all their family law problems after a marital relationship breakdown or even before a marital relationship breakdown. A family assistance bureau would have trained people who have knowledge and know-how through their own experience and who would help both parents to put aside any bitterness and to make decisions that would be in the best interests of them and their children. This would be done without adverse influence of the legal professional or counsellors. There could even be a new law to state that those who cannot agree after separation should have to first attend a family assistance bureau before going to court. LFA believes that it would help the large majority of parents and would save the courts a lot of time and the parents a lot of money especially, which would be better spent on the children.

Ms GEORGE—Thank you for your submission. In relation to what you say about the United States, we have had a number of submissions from lawyers and people in the family law arena who say that what is said is an overexaggeration of the situation in most of the states in America, in that the operation of the law there is very similar to the provisions of the amendments to the Family Law Act here in Australia, and that we need to distinguish between joint legal custody and joint residency, and that if you look at the American experience you will see that shared parenting does not result in the 50-50 living arrangements being shared between parents. Do you want to make any comment about that?

Mr Williams—Shared parenting does not mean that you would have 50-50 living arrangements. Going back to my own case 30 years ago, when my wife and I separated, my wife walked out and left me with the four children because she had an alcohol problem and she could not care for them. Then four years later she decided that she wanted to see the kids, so I said to her, as the father of the children, that we should be sharing the kids. Although they stayed with me in Canberra and she lived up at Nambucca Heads, every third weekend and every school holidays I made sure I took the children up to her to spend time with her. Our children grew up

with no psychological, emotional or social problems. After I had taken them up there, their school work started to improve. They got very good marks. We started shared parenting. We believed in that even 30 years ago and the children have appreciated that situation. My children even talk to me now and ask, ‘Dad, why can’t we do what you used to do?’ We got on well with both parents. My kids are part Aboriginal. Many Aboriginal families do not have the chance to get into that situation, but ours did and it has been proven that it can work. I have seen many cases in my 30 years of doing this. In fact, Lone Fathers turned 30 years old on the 18th of last month. We have been helping people throughout Australia and we have found many cases through our organisation where people go into a shared-parenting situation. But many of them, when they apply to the court for a shared-parenting situation, for some reason the court rejects it.

Ms GEORGE—So what you are saying, Mr Williams, is that you do not believe that shared parenting necessarily means a presumption of equal time?

Mr PRICE—50-50 residence.

Mr Williams—It cannot in a case where one lives in Canberra and one lives somewhere else but both parents have an equal say in their children’s upbringing. As the situation is now, one parent is a winner and one parent is a loser. We even have problems in many cases where the losing parent cannot even get school certificates and they have no idea of what their kids are doing. All they are is an open chequebook for the wimps—the other parent and their new de facto partner. That is the situation in many cases.

Mr Carter—We are aware that the situation in the US varies greatly from state to state and sometimes even from county to county. But we have looked into it to find out the extent to which what you could narrowly describe as joint physical custody is applied. Statistics there indicate that in something like 20 per cent of cases parents are getting joint physical custody. That rate is seven times higher than we have here.

Mr Williams—In cases where people live in an area as big as Canberra or even in a suburb in Sydney where the children can go to the same school, there is no reason why they cannot have a shared situation. That does not mean every night, but they could do it month about or week about or something. The children should have a say in the matter of what they are doing; whereas, now the children seem to be left out, yet we are saying that the children’s interests are paramount. They are not paramount because children do not really have any say.

Mr Carter—We talk about the US experience because there are many experiments in different types of legislation going on there in different places. But the general picture over there seems to be that, if you have 30 per cent or more of the time with your child, that is regarded as a shared parenting situation. They would count that is being joint physical custody. We would tend to take the same view; we would not be saying rigidly for example that one would expect to have 50-50 in every case. That would be a worthwhile starting point but you would not expect to find that in the majority of cases.

CHAIR—Many people have raised the issue of ‘deadbeat dads’ who do not want to pay for their children. We do have some fathers who do not want just to get away from child support or from contact with their children; they do not want to pay or be responsible for their children. They exist; that is a reality. The reason I want to put this question to you is that we have heard

from several Lone Fathers groups, as you would know, since we have been doing hearings around the country. What can we do because there are some fathers who make it bad for every other father? It is assumed that, because some fathers do not want to pay for the children or have contact with them and will go to all lengths not to, all fathers are the same. We know that is not true but how do we respond to that and put in place a range of enforcement processes that deal with those parents, those dads, who do not want to take financial or emotional responsibility for the children?

Mr Carter—One thing for you to think about is that a really well tuned child support scheme—we have not said much about that yet—would relate the amount of time that people spend with their children to what they are expected to pay in child support. Not in any hard and fast way but there would be a connection. The implication of that would be that for fathers, or for that matter mothers, who took no interest in their children, they would end up paying a bit more in child support, and that would have some probably beneficial effect.

Mr Williams—As an organisation, we have long been suggesting amendments, especially to the provisions for child support payments where people do not meet their obligations. I think the agency would back me on this: most people on average weekly earnings pay their child support. It is mainly the business men and women—and it is a small majority now—who do not pay. The agency and the government—I am going to get flak over this—build up statistics to make it worse than it is. When it first came out, they said 70 per cent of men were not paying child support. In fact, it was only 30 per cent. I can talk about this because I was one of the seven consultants who helped design the scheme in the first place.

Mr PRICE—It is all your responsibility!

Mr Williams—No, no. I believe that as consultants we put forward a scheme that could have worked but there have been so many cosmetic changes over time that now it is based on capacity to earn and things like that—they make it so hard—that have been sneaked in down the line. We also said that the minority who do not pay but have the capacity to pay should be given, under the law, a period to pay. If they do not pay it then their business should be sold up and they should pay their child support out of that. That would alleviate this bad image they put around that dads are bludgers and do not want to pay. Most dads are decent people and want to pay, but they want to pay an amount that allows them to get on with their lives.

Look at a person earning $50,000 and working on a type of a margin. If they are paying for three children they are paying 32 per cent of their gross wage—I emphasise that it is gross wage, not after tax—then they have to pay their tax. They have to earn a living and pay other things like Medicare and superannuation and stuff. In fact, they are paying up to 95.9 per cent of their total gross wage and they are expected to live on the remainder. In many cases people are left with $37 or $40 to live on. When they try to get a review they are told to move into a caravan or get cheaper rent. In Sydney you just cannot get cheaper rent. These are the issues. I am not blaming the Child Support Agency; it is the legislation.

CHAIR—No, they only—

Mr Williams—The Child Support Agency does a great job under duress. I have been involved with them for a long time; they do a great job under duress but they get a lot of criticism. It is the legislation and the people like the politicians who make the legislation—

CHAIR—Exactly; it is us.

Mr Williams—You have to change the legislation to be fair to everybody. You said yourself, Chair, that you get calls from people saying, ‘It is not worth me working; I give up.’ In the mines at Mooranbah in Queensland—and I was told this by a politician and by the mine secretary up there—they had a walkout of over 100 people at one time because they were earning $100,000 but because of the amount of child support they had to pay they were left with nothing. We ought to go back and look at the true cost of keeping children.

Ms GEORGE—We have been having that argument.

Mr Williams—It is ridiculous to say that it costs $287 to keep a child because no intact family has that money. We have built up a single parent family with three or so children into a life of small luxury compared to an intact family.

Mr PRICE—I want to get a few things on the record. If we were to recommend changes to section 121, with safeguards, to allow publicity of cases, what impact would that have, particularly for members of your organisation?

Mr Williams—Our organisation has called for many years for the dismissal of section 121. If people feel they have had a bad deal from the court—and we all know the Family Court can make some very bad dealings—then they have a right to speak out and to seek help. But if they do that now they are charged. What is the court hiding? Is the court covering up something by using section 121? It is not as though people are going to go around and blow up Family Courts, or something like that. It is just not necessary to have that section there.

Mr Carter—As far as we understand it, the purpose of that provision originally was to avoid high-profile people having their affairs spread all over the press simply because they were celebrities and people have an interest in the goings-on. It was not intended to prevent debate about the excellence or otherwise of Family Court decisions. That aspect really has been neglected. It should not be beyond the wit of the parliament to change the provisions there to allow that sort of debate to occur without involving celebrities having their names and affairs splashed all over the newspapers.

Mr PRICE—One of the things that have startled me about the inquiry is the suggestion that we can deal with issues of contact and residency administratively rather than judicially. That would provide a great deal of flexibility in the way it was done. It would be cost-effective, and I think speed would also be an advantage. Does your organisation have a view about that?

Mr Carter—As I was saying before, there is a lack of balance between the child support issue and the access and contact issue. There was a kind of balance—the wrong kind of balance—if you go back 20 years or whatever, when child support was not paid and access was not provided. The child support issue has, to an extent, been solved. We now have an organisation that collects

information, follows people up and provides an enforcement arm. We do not have the same thing for contact and access, and we should.

Mr PRICE—So your organisation would be strongly in support of any recommendation the committee made to take out from the Family Court the issue of contact and residency, and make it an administrative decision?

Mr Williams—Of course. It is already in law. If you remember, in 1991 the law came out about contempt orders. Gareth Evans praised our organisation for putting up the amendment to the parliament, which got through. I remember doing an ABC program that morning, straight after it was passed, with the registrar of the Family Court, who happened to be a lady in Melbourne. The penalties came down then: if you denied access to your former partner after a court order, the penalties were 500 hours community work, a $2,000 fine or a jail sentence. The Chief Justice came out and said, just after that, that the court would not allow them, because it would be too harsh on the mother. When you have a Family Court judge who can overrule an act of parliament, we ask, ‘Why have we got a parliament? Why isn’t the court following what the parliament has decided?’

Mr Carter—I think you need to make a distinction between an order made by a court, which could be on the basis of application from the parties, which is one thing, and the actual enforcement of that, including by the use of the bureaucracy to assist. We would be in favour of the second, but that is not quite the same thing as saying that the court would be completely cut out of the picture. The court might well—

Mr PRICE—The court is not completely cut out of child support, as you know.

Mr Carter—Yes; exactly.

Mr PRICE—People can still appeal there. But it would take a significant amount out of the court, initially. In other words, if it was dealt with administratively then, just as child support whacks in, you would have to see an agency, sit down—that is, both parents—and be advised with the child, to give the child rights on contact and residency issues. Then you would either come up with a mutually satisfactory arrangement or register the arrangement that you have made, or alternatively have a decision made for you about those issues.

Mr Carter—I think that that is right. There is no difference between us on that. I think that as the Child Support Agency operates it keeps records—it knows what people’s obligations are. It follows up if people do not pay; at some stage they will have to pay. The same thing perhaps could operate with access: have a body there which keeps records. Instead of people having to go to a lot of trouble and expense in putting material together and then accessing the court, there should be someone within the agency who knows the story, and you just take it from there.

Mr PRICE—The chair and, I think, other committees have vigorously taken up the issue that we are attracted to the idea of joint residency as a starting point in negotiations. It seems to be a not unreasonable proposition. But we are repeatedly told that this would, in fact, become a legal presumption, and it would not be the starting point that we envisage it being. In a way, we can be torn between what people’s expectations are. On the one hand there is an expectation that the committee is going to recommend joint residency. On the other hand, if we can shift that near

monopoly of sole residency into a greater percentage of shared residency, by way of our recommendations and proposed changes, would your organisation see that as a successful or welcome outcome? How would you react to that?

Mr Carter—We would be very much in favour of that. In fact, if you want to generalise the point, I would say the whole concept of sole residency is really an idea that is on the way out and has already had its day. If you use that as your starting point—which is a pretty rigid arrangement in many cases; a lot more rigid than joint parenting—you are led into all sorts of strange lines of argument and all sorts of errors when you are designing schemes like child support schemes. A lot of those problems are artificial problems which could be done away with if you accept that we do not have residency parents and non-residency parents—we just have parents.

Mr PRICE—Yes, that was put to us this morning.

CHAIR—We have heard from Lone Fathers from right around the state now—you are a very organised organisation. We have had the opportunity to go through the submissions in detail, and, primarily, they have been the same. The one thing I wanted to ask about—and I have asked Child Support Agency to provide me with a scenario on this—is on page 36 of your submission where you have indicated that we:

> ... should calculate child support payable, at appropriate flat or declining percentage rates, on the basis of net income after tax rather than gross taxable income.

The scenario that I have put to them involves having an exemption, an exempt income—it is not exactly your gross wage, because you do have an exempt income. Are you looking at this with respect to removing the exempt income and going entirely by net income with the removal of the exempt income framework?

Mr Carter—No, we would not be doing that.

CHAIR—So you would keep the current exempt income and then look at it being a calculus on the net over and above the exempt income?

Mr Carter—I think there has been an awful lot of misinformation about child support, the cost of children and what schemes should look like, and so on. If you look at the logic of the whole thing carefully, there are really three issues. The first issue is that any parent's first responsibility is to maintain themselves. If they cannot do that, they are not going to be able to help anyone else, and they need sufficient income to do that—that is with the exempt level comes in. We would say that it should be the same for both parents. The second issue is, once you have overcome that hurdle, the next tranche of your income should be given predominantly to the other people that depend on you, which are your dependants, your children and, in an intact family, maybe your wife or husband as well. Once you get through that and you have provided a decent sort of level of support for your dependants, you reach another tranche of your income where your expenses tend to become more discretionary. There are different rules which apply in each of those areas of income, and they should all be represented in the formula in the right way.

Mr PRICE—Jim, I would love to be pulling out a few miracles as we progress with the inquiry but how would you feel if we reduced that disregarded income level significantly?

Mr Williams—Are you saying to reduce the disregarded income level of the payee? Why wouldn't you have a disregarded level for both parents equal to start with?

Mr PRICE—Even in your submission, Barry, you are saying that you feel it would be quite a satisfactory outcome to have 30 and 70 per cent shared residency. That presupposes that one of the parents has a greater percentage of the care than the other and that is limiting their work. You could run the intellectual argument that it should be equal—that happens in the 50-50 arrangement, obviously. But getting it down would not be a bad step, would it?

Mr Williams—No, it would not be. But you have to realise that both parents, even in a shared parenting situation, have to each have a home. The way it is now, the parent who cares for the children for the majority of the time is given the opportunity to have the house, but the other parent, who is paying for it, does not have the opportunity to have the same sort of residence so that the children are not disadvantaged when they are staying in that house.

Mr Carter—Coming back to the argument I was presenting before, the conclusion was that the exempt limit should be the same for both parties. Assuming that they are both healthy adults and that there are no special circumstances, the cost of looking after themselves is about the same for each parent. So at that point there should be no distinction made between the two.

Mr PRICE—At what point, though?

Mr Carter—You have to look at the cost. There are so many problems with the child support scheme at the moment because the assumed level of income at which people can sustain themselves is in fact well below what is required. The costs of an old age pensioner who has accumulated enough money to own their own home and who does not have responsibility for children—and I am not running down that category of person—may be somewhat less than that of a young vigorous parent who has responsibility for their children. The 10 grand figure really is a bit low, and the 30 grand figure is too high.

CHAIR—Mr Williams and Mr Carter, we appreciate you coming in. As I said, we have spoken to lone fathers around the country, and we have a very good understanding of Lone Fathers Associations' position on this. We have enjoyed your submissions, and it is refreshing to see the differences in leadership in the organisations around the state. We thank you for coming before the committee this afternoon. We have placed a great amount of importance on all of the submissions that we have received, and it has been good to see balanced views put before us. You can be assured that we have had a lot of interaction with the Lone Fathers Association.

Mr Williams—Thank you very much. We appreciate your talking to us.

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

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 1.08 p.m.