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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS

Reference: Child custody inquiry

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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS

Monday, 20 October 2003

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

Members in attendance: Mr Cadman, Mr Dutton, Mrs Hull and Mr Price

Terms of reference for the inquiry:

To inquire into and report on:

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

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

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

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

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

WITNESSES

Committee met at 9.37 a.m.

McINTOSH, Dr Jennifer Elaine, (Private capacity)

MOLONEY, Professor Lawrence John, (Private capacity)

CHAIR—I declare open the 17th public hearing of the House of Representatives Standing Committee on Family and Community Affairs inquiry into child custody arrangements in the event of family separation. This inquiry addresses a very important issue that touches the lives of all Australians. Today we will hear addresses on four broad topics related to the inquiry. These are the children's perspective, the family relationship services program, legal services and welfare implications. Several representatives will appear in each of the groups addressing these four topics.

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

Prof. Moloney—Thank you for the opportunity to address the inquiry. I would just like to say three things by way of more systemic comments. Jen will be speaking more from the perspective of a developmental psychologist and will say something about the impact of conflict. I do just want to emphasise from the start that I am not here to represent any particular organisation. Although I work as an academic these days, my interest in family law goes back to 1975, when I joined the court as a counsellor. I was subsequently director of that service in Victoria from 1977 to 1985 and acted, from time to time, in the position of national director.

The part of the inquiry I want to speak to is the question of post separation parenting arrangements and, in so doing, the difficulties I see around the fifty-fifty rebuttable presumption as a solution to the disquiet around current practice. First, I would like to say something about the origins of this disquiet. I think we are in a transitional period in which men are becoming more aware of the roles they play and wish to play, not simply as breadwinners but as nurturers to their children. Many men are no longer willing to be seen as mere visitors to their children and, more importantly, the evidence for some time has been that most children want greater involvement with their fathers after separation. Some women welcome this development; some feel it is unfair because women are the ones on whom society has traditionally loaded its expectations about the care of children and, of course, care generally. In the publication that arose from my submission, which I have presented to the committee, I have gone into this in more detail.

The second thing I would like to say is that, in my view, the Family Court has struggled to produce a balanced response to these developments. I am not suggesting this is easy; I think some cases that pass through the court would be seen by most reasonable people as verging on the impossible. But there is a sense in which the Family Court, although it can never please all its clients, has begun with and, I believe, remained fairly stuck on the idea that there must always

be one primary parent, usually the mother, and another parent who is relegated to the role of visitor. Again, I have tried to expand on this issue in my submission and in the published material. I also think there is evidence that many men who have attempted to go beyond the stereotyped notion of breadwinners have been placed into the same category, at times, as men who seek to control their partners and their children. In other words, there is a mix-up of this with the idea of violence, and I think that is very unfortunate.

The third point I would like to make is the well-recognised fact that the Family Court has not been able to throw off the shackles of adversarial processes or to find really adequate ways of hearing the voice of children. I think these problems go hand in hand. Adversarial processes may have a legitimate place in determining allegations of child abuse and violence, but I think almost everybody now agrees that adversarial processes are inappropriate for most family disputes. The cost of encouraging parents to denigrate each other and to trawl through years of anger and disappointment is simply too high. The court has tried to address that but, I think, with very limited success.

In my view, we have been lulled by a mantra of the best interests of the child and yet, paradoxically, we know that child-focused and non-presumptive practices do provide the best chance of assisting high-conflict couples to move on and not litigate. Of course, there are cases that do litigate, so what about them? It is true, we know, that these cases represent only a small fraction of the total number of disputes, but these cases also cast a shadow over the less formal decision-making processes. Lawyers advise clients on the basis of what courts have done in the past and it could be argued that that is essentially what lawyers have to offer. Adversarial litigation that drives these cases is flawed in at least two respects. As a process, it leaves parents estranged from each other, and the outcome that sits beside this process of estrangement is the very assumption that one parent needs to be the primary parent because these parents have demonstrated an inability to cooperate.

In my view, we need to begin with a rebuttable presumption that parents should be actively involved with their children and not mere visitors. Exactly how that involvement is achieved will vary from case to case, but it must start with a realistic, rather than a token, focus on the child's needs. We need to give continued support to child-focused mediation practices of the sort pioneered by my colleague Jen, but we also need a radically different form, I believe, of child-focused decision making. What do I mean by this? I think family members need to feel that they have been heard and that they can say what they need to say, not in a manner filtered by a barrister through legally modified language but directly and in their own language, to a decision maker who has the skills to check that he or she has indeed heard accurately.

We know that clients distinguish between process and outcome. So even if the outcome is less than what they want, which of course is often the case in family law, they are more likely to live with it if they feel they have been heard and treated with respect. So this points, at the end of the day, to two important changes, from my point of view. The first is a move away from gender laden and adversarial reinforced assumptions about a universal need for a primary parent after separation. There is one qualification about the primary parent issue that relates to very young children, but Jen will speak more about that in a moment or two.

The second, I think, is an extension of a thinking behind child focused mediation into areas of litigation. As I said, traditional family law litigation could be preserved for cases with allegations

of abuse and violence, although the court needs to continue to strive to link this work with the work done in state jurisdictions—that remains a huge problem. But I would invite the committee to consider that the other cases—the non-violent, non-mediatable cases—need a less formal tribunal system that would be chaired by one or more individuals who have an in-depth understanding of child development and family dynamics and who, whilst retaining their authority, can engage directly and respectfully with family members.

CHAIR—Thank you, Professor Moloney.

Dr McIntosh—Good morning. I am pleased to assist you, hopefully, in your inquiry. I am an independent psychologist. I am a developmental psychologist and a researcher. I direct an attachment clinic in Melbourne where we specialise in the assessment of children's psycho-emotional development in relation to their relationship with their caregivers. My research into the impacts of parental conflict on children is current, as you will see from my submission. I am currently engaged in a longitudinal study with La Trobe University and Relationships Australia into the outcomes of child inclusive dispute resolution for families in conflict post separation. This is the first study of its kind in the world. It is funded by the Attorney-General's Department.

The lens that I want to bring to this inquiry is developmental. I want to just briefly expand on my submission, drawing a very precise emphasis to the developmental issues at stake in the fifty-fifty presumption. Specifically, I want to assist your thinking about when this presumption is and is not psychologically safe for children.

My first recommendation is that we think about it in this broad framework. A presumption of fifty-fifty residence is not a safe presumption when that arrangement is not psychologically useful to the child in question and when it runs counter to their developmental needs. By that I do not mean that children may be temporarily unsettled. What I am referring to are living arrangements which impact on core features of a child's psycho-emotional development. The research literature satisfies me that there are two conditions under which this presumption is not developmentally safe for children. The first is when children are exposed to intense or protracted conflict between their parents post separation, and you have my paper as part of that submission.

The second is a more general truth: infants and toddlers are at the highest risk of negative outcomes from a fifty-fifty presumption. An absolute truth, in my view, is that children under the age of three are sorely threatened by a fifty-fifty arrangement when their parents' state of mind means that their joint parenting capacity is damaged. These latter points are controversial and in some circles they are unpopular. I acknowledge that the material I am going to present just now is challenging conceptually and not to be taken on board overnight, but I firmly believe that we ignore it at the peril of our future generations.

The single most important psychological task for any child between nought and three is to establish and consolidate a secure attachment with at least one caregiver. An attachment is a biologically driven bond of unconditional psychological dependence. The quality of attachment that an infant forms has a profound influence on every aspect of their development—personality, cognition, relationship capacity—and we now understand absolutely that brain development is completely connected to the quality of attachment that an infant forms. If you look at it this way, of our social indicators poverty is the strongest societal contributor to poor outcomes for

children. Attachment is by far the strongest psychological predictor of poor outcomes for children and adults.

There are four main styles of attachment that form: secure, anxious, avoidant and disorganised. It is the latter group about which we have grave concern. Disorganised attachments form in infants who have experienced a pattern of poor or unpredictable attunement by their parents. Disorganised attachments are absolutely at the core of negative psycho-emotional outcomes. These are infants who become children who become adults who become parents with alarming levels of emotional insecurity and poor ability to regulate strong emotion.

You will see that what I am talking about is a vital social policy issue. In the normal population out there in Safeway and Coles, 14 per cent of the population have a disorganised attachment style. In the divorced population of children, this rises to about 20 to 25 per cent. We now have evidence, and I have tabled one study, to this effect: of the infants under 18 months who have a shared residence arrangement, it has been found that 60 per cent have disorganised attachments. The infants in this study, and others which replicate it, are found to have parents whose conflict post separation is entrenched. These are parents whose relationship does not enable them to provide the emotional scaffolding that is absolutely necessary for infants to cope with the strain of multiple transitions in their lives. For infants who have regular access to a non-residential parent but not overnight, their attachment styles fall within the normal range. Shared residence for infants under three poses enormous risks. The presumption only works if we assume that these infants have at their disposal a parenting relationship that can support them through the strain of transition. One-third of infants have that but two-thirds do not in the separating population.

I want to close with these thoughts. The fifty-fifty presumption is developmentally risky for the under three population. It has the potential to seriously augment the already alarming numbers of children who develop poor attachments and achieve poor psychological outcomes in their lives. I am not an economic rationalist but you do not have to be one to realise that this poses serious problems for our future generations of workers and parents.

What are the solutions? It makes no sense developmentally to talk about children. We have to get better at distinguishing what forms of residence are developmentally useful to infants, to children and to adolescents. In my view, even with a sharp developmental perspective this can almost never be presumed for individual children. I believe what we need is a system that makes child focused dispute resolution mandatory for separating parents in conflict. That would include an astute developmental consultation for preschool populations and child inclusive mediation for school-age populations. In that way we build a system that is concerned first with children's rights to psychological wellbeing and we support parents to create that.

Mr PRICE—Did you say that 60 per cent of children were in shared parenting?

Dr McIntosh—Infants under 18 months.

Mr PRICE—Okay, what do you mean by shared parenting?

Dr McIntosh—Over 70 nights spent overnight per year. This is referring to the work of George and Solomon. You have one of their studies before you.

Mr DUTTON—Do we have that study to which you refer?

Dr McIntosh—You do.

Mr PRICE—It seems to me that what you are encapsulating is that, in a sense, it is the children that are the greatest victims of parental separation?

Dr McIntosh—Potentially, yes.

Mr PRICE—You have drawn an interesting mud map. The committee has had the advantage that it has been on the road for a while. Whilst we have not put anything down in concrete, it is fair to say that we are interested in fifty-fifty as being a starting point rather than the mandatory outcome or the rebuttable outcome. Getting back to the earlier opening statement where you talked about getting away from the adversarial impact of the Family Court, certainly in terms of residency and contact it has been put to the committee that that actually could be handled administratively rather than judicially. If we were looking at setting up an administrative decision-making organisation, what would you say would be critical in terms of the skills of that organisation in making determinations about residency and contact?

Prof. Moloney—Some of the things I mentioned in the opening statement to me are absolutely essential. The core skill is the skill of either the decision maker or decision makers in that interaction that they have with the family members. The decision needs to be made—nobody is backing away from that—if you have tried all other avenues, but what you hear over and over again with adversarial processes is that people do not feel heard. They have been set up right from the beginning to be against each other and, almost regardless of the outcome, most people walk away from that process feeling pretty badly about each other. More importantly though, the capacity they have to continue to parent cooperatively is greatly diminished. You need processes that allow people that space. One of the issues that has always been difficult around traditional legal processes is that emotion does not come into it. Proper behaviour in court is, of course, not to be emotional. That is part of being human. You have to find a way in which that emotion can be legitimately expressed—I do not mean allowed to run rampant, but legitimately expressed.

Mr PRICE—It has been put to me in the past that not every two parents or particularly one of two parents is equipped to deal with mediation. Could you give me a definition of what you mean by mediation?

Prof. Moloney—Okay, I will do my best. There are various forms of mediation but I suppose—

Mr PRICE—Which form are you advocating?

Prof. Moloney—I have just published a paper on what I have called ‘therapeutic mediation’ or a whole review of various forms of mediation. I am not advocating a particular form, but I will come back to your question. The form of mediation you use needs to be decided at what is called an ‘intake’ where both parents are given an opportunity to meet with the potential mediator or mediators. The process itself is one in which as much as possible the content of the material is defined by the parents but the process is very much managed by the mediators. The

mediators as far as possible back away from content and as much as possible accept that parents are the best judges of their own children's needs.

Where the mediation process works exceptionally well is in the child inclusive version of it. In the model that Jen and I have been teaching, a separate child interviewer works with the children and then goes back into the mediation session and talks to the parents about not so much what the children want but how they are doing and how they are seeing the situation. The parents negotiate as well as their own needs, which are typically up on a whiteboard or something, John's needs and Mary's needs, and they become part of the equation. That has a dramatic impact on the way parents cooperate.

Mr PRICE—Have studies been done to compare the skills of separating parents with intact parents? Do separating parents have equal parenting skills or generally less parenting skills? If it is the latter, we are constantly reminded about the benefits of mediation and, indeed, compulsory mediation, but we are not urged to ensure that separating parents have their skills uplifted. From what you are saying to us they need greater skills on separation, not fewer skills.

Prof. Moloney—That is the paradox. At the very time that they need these skills they are often struggling—not because they are necessarily poor parents but because it is just a very difficult time. There are evangelists in the mediation world who speak of transformative mediation—mediation that has an amazing impact, and at times it can. There are very difficult issues about when you say, 'This is enough.' It is enough to get these parents back on track in a sort of cooperative mode, with an option to come back if the wheels start to fall off again. We have to be careful, clearly, because there is a history in the area of social sciences of overdoing it at times of crisis and being too intrusive in people's lives. We have to be very careful about that but at the same time keep the focus on the children.

Mr PRICE—Let me put it another way: even if you did not make the uplifting of parenting skills mandatory but encouraged it, is it fair to say that those people who may wish to access that would not have it available anyway?

Dr McIntosh—I have a paper coming out in this edition of the *Journal of Family Studies* on the nature of normative conflict and enduring conflict which will address the question you have just asked.

Mr PRICE—Feel free to table the paper and we will give you some advance publicity.

Dr McIntosh—Okay, I will forward it to you. We have the galleys here. It is not that the separating population have worse parenting skills; it is that separation imposes an assault on parenting capacity and it is conflict that drags parents down and compromises sorely their ability to be attuned to their children's needs. In my study of children in contact in extreme conflict situations, I had a look at the relationships between children and fathers that developed over six months in supervised contact and it was evident that the children who most benefited in their relationship with their father over that time had fathers who became more confident in their parenting capacity, and that was associated one to one with reduction in conflict with the ex-spouse and the ex-spouse's support of the father in his role. It is not that we need to send these parents off to parenting classes; we need to send them off to a very supportive form of developmentally focused conflict resolution. I emphasise the word 'support'. It is not that these

parents need to be hit over the head; it is that they need an auxiliary ego at a time when they are really struggling to make sense of their own emotional world, let alone that of the whole family.

Mr PRICE—Thank you.

Mr DUTTON—Dr McIntosh, following on from the point that you made about the study you looked at, that was with fathers in supervised contact arrangements; is that right?

Dr McIntosh—Yes.

Mr DUTTON—What would the circumstances be there? Why would they need to be supervised?

Dr McIntosh—Most would be court ordered and about 20 per cent would be referred through other channels.

Mr DUTTON—Would that be because there have been allegations of some sort of impropriety?

Dr McIntosh—In some cases, but not all. It was that the conflict between parents for whatever reason was so extreme that they could not manage to hand over their children without the conflict spilling over. These are the sorts of parents who are using McDonald's and the police station et cetera. That study is available to you. Did you find it in the library?

Mr DUTTON—I am interested in concentrating for a moment on the majority of situations where at the point of separation you have a good and caring mother and a good and caring father who have an inability to continue a relationship between themselves but have both played an active role in the child's upbringing. Take for argument's sake that they have a child of the relationship who is five years of age and dad takes that child to sport or whatever the case may be. Do your findings differ for those parents? I just want to have clear in my own mind what it is that you are saying. Are you saying that, regardless of what the parenting skills are of the non-residential parent, for argument's sake, that really is not a factor; it is the fact that you are taking that child away from the mother and therefore having a difficulty in forming a bond there? I am just confused with part of your evidence.

Dr McIntosh—The evidence suggests that infants under 18 months who are subject to regular overnight visitation develop in two-thirds of cases a disorganised style of attachment to their residential parent. That does not happen because the quality of parenting they are receiving is bad; it happens because of the conflict that they are exposed to and it happens because of the state of mind that the parents are in vis-a-vis the conflict which absolutely compromises their ability to be attuned and to support that infant through the visit exchanges and the periods of absence away from attachment figures et cetera. One-third of the population are quite capable of supporting infants through useful visitation schedules, are capable of being flexible and are capable of responding to infants' needs. Unfortunately, that is not the majority. What I am saying, therefore, is that the presumption is unsafe if we are looking statistically at that population.

Mr DUTTON—And what about children post that population? On page 2 of your submission you talk about 38 per cent of couples who share cooperative co-parenting post separation. Would it work for that group of people, for argument's sake, in that age group post the population you are talking about?

Dr McIntosh—I am not sure I understand the question.

Mr DUTTON—I am just confused. All the evidence we have received indicates that, for a child's proper developmental capabilities, they should have contact with both parents. When you are talking about situations where there is not overt conflict in the presence of the child between the two parents—the two parties are adult enough either to put that to one side when the child is there or deal with it later on—you are saying to us that the child spending X amount of nights with the non-custodial parent, for argument's sake, would be inhibitive to the developmental growth of that child.

Dr McIntosh—No, not necessarily, not in situations of low conflict and responsible attuned parenting. I personally do not think 50-50 is a good option for the under 18—

Mr DUTTON—What do you mean by 50-50?

Dr McIntosh—Residence.

Mr DUTTON—You see, this is the problem that we have got in the community at the moment, and I have seen it through some of the witnesses that have come before us. We are not talking about mandating to couples that are separating that one party will have seven nights this week and the other party will have seven nights the next week.

Dr McIntosh—No, clearly.

Mr DUTTON—We are suggesting that 50-50 would be a starting point because, for whatever reason, despite direction from this parliament about eight years ago and despite the direction when the act initially came in, the Family Court have not been able to deliver a fair starting point. We have this 80-20 template at the moment which many people find unsatisfactory, and I suppose that is part of the reason that we are here. I am suggesting that it is merely a starting point and that the parties would then be able to say, 'Because of work arrangements, I would not be able to meet that,' and it would come back to 70-30, for argument's sake. The evidence we have taken has shown that it is good for children to have contact with both parents in normal situations where there is no violence. You seem to be going against that. I do not know whether you fully comprehend what it is that we are talking about—that it is a starting point, not a mandated 50-50 for everybody who comes into the process.

Dr McIntosh—I do understand what you are talking about. All the evidence suggests that children benefit most when they have contact with two healthy parents throughout their lives. There is not a shadow of doubt about that. I am suggesting that you need to consider very carefully the developmental vulnerabilities of children under three when they are exposed to a shared residential arrangement which takes place in the context of ongoing parental conflict. I want to be very clear about that. I feel that the evidence is strong enough to say that that perhaps ought to be an automatic rebuttable position.

Mr DUTTON—What does the evidence show for children aged three years and over?

Dr McIntosh—The same.

Mr DUTTON—Where do we find that?

Dr McIntosh—You will see that in the paper that I have submitted from the *Journal of Family Studies* entitled 'Enduring conflict in parental separation: pathways of impact on child development'.

Mr DUTTON—Do we have a copy of that?

Dr McIntosh—You do, as part of my submission. This is a particularly important paper. It summarises up-to-the-minute research on what I am talking about. You will see this is an area where research is light years ahead of practice. You will see the evidence laid out from extremely sound longitudinal research that follows infants, children and adolescents and that looks at optimal outcomes for those groups, vis-a-vis, relationship parenting capacity post separation. The findings about the corrosive influence of parental conflict apply right throughout the populations that we are talking about. For adolescents in particular, the outcomes are very poor when they are subject to a post separation arrangement of high conflict. The outcomes are listed, but I will point to some in particular. These children are far more likely to present to mental health clinics. They are twice as likely to have teenage pregnancies. They are far more likely drop out of school early. There are a number of indices of an alarming nature up at the other end of the developmental spectrum.

Mr DUTTON—And all of this is because of the additional contact that they might have with the other parent?

Dr McIntosh—Because of exposure to conflict between the parents and the—

Mr DUTTON—There is a fine point there, though, isn't there? I would not take any issue with you in relation to those difficulties being present in relationships where there is a high level of conflict. I would not doubt that. But I do not have it clear in my own mind how it is that additional contact with the other parent, for argument's sake, compounds that, particularly if we were able to put in place a system where drop-off and pick-up did not occur in a situation where there would be conflict—changeovers at school, for argument's sake.

Dr McIntosh—Sure.

Mr DUTTON—If there is a situation where there is a high level of conflict with a low level of contact with the non-resident parent and the same situation but with a high level of contact with the non-resident parent, I am not sure that the contact is the problem, except if you have got two parents clashing at the point of contact each time. I do not see how the contact could bring on those developmental problems as opposed to the actual prevalence of the conflict that was there.

Dr McIntosh—Yes, your point is a really important one. Supervised exchanges are one safeguard, and they are very important. In my study, I found six out of seven children benefited

from that sort of arrangement. One out of the seven, in my view, should never have had contact, and those children were subject to ongoing threats by the non-residential parent of harm to the residential parent and abduction.

Mr DUTTON—Nobody is supporting those sorts—

Mr CADMAN—Of course nobody would accept that sort of arrangement.

Mr DUTTON—Nobody is supporting those people, but—

Dr McIntosh—Let me finish my point. This is a non-gendered debate, also—there were equal numbers of male and female residential parents in that study. That is a safeguard. The other factor is that you can safeguard children from animosity in exchange; you cannot safeguard children from a parent who is persistently toxic about the other parent in the presence of the child. It is that level of screening that, somehow, we need to get better at. We need to get better at educating parents about the impact of derogatory, divisive statements, exposing the child and putting the child—

Mr DUTTON—Nobody would take issue with that, would they? If they were reasonable in this debate, they would not take issue. But that level of conflict—

Dr McIntosh—But our system does not currently handle that very well.

Mr DUTTON—It could be the custodial or non-custodial parent—or whatever terms you want to use to refer to these people—with that level of conflict or animosity towards the other parent. It could be the custodial parent, for argument's sake, that has that animosity toward the non-custodial parent. Equally, it could be shared. There is no sort of moral domination on those grounds.

Dr McIntosh—No, there is not.

Mr DUTTON—So how does that argument then hold up? I do not understand that argument. You are saying that it would be a good thing if we removed conflict from the point of changeover. Everyone would agree with that. If we could facilitate a much easier process in changeover, that would be fine. But you are talking about exposure to conflict then being one parent running down the other parent in their absence and, therefore, we should not allow more contact with the non-custodial parent because that may expose them to—

Dr McIntosh—I did not say that.

Mr DUTTON—I am just trying to understand what is that you are saying.

Dr McIntosh—I do not believe that to be true at all. What I want to point out—then I will let Lawrie answer—is that I am not exactly sure how you have interpreted my work in that way. I am an advocate of active, equal contact for children—

Mr DUTTON—I am just trying to understand where this conflict is present. If we took it out of the changeovers—

CHAIR—Could you just let Dr McIntosh finish what she is saying—

Mr DUTTON—Sure, I would be happy to hear it.

CHAIR—without you interjecting. I would just ask if she could finish what she is saying.

Dr McIntosh—We do not have a disagreement. What I am saying is that we need a system that supports parents with timely, supportive education and dispute resolution to help them to take the sting out of the kinds of toxic encounters that go on within the walls of both homes. So this is not about the amount of contact. But, if we are looking at a system that supports children's rights for psychological wellbeing, we cannot stop at saying that a safe changeover is a good thing. That is my point.

Mr DUTTON—The problem is that that does not answer the question.

Prof. Moloney—What Jen has introduced—and it may be new to the committee; I am not sure—is this developmental perspective, especially with very young children. Jen is the expert on attachment, but I also come from a psychology background and I understand the principles. There are some very tricky issues around this. With very young children it is absolutely critical—and I think this was in Jen's opening remarks—that, at a minimum, one person be supported in retaining that attachment and bonding. If that is put under threat—and it may, in many ways, seem unfair—we cannot ignore that. That is with very young children. I have to say that there is controversy in the literature on just how that translates into action in terms of overnights and so on. Jen possibly has a slightly stronger view on that than I do, but she has more knowledge as well. I am just wondering if that is where it has got confused. As the children get older I think we get into different issues, really. That very primary kind of attachment is less threatened as children get older.

Mr PRICE—In terms of the status quo you are saying that, if the committee are to do anything, we should be strengthening parents who are separated so that issues of contact and residency become mutually satisfactory and empowering for the children.

Prof. Moloney—Absolutely. But, of course, to start—

Mr PRICE—It seems to me that you are very critical of the current situation.

CHAIR—Professor Moloney is, I think.

Prof. Moloney—Yes. I think the evidence is there that in many ways we have just allowed what was happening in 1975 to more or less continue. I do not think we have been sufficiently responsive to social change in this area. I also feel quite strongly, though, about attempts to remedy that by beginning with a presumption around time. To put it at its crudest, it is actually commodifying children; it is saying, 'Imagine a child is like a house that you can divide up.' I do not think that that is where you start. You start with a serious attempt to look at how these children are doing and what they need. We do not do that very well, either. As I said in my opening statement, I think 'the best interests of the child' has become a mantra. We just trot it out. We all heave a sigh of relief and say, 'That's done. Now let's get on with the real fight.' That has to change.

CHAIR—I refer to the video that was provided to the committee members. I think that starts to demonstrate what both Dr McIntosh and Professor Moloney are speaking of here today: the discussion, particularly with respect to Professor Moloney's submission, of the issue of quality mediation versus the adversarial process. That brings about a far different outcome in conflict than the outcome that might have been demonstrated in the past. Mr Dutton, you still want an answer to a question that you seem to have in your mind. Could you frame it so that Dr McIntosh may be able to answer it?

Mr DUTTON—It is probably clearer if I put it in terms that we are talking about the three years plus age group, for argument's sake. I do not doubt that that bond needs to be established in that younger age group, so let us take that as a given. If we are looking at a situation where two parents separate, there is obviously some level of conflict, the reason for which they have separated. But they have both been good parents, and they continue to be good parents post separation—that does not change. If there is a level of conflict in the relationship between the two parents—and we take that as assumption 1—assumption 2 is that we have not a shared care arrangement, but three nights a week, for argument's sake. I do not understand how the level of contact can be detrimental to the development of that child, providing that you have got two well-intentioned, good parents and providing that people are not being bashed up at changeovers and all this sort of stuff. I understand what you are saying in relation to conflict, but I do not understand it in relation to contact. If the level of conflict is already there in the relationship, it is there regardless of whether the non-custodial parent has access one night a week or three. If we can take away the difficulties at changeover, handover or whatever term people use, I do not understand how the contact is reflective on that or inhibits the development of that child.

Dr McIntosh—If your assumption 1 is that these children have two good parents who care and are responsible, then I do not see either how contact would impact negatively, provided they are managing their conflict, that they are keeping their children out of the middle of it. The evidence is excellent in this regard, that well-managed conflict need not impact negatively on children's lives. Therefore, the kind of contact arrangement that you are suggesting in this example is not problematic, provided conflict is well managed. Conflict well managed can have some benefits for children—to see, for example, how adults can handle it and resolve it. The children who do the best are not brought into the middle of a conflict, they are not threatened by the conflict and they see resolution. So it is not conflict per se that has the impact. I think, in a sense, there is good evidence to support what you are suggesting.

Mr DUTTON—My question then is: why wouldn't we provide a fifty-fifty starting point for those people?

Prof. Moloney—Why would you, though?

Mr DUTTON—Based on what Dr McIntosh just said. If you have got a situation where you have a good mother and a good father and there is not the level of conflict that would inhibit the contact with that child, why wouldn't we provide the ability for that child to have contact with both parents, when all the evidence says to us that it is in the best interests of the child? I would be interested to hear your response, Professor Moloney.

Prof. Moloney—My response is that you start with the child. You do not treat the child as an object, and that is, with due respect, what you are doing when you say, 'Let us start with fifty-

fifty.' You inquire as to what does this child need—and what does each child need? Children need different things at different developmental stages. Different children within the same family need different things. If I were a child I would be appalled at the thought that parliament had decreed that after separation that is what should happen.

Mr DUTTON—What, that you have contact with your mother and father?

Prof. Moloney—Not at all. I would be appalled at the thought that I do not seem to have much flexibility or say in this. I understand that your argument is that it is a rebuttable presumption, but why start with that presumption? What we as parents need is a system that genuinely looks to what these children need, and I have written a lot of stuff on this in the past five years or so, that men have often been ignored in this process. So we do need a kind of kick-start, I think, but that is not the kick-start we need.

CHAIR—I have a follow-up question. Mr Dutton is clearly saying that the evidence that we get on paper, in submissions from organisations and from research, is that it is clearly beneficial for children to have as much contact with both parents as possible, in the best interests of that child, excluding the areas where there is severe conflict, intimidation, domestic violence et cetera. Commonsense must prevail there. We are talking about just the area of breakdown where there is no domestic violence or abuse toward a child or the partner. The evidence we get is, overwhelmingly, that it is in the best interests of the children to have a lot of contact and association with both parents. We cannot deny that because it is all the way through the evidence. It is in every single paper that we have had. But the clear fact is: it does not happen.

We receive countless research. Every bit of information seems to point toward the fact that the children who do not have regular contact wish they did; that the mothers in full residence with the children at the moment, with maybe just an 80-20 share, would like to see more contact happening; and that the fathers, who perhaps have an 80-20 share would like to see more contact happening—but it does not happen. You, again, Professor Moloney, speak of the issue that all of the evidence suggests, but it is still not happening. It seems to me as though we all have all this evidence that says it is clearly in the best interests of the children—outside of domestic and other violence—that children have as much loving contact with each parent as possible, yet it is still not happening. I cannot understand why that is so.

I will turn to the submission of the next witness, Relationships Australia. It would be nice if you could stay and listen to Dianne Gibson of Relationships Australia.

Prof. Moloney—We will do that.

CHAIR—Within that submission, at 2.5 'Child developmental stage', there is a table which goes through the developmental needs of children aged from nought to two. It talks about the first year of a child's life and how ideal it would be for infants to interact with both parents every day or every other day. For this to work, of course, it says, 'It is important that parents have confidence in each others' skills and agree on key aspects of care such as feeding, crying response, stimulation, sleep routines et cetera.' It then goes into the preschool years. It seems that there is so much evidence but that all this evidence does not deliver the required or desired result. That is the issue of concern that this committee is confronted with.

Prof. Moloney—I understand that. Can I make two responses to that? I think the phrase 'as much contact as possible' to some extent misses the point. It is not 'as much contact as possible'—I hate the word 'contact'—although you need interaction between a parent and a child or nothing will happen. But the idea that you quantify that and then that solves the problem or gives the child what he or she needs is, I think, with all due respect, a naive kind of idea. Children need ongoing parenting from both their parents. The way that parenting is delivered varies enormously—I know that both professionally and personally. It does not reduce itself to some kind of fifty-fifty doling out of the time. So that is one point.

In a sense, the more critical point for me is that the solution to this via legislation seems to be, again, the wrong solution. This is a social problem. It needs strong support. People from my own profession have not been well enough aware of this and not willing to stand up and be counted around this. I am a family therapist. I think a lot of family therapists are frightened of family law. They do not want to have to get in and mix it with lawyers, so they tend to push these problems to the side. But the solution lies in those kinds of consultations within mediation and conciliation, or within the adjusted decision making system I was alluding to.

CHAIR—We respect that and we understand that. We know that governments cannot legislate for people to talk with one another, to like one another, to relate to one another. All of the evidence points to the fact that children deserve and are entitled to the love of, and a good relationship with, both parents post separation and prior to separation. With all the good intentions in the world, and with the changes to the Family Law Court process, to the way we relate in words and to the way we rephrase contact versus residence or custody versus residence et cetera, it is still not delivering the outcome that the research tells us people want.

Prof. Moloney—I understand that. Again, I can see what is driving this solution. As a professional I would find it a handicap to start with a couple and their children and say, 'The law says that where we start is fifty-fifty.' I would not want to work that way. I would want to work with this family and say, 'Tell me what has been happening. Tell me how it is. Tell me what would work. Tell me the things that would be problematic in that.'

CHAIR—With respect, Professor Moloney, breakdowns do not happen overnight. If I could just come back to Dr McIntosh, we talk about one parent poisoning a child against the other parent or making derogatory and inflammatory remarks about the other parent. Breakdowns do not happen overnight. They take some time. We heard evidence the other day which indicated that people are in different stages of grief at different times. The person who is set to leave has been leaving for some time. They are more attuned to the breakdown by the time they have left—unless it is a violent relationship where it is a snap decision that they must leave because they are in danger. In a relationship that is not going well, one person is always a lot further through the process than the other. So in one person's mind they have been going to leave for two, three, four or five years. They may have come to a position of grief and everything is over. They have mourned the loss of that relationship during the time that the relationship was still intact. The other partner may have very little idea that that is taking place. So they are at very different levels.

In the lead-up to the breakdown, the person who is looking to leave may already be influencing the child, before anyone gets to the mediation stage. The parent who is leaving—not the person left—is going to perhaps have influenced that child or children over a long time, such

as bringing attention to the lack of care and involvement of the other partner in order to have that child adaptable and able to recognise and understand, when the parent goes, why they are gone. The problem I have is that when you deal with it post breakdown you have basically not dealt with the impact of when the relationship was intact. You start with the presumption, 'What happens?' and, 'Let's talk about what you both feel is the right thing for your children.' Then you go away and talk to the child, when the child may have been very well influenced prior to any of that taking place. So it is not a level playing field.

Prof. Moloney—No, it never is.

Dr McIntosh—This is entirely the mandate of child-inclusive mediation. The model that we are currently researching is not only to deal with post separation restructure and its management but also to allow a space for healing pre-separation conflict and its impacts on children. It plays a vital role in parents being able to reflect on what path their children have travelled inside the marriage through the conflict. Some of these children have been exposed to 11 or 12 years of conflict before their parents separated. That needs to be understood and addressed to give some scope for healing before parents move forward into an arrangement that is going to add another layer of stress to what already exists.

CHAIR—Would the presumption prior to separation that you may be able to share time with your child on an equal basis after separation deter that conditioning of a child by the parent who is going to leave? Could that presumption deter the type of action that that parent will inevitably start to put in place in order to create the least possible problem with their children? Could that presumption change the way in which a child is conditioned prior to the act of separation? If there was an opportunity for time with that child to be shared equally, that may influence the way in which you would behave prior to separation.

Prof. Moloney—It is a very interesting point. I do not know whether people's behaviour would change if there was up-front legislation and people knew right from the time they married that this was what was likely to happen. There are many issues in that, but I think it is a very interesting point. I would have no problem with that if the presumption was that they would share the parenting after separation. That is where I think we need to be. But, to pin that down to a presumption about blocks of time or to put numbers on it, again, I would go back to my basic point: I think it is very disrespectful to children. I would find it quite offensive, frankly.

Mr CADMAN—Are you aware of any international studies comparing Australia's arrangements with the arrangements particularly in other English-speaking countries?

Prof. Moloney—Not so much comparing, but I am aware of what happens in certain jurisdictions—for example, in parts of—

Mr CADMAN—Would you agree with the statement that the court's extensive freedom of action seems to make it possible for the court to control or even exercise virtually all the rights encompassed by or of parental responsibility?

Prof. Moloney—Are you saying that the court takes a non-presumptive stance—allegedly; I do not think in many ways it does? Is that the question?

Mr CADMAN—I am just asking whether you agree with the statement that the Australian court, because of the extensive freedom it has, seems to take responsibility to control and even exercise virtually all the rights encompassed by or of parental responsibility.

Prof. Moloney—I am really struggling to understand that question.

Mr CADMAN—What it is saying is that the court stands in the gap and becomes the de facto parent, I think.

Prof. Moloney—I suppose so, if at the end of the day a decision has to be made. Is that what you mean?

Mr CADMAN—I do not know; I am quoting somebody else and asking whether you agree.

Prof. Moloney—I am finding it hard to understand the statement.

Mr CADMAN—It is an authority. I will give you the reference.

Prof. Moloney—The reference will not help; it is what the author means.

Mr CADMAN—It is an authoritative comparison of the various courts published in the *Australian Journal of Family Law*. It is a study by Eva Ryrstedt, who seems to be qualified to make those comparisons and who makes that statement. You cannot offer an opinion on that?

Prof. Moloney—I am sorry but I do not understand the statement.

Mr CADMAN—You are not familiar with court outcomes case by case?

Prof. Moloney—With court outcomes?

Mr CADMAN—The decisions of the Family Court of Australia and the result of each decision case by case. You are not aware of the factors in each decision?

CHAIR—Professor Moloney, if Mr Cadman would like to provide you with the information, you could take it on notice and give a response.

Prof. Moloney—I am happy to give a considered response.

Mr CADMAN—The Chief Justice of the Family Court when he appeared before us seemed to agree that there was a de facto 80-20 arrangement in place, or seemed to think there was a perception in the community that there was a presumption that there was an 80-20 rule. Would you be equally opposed to an 80-20 presumption as you would be to a fifty-fifty one?

Prof. Moloney—I am opposed to starting with a numerical presumption.

Mr CADMAN—How do we get away from the 80-20 perception, then?

Prof. Moloney—I think that is what we have been discussing, and I think it is more complex than simply making a law that says, 'We'll start with this particular number.' I agree that this is not a simple issue and I agree that we have lagged behind the social changes. I am just concerned that the solution that is being put forward in terms of fifty-fifty is too simplistic a solution.

Mr CADMAN—I go to the dot points of your conclusions included in your submission. You suggest at the first point that the court should exercise more of an overseeing role in its decisions to see whether things are working out fine. I understand you would like the court—and I quote:

... in the light of what we know about the impact of entrenched conflict on children, to oversee processes that do not make decisions at the expense of contributing to an escalation of conflict.

Is that what you mean by that proposal?

Prof. Moloney—I mean that the court was never set up in terms of a management system. That has been acknowledged by many people. It is not good enough at the end of the day to have a highly adversarial process come up with a decision and then in a sense cut the parties adrift and say, 'You've now got to get on with it.'

Mr CADMAN—That is true. We have the CSA to look at finances but we have got nothing else to look at people relationship factors, have we?

Prof. Moloney—Nothing systematic; it is piecemeal.

Mr CADMAN—But your second dot point refers to the allocation of sufficient time for contact. Neither of you in your submissions seem to deal with parenting responsibility as separate from residency.

Prof. Moloney—I assume parental responsibility. That is absolutely core—

Mr CADMAN—What do you assume, that there should be equal contact or 80-20? Should it reflect residency? How should that be worked out?

Prof. Moloney—We are talking about responsibility—

Mr CADMAN—Decisions on schooling, health and general wellbeing of the child as compared with residency. I think residency is a clear expression. Parental responsibility may not be so clear.

Prof. Moloney—So responsibility around issues of deciding on which school and so on.

Mr CADMAN—Yes. I think it is a generally used term. I do not know whether I am right or not.

Prof. Moloney—The concept of parental responsibility?

Mr CADMAN—Yes.

Prof. Moloney—Yes, it is, and it is in the Family Law Reform Act.

Mr CADMAN—Should that be exercised equally or should it be on the same basis as residency?

Prof. Moloney—I think the aim should be to exercise it equally—

Mr CADMAN—So you would not mind a fifty-fifty presumption in that case—parental responsibility.

Prof. Moloney—I do not know what a fifty-fifty presumption translates to. Do you say, 'I think he should go to X school, you think Y'? What does that mean?

CHAIR—I think it means equal communication.

Mr CADMAN—Equal opportunity to have a say and to influence the future of the child.

Prof. Moloney—Okay, I think I understand. I do believe that there has been a kind of de facto presumption, if you like, that the resident parent—

Mr CADMAN—Makes most of the decisions.

Prof. Moloney—makes most of the decisions. There is a sort of pragmatism to that but it also slips into those bigger decisions that I think ought to be a much more shared responsibility.

Mr CADMAN—Do you think that benefits affect the decisions that individuals make and do you think that benefits such as the 109 nights, level of payment, tax benefits parts A and B and all those sorts of things affect people's decisions about whether they allow contact?

Prof. Moloney—There are clusters, aren't there, around the arrangements that often fall just below. So, you would have to say that those issues are being considered.

Mr PRICE—More like the continental shelf, I think.

Dr McIntosh—That culture of thinking comes particularly alive in the adversarial system, more so than in the alternative dispute resolution.

Mr CADMAN—You come to points of conflict.

Prof. Moloney—This is a difficult one, as you would know better than I, because we are, at the same time, trying to balance the money, and there is often not enough money to go around. My solution to this has always been that you have to start with the parenting relationship and the children and, in a sense, let the money sort itself out. I know that is an ideal, and I know that in practice the whole process, which will have advisers in all sorts of spheres—legal advice and so on—often leads to that kind of magical 107 days. We have just fallen below, as Mr Price says, the continental shelf. I agree with Jen; I think the way past that is to really engage with the parents about what it is they are doing here with their children. What do they want, and what do

the children want? Then, having established that, let us see how we can sort out the money. My experience with fathers who are engaged—

Mr CADMAN—Excuse me for just a moment. You probably do not accept the statement that the court takes the role of a parent away from the parents, and so the court, in fact, decides what is best for the children. The children, again, are not consulted, according to what you are putting forward. Is that right?

Prof. Moloney—At the end of the day, if no other solution can be found, the courts have that duty. I would also say, though, that the courts have not been good at really bringing in children's perspectives on this. There are ways that is done. The Family Court counsellors write reports, and there are other reports—there is separate legal representation of children. There are whole other issues that I could speak on for hours. I do not think they work particularly well.

Dr McIntosh—Can I point to some data in a study that you have before you. It is from my study of child inclusive mediation in *Mediation Quarterly*. We found that a child inclusive mediation process had an extremely positive impact on the resolution of property and finances, as well. It had a spill-over effect. When children were consulted, and when parents were supported in considering first their parenting responsibility in light of the unique input of their child—not presumptions about children, but each one of their children—when they were reminded about what they do well as parents, when they were supported in their capacity to think about their children, and when their capacity was enlivened, it had a wonderful spill-over effect onto their ability to resolve property and financial issues. We are looking to replicate that in our current study. But the data is there in the pilot study.

Mr CADMAN—That is helpful. But, you see, our problem is this: Mr Price did an inquiry nearly 10 years ago. There were changes to the Family Law Act, and they do not appear to have worked. The court has still gone on the way it was before.

Dr McIntosh—We agree.

Mr CADMAN—We think that we might need to be a bit more radical than Mr Price was if we are going to get the results we need, to tell you the truth.

Dr McIntosh—How about compulsory parent education?

Mr PRICE—Yes.

Dr McIntosh—How about doing things more along the lines of the Californian system? How about compulsory child-focused mediation? How about some of those solutions to support what could be workable legislation, if it had infrastructure to make it happen?

Mr CADMAN—In our terms, what you are saying is, 'Throw more money at it and it will work.' I do not think that is—

Dr McIntosh—I am saying: how about realigning the resources?

Prof. Moloney—Where from?

Mr PRICE—The Family Court.

Dr McIntosh—The Family Court?

Mr CADMAN—Do you think orders set the pattern for final outcomes?

Prof. Moloney—Of course.

Mr CADMAN—Because they are made on the papers—no people are present—the interim orders the court might make in the settlement of a process.

Prof. Moloney—They may be made on the papers, yes. There is no doubt that if you set up a status quo early in the process—

Mr CADMAN—Two years later, hear the case.

Prof. Moloney—you have the job ahead of you then to turn that around. That is very clear. You need good quality resources early on.

Dr McIntosh—Absolutely. It militates against the flexibility that children need developmentally. An order at one stage over their life is simply not going to be appropriate at another stage. It creates a mind-set in parents and undermines their own ability to think, 'How do we need to be flexible here? We can't be flexible because the order says.'

Mr CADMAN—That is right. Not only that, but you also set the 80-20 rule in place and the non-residential parent, or whatever the appropriate term is, says 'That's that,' expecting that within a few weeks or at most a month or two, a final decision will be made and this is really a temporary situation. Years later, they find that it is not and their opportunity to have a proper relationship with their children seems to have vanished. That is a problem for us. Do you have any ideas about how we can cut that down because there has to be a settlement made if there is tension there and both parties want it?

Prof. Moloney—Yes. If both parties want it and there is conflict, you have to get in there quickly and assist. In most cases, I do not think assisting by formal court hearings, even on the papers, is a particularly good use of resources. The exception for me is where there are allegations of violence, abuse and so on. I would love to see the court put its energies into that and that is happening through projects like Magellan and Columbus. They are the ones that need legal, immediate intervention and decisions as to what happens. The other cases could be dealt with in less formal settings and still get a good result early on.

Mr DUTTON—I wonder if our positions are very different at all. Are there some academic issues and practicalities that we might be arguing on as to how we want to deliver the same outcomes and whether having the fifty-fifty presumption, or whatever you like to call it, as a starting point is what causes the real difficulty? We may well be headed in the right direction and the reason that we find we have to use the term fifty-fifty and include it as part of the terms of reference is because of that 80-20 reality that the Family Court dishes out at the moment. As we have discussed, we are trying to provide for a shared basis of the entitlement of the child to have

contact with two good parents. If we took away that terminology, but still had that as an ideal starting point, then do you think we are very different in our positions?

Prof. Moloney—I have made a statement to that effect. I am not sure if it is at the end of my formal submission or at the end of the published version of it.

CHAIR—You have.

Prof. Moloney—I have said something very similar. Part of the problem is putting this number on it. If you talk about sharing the parenting, that is vastly different. It may be that, at the end of the day from your perspective, it gets you to the same place. I do not know.

Mr CADMAN—That process has almost failed. That is what Mr Price almost said.

Mr DUTTON—This is the difficulty that we find ourselves in. Whether it is because of judicial activism, or whatever the case may be, the Family Court in Australia has performed, in my view, against the wishes of the parliament. Whether they have some legitimate reason that we are not aware of I do not know, but if you look at the second reading speech and the initial intent of Lionel Murphy when the act was put together, the Family Court has done anything but the will of the parliament. That is the conundrum that we find ourselves in. We are finding that we have to say that there needs to be a more reasonable position than there is. If we do not put in almost like a final order ourselves in our dispute with the Family Court, we have to put in fifty-fifty, because if we do not put in that specific terminology then they are going to go off on their own path again. I just wonder how in legislative terms we are able to couch that so that we can tell them what the will of the Australian parliament is to reflect the view of the majority of Australians.

Prof. Moloney—I do not know if a legislative solution is the way to go. It is beyond my area of expertise. But I certainly reinforce what Jen was saying: when you get an opportunity to work with these couples, for the vast majority of them, early in the process—skilfully and without presumptions of 80-20 or without prejudices about what men can or cannot do or what women can or cannot do—you can get fantastic results. I have been supervising mediators at the Family Mediation Centre for 10 years, and I would be very surprised if their figures reflect the 20-80 arrangements.

Dr McIntosh—Absolutely; I agree with that.

Prof. Moloney—They assist people to come to a huge range of arrangements for individual children at different times. They can come back if they want to tweak things a bit. Those are the sorts of things that are needed. Somebody asked, 'Does that mean throwing money at it?'—I do not know. There may be ways in which that can be offset on a partial fee-for-service basis or, as Jen said, there may be some way of diverting other moneys. That is way beyond my expertise.

Mr DUTTON—Surely, anything would have to be cheaper than the current situation where each of the parties might spend over $100,000 in an adversarial process—even if it was a fee-for-service process

Dr McIntosh—We costed the pilot child-inclusive model. It adds about $180 to the mediation process—it is not much.

Mr DUTTON—I would like to head off on a slight tangent for a moment. We seem to be obsessed—and probably with good reason—about all the research, the longitudinal studies and everything that is out there about conflict in relationships, contact and the whole debate that we had before. But what are we doing to provide the same sort of oversight to intact families at the moment, where that level of conflict, or even higher, might be present; where parents might have little or no contact—or, indeed, they might have significant contact—with their children in relationships which remain 'intact' for lack of a better word. Why are we not obsessed with how much contact, for argument's sake, each of the intact parents has with those children, or with providing the same 'big brother' guidance that we are talking about for parents in post separation matters?

Dr McIntosh—There are some very unhelpful taboos that float around in that area. I agree with you; it is an area in which I would dearly love to see some active community education going on. In the Children in Focus program we are beginning to work on that—sending some very strong messages to intact families and separated families about the impact of conflict and how it should be managed. I would dearly love to see resources go in that direction.

Mr DUTTON—I understand that, but the reality is that we are imposing a much higher burden on parents in a post separation matter than we are in intact families who may well be in the same levels of conflict, if not worse.

Prof. Moloney—I think you are right in one sense—that is, from a social perspective, when do these things bubble up to the surface? When they are right in your face do you then say, 'We can actually intervene here and do something'? I do not think it is big brotherish; it can be big brotherish. I do not know how you do it with families that are out there just getting on with life. What tends to happen there—outside education programs and so on—is that they usually come to people's attention when one of the children puts their hand up and says, 'I'm not coping,' so they go and steal, or worse. In my role as a family therapist I have seen that many times. That is where you then get in and start to work with the parents and say, 'What is happening here? How can we do this differently?' I agree with Jen on education, but for larger, more normative sets of interventions, we have to be very careful that we do not overdo it on interference.

Mr DUTTON—I agree. I come from the point of view in this argument, as with most arguments, that we need to minimise the involvement of government in people's lives so that they can get on with their own business. I wonder where this debate starts and stops with separated parents—as dreadful a situation as it is—because in no way are we putting the same demands, levels of proof or anything on intact families where there is conflict and perhaps where they could quite easily become separated.

Prof. Moloney—But the risks are greater around divorce. We know that. That is part of the rationale for that extra level of, if you like, intervention. The risks are around conflict. It is not divorce per se that messes kids up; it is the processes that are mishandled around them.

Mr PRICE—Dr McIntosh, you mentioned taboos—what taboos?

Dr McIntosh—The taboos around intervening with certain families in society are strong. They include some taboos around domestic violence and some taboos around the intact family. I think it would be useful to challenge them with a wide reaching preventative community education campaign.

Mr PRICE—It seems to me that you may not prevent a breakdown, but the cost benefits of intervening or providing skills while the families are still intact are huge compared to all the federal money we pour into what I call dead relationships and mergers.

Dr McIntosh—Absolutely.

Mr PRICE—We focused a lot this morning on infants. Some of the stuff you had to say was pretty challenging to absorb. We have not actually talked about children and adolescents and their developmental needs. What are they and, in particular, how should we take them into consideration?

Dr McIntosh—Again, it is hard to make presumptions about what the needs are. It would seem, from my reading of the literature and my great deal of clinical experience, that a shared residency arrangement is viable and useful for young adolescents and middle adolescents in particular. The catch here of course is that, for it to be useful, the conflict should be not absent but well managed by parents, and children should live proximally to each parent and, increasingly through their adolescence, have choice in where they go and when, and that should be accommodated. So in a sense, the adolescent population is somewhat easier to deal with. There is wonderful research, and again it is all summarised in this paper in the *Journal of Family Studies* about the factors involved in good outcomes for adolescents post separation in high conflict environments. It has to do with the parents' ability to provide day-to-day scaffolding in their children's lives: emotional availability, effective authoritative parenting, routines and predictability.

I am very satisfied with that research and I think we would do well to pay attention to it. The latency age, particularly from six to 10, is very difficult. They are on the cusp of burgeoning independence, but they are not there yet, and their attachment systems are still highly activated, but not as activated as those of the preschool population. These are the children for whom I have specifically designed the child inclusive process. These are the children who most concern me in terms of their ability to give voice to their own situation. That is the group I find hardest to make a developmental recommendation about.

Mr PRICE—You talked about the mediation that you supervise, Professor Moloney. Do parents going there pay for it?

Prof. Moloney—Yes. It is on a sliding scale. It is subsidised.

Mr PRICE—The figure, I think, on that child focused mediation was $108.

Dr McIntosh—It is child inclusive mediation. It adds—

Mr PRICE—Is that per session?

Dr McIntosh—No. A barebones version of a child inclusive practice will add about $180 to the organisational cost. It will add about—

Mr PRICE—Sorry. You are losing me.

Dr McIntosh—Let me talk in a different sense. It adds about five hours to a normal mediation process.

CHAIR—And the cost?

Dr McIntosh—If you want to put a figure on that, we had better ask Di Gibson.

CHAIR—Okay.

Mr PRICE—That is helpful. You say that it adds about five hours to an ordinary mediation process.

Dr McIntosh—Yes. It adds an hour for briefings, 1½ hours to see the children, an hour to formulate the material, and an hour to debrief with the mediators and then to feed back to parents. That is what we call the barebones model. What I am piloting now with Relationships Australia is a slightly augmented version of that.

Mr PRICE—How many hours do you anticipate that would involve?

Dr McIntosh—Seven to eight.

Mr PRICE—You mention that that five or seven to eight hours is in addition to some earlier mediation.

Dr McIntosh—Yes.

Mr PRICE—What is the package?

Dr McIntosh—The package for a good child inclusive process would be about six sessions all up.

Mr PRICE—Plus the earlier—

Dr McIntosh—No. Let us say the mediation session is a two-hour session. It would be six to eight—eight for high conflict.

Mr PRICE—If at some point you could give us a feel for costs on that, that would be very helpful.

Dr McIntosh—It occurs to me that the committee may find it useful to view some child inclusive cases. We have a demonstration tape that we can make available to you.

CHAIR—Yes. That would be very helpful. I found the tape that you gave us before very helpful.

Mr PRICE—I have yet to view it. I apologise. At some point I think you were invited to be radical. I have listened to what you have contributed this morning. If we were to legislate that the Family Court could only deal with cases of violence or abuse, what would your model be for dealing with all the rest?

Prof. Moloney—I suppose my model would be along the lines I outlined even in my opening statement. It would be a more direct model, where you are actually talking with—I do not even like the word 'litigants'—the parents; where the children have some opportunity to have their voices heard.

Dr McIntosh—More developmental consultation.

Prof. Moloney—That is right. In the early days of the Family Court I was a counsellor. I happened to be there on the day the court opened its doors.

Mr PRICE—Is this a personal explanation?

Prof. Moloney—We used to go on circuit, and one particular judge decided that we would meet in the council chambers in Shepparton. We met around a table, a little like this. It was still a formal court hearing, but it had a dramatic impact on the way proceedings went. There were the client, the barrister and the solicitor, and we still had all the formal accoutrements, but it was a very different process. At the time—in our possible naiveté—we actually came back and suggested that the courts ought to be set up like that. Of course, that did not go very far. That would be part of what I would suggest would be needed. People need to be heard. I do think that there needs to be some kind of appeal process. Again, I am not a lawyer, but I am aware that from time to time the Family Court does deal with cases that raise really difficult, never-before-heard issues around, say, reproductive technology or very alternative sorts of families. Then there may need to be some kind of reference to a court.

Dr McIntosh—I think that what needs to happen is an upfront assessment of what parents need in order to get to a state where they can cooperate around parenting arrangements. That should not look like a progressively intrusive set of interventions in a parent's life. I refer you to the work of Janet Johnston in this respect. We need a very good upfront assessment of the kind of support that parents need to get there. Rather than putting them through basic parent education—'That didn't work. Let's try the next thing'—we identify early on the parents who need maximum support, and they go straight there. That is as opposed to everyone jumping through hoop 1 and then, if that doesn't work, hoop 2. There is really good evidence—and, again, it is in my forthcoming paper, which I will make available to you—about therapeutic group mediation being very effective, particularly for couples in high conflict and especially when they are early in the phase of post separation.

Mr PRICE—Professor Moloney, when I talk to parents who have been through the legal maze of the Family Court, they often describe it as an out-of-body experience: the entrails of their relationship are dissected, but they do not get to say anything about any of the proceedings in front of them. On a number of occasions Mr Dutton has raised the issue of a tribunal. If we

had a system of, if you like, strong encouragement to put people through mediation and then just had the matters registered with the tribunal, would that be a system that you would approve of? Where mediation does not seem to work, what about having a tribunal that, in your own words, does not have to always talk about the formality of the law but allows parents to express some of their feelings and views on issues that are irrelevant in terms of no-fault divorce but critical to them healing and getting on with their lives?

Prof. Moloney—In principle, yes. I think it is the sort of tribunal that would require quite skilled people to control the proceedings, but I do think that that is what a certain group of people needs.

CHAIR—It has been a very good experience to receive both of the submissions from you, Dr McIntosh and Professor Moloney. I move to page 9 of your submission, Professor Moloney, wherein you say that good parenting practices require adequate time between parent and child. You generally say that every-second-weekend orders or agreements enforce a visitor type model of parenting and that authoritative parenting is very difficult to achieve out of that process. Having read your submission intently and having looked at the video in which you star, I would think that, in listening to the questions of my colleagues this morning, you would not be diametrically opposed to where we are trying to be, and that is to try to engage a method or mechanism that would allow good parenting to take place between the two parents and the children. If we needed to explore the issue further with both of you, we would appreciate it if we could at some time contact you. Thank you, indeed, for coming along this morning. We very much appreciate it, and I am sure that the outcome will utilise some of your very good evidence in this inquiry.

Prof. Moloney—Thank you for having us.

Proceedings suspended from 11.19 a.m. to 11.31 a.m.

BEAVER, Mr David Gerard, Chairperson, Catholic Welfare Australia

BICKERDIKE, Dr Andrew James, Senior Family and Child Mediator/Manager, Relationships Australia

DAVIES, Ms Libby, Executive Director, Family Services Australia

FOSTER, Mr David James, Deputy Director, Uniting Care UNIFAM, Family Services Australia

GIBSON, Ms Dianne, National Chief Executive Officer, Relationships Australia

HANNAN, Ms Jennifer Anne, Executive Clinical Manager, Anglicare WA

ROOTS, Mrs Margaret Mary, Director, Quality and Network Support, Catholic Welfare Australia

CHAIR—This morning I welcome the representatives of the Family Relationships Services Program to today's public hearing. They are Relationships Australia, Family Services Australia, UNIFAM, Anglicare Western Australia and Catholic Welfare Australia. The evidence that you give at this public hearing is considered to be part of the proceedings of parliament. I therefore remind you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. Each group has made submissions to the inquiry, and copies are available from the committee secretariat. Because there are so many of you, we would like to have an overview from only one person, if possible, who would speak on behalf of you all. Then questions can be directed to and answered by others. It would be handy if we could just have one person give an overview.

Ms Gibson—I am going to start with a quick overview of some of the points that we raised in our submission, and then I will go on to propose what we hope might be some solutions to some of the problems that have been raised. To start with, just to remind you, Relationships Australia is a national secular organisation that provides family and relationship services from 80 locations around Australia. Last year we saw 90,000 Australians and almost half of those were men, so we saw 40,000 men last year. We are alarmed at the research findings, for example, from the Household Income and Labour Dynamics Study—HILDA—that one-third of children had not seen their father in the last 12 months. We are also reminded that 40 per cent of resident mothers want more contact for their children with their father. This is consistent with anecdotal reports from our counsellors, mediators and conciliators. The evidence is also quite clear that it is conflict between parents that impacts most adversely on children when families separate.

The conflict surrounding separation and divorce is based in relationship problems, not legal problems. We need solutions that support workable relationships following separation, not major legislative change. The Family Law Reform Act 1995 has given us a suitable framework for shared parental responsibility, although the act could be strengthened and clarified in this regard. Relationships Australia believes that the rebuttable presumption of fifty-fifty physical custody would be regressive rather than progressive.

The title of our submission is 'Helping parents to put children first', because the research literature and our 55 years of experience in this field clearly show that children benefit most from the active participation of both parents in their lives following separation. However, in intact families, parental responsibilities are not usually equally shared and these patterns do not easily change following separation and divorce. Our mediators report that, even when parents come to mediation with the starting point of shared physical custody, only a limited number can achieve this when the following factors are thoroughly discussed and considered. These are the age and stage of the development of the children, the different needs of different children, the resilience of the children and their primary attachments, the repartnering of their parents, and any history of family violence. Housing, transport and proximity of both households are also important. The employment circumstances of each parent need to be taken into account. Suitable day care and after school arrangements are also critical. The level of effective communication and cooperation between the parents, including flexibility and negotiation skills, impacts on their ability to share arrangements for children—as do their parenting patterns prior to the separation.

Relationships Australia believes that it is shared parental responsibility and continuing involvement that make the difference for children of separated parents; however, that solution has to be tailored to meet the needs of particular families. We are proposing a national strategy with the following elements to address some of the concerns that have been raised throughout this inquiry. First, a community education and awareness campaign to educate the wider community about the benefits of children having quality relationships with both parents and extended family members, such as grandparents, following separation. There is a precedent for that in Sweden, where they ran a community campaign on this very issue some years ago. The aim would be to shift community expectations of parenting after separation. Of course, the community includes the workplace, and we hope that they would listen as well. Written materials on separation, parenting plans and Parenting Apart should be readily available throughout Australia.

Second, parent education programs following separation, such as the raft of programs that Relationships Australia run under the umbrella title of 'Parenting Apart' that provide information, support and skills to separated parents. Third, professional education programs, including family law practitioners, about the benefits to children of shared parental responsibility and involvement and how that can be achieved. Fourth, expanded funding for PDR service providers, who have already demonstrated great expertise in this area, to meet the increasing demand for professional support to resolve family disputes away from courts.

Fifth, strengthen the requirements for separated parents to develop a plan for how they will share parental responsibility to meet the needs of their children before litigation is commenced and when divorce applications are filed. Sixth, strengthen and clarify the Family Law Act to further reflect the 1995 amendments. Seventh, expand funding and support for early intervention programs that educate couples about marriage, relationships and parenting and increase funding and support for programs that give support to couples and children through the inevitable rocky times in relationships to limit the impact of separation and divorce and to support individuals, couples and children when separation does occur.

Mr DUTTON—You made the statement that the problem that we have is a relationship and people one as opposed to a legal one. Don't we have some structures in place at the moment that make it very difficult and probably even contribute to some of the animosity and conflict that

exist between people? We facilitate a law process, for argument's sake, where people can compel the other to spend vast amounts of money to protect their own position. So we facilitate a process where one vindictive person can try and send the other broke. Regarding child support, we heard the arguments before around the 109 nights—again, a money driven argument. I understand what you are saying, but doesn't the infrastructure that is in place at the moment provide for a fairly high level of conflict?

Ms Gibson—I think the conflict arises out of the separation itself, and I believe that we will always need legal remedies. Some families will definitely still require legal remedies. My submission is that we need to change community awareness and attitudes so that the first port of call is not a lawyer or the Family Court but rather some sort of program or assistance within the community that will help people understand what their rights and obligations are in a non-adversarial way and help them to plan for how they can share their parenting responsibilities into the future. I think what we need is a community that supports that sort of expectation rather than litigation and an adversarial process.

Mr DUTTON—I think we would all strive to achieve those ideals. Is there any differentiation of the points of view of the panellists to what we have heard so far? Are there points of difference that people might like to highlight?

Ms Davies—I was going to say that Family Services Australia is not the same network as Relationships Australia and Centrecare. Catholic Welfare Australia, I am sure, will say their own words in relation to that as well. We would appreciate the opportunity to speak a little bit about the network that is represented through Family Services Australia. Many of the points that Relationships Australia has raised we do concur with. However, there are some obvious differences in the service delivery framework which informs the position that Family Services Australia also put forward in its submission.

Mr DUTTON—Can you highlight those for us now?

Ms Davies—If I may, I will introduce Family Services Australia to the committee. It is the largest industry representative body for the Family Relationships Services Program. It covers 70 organisations across Australia that provide a range of family relationship and related family support services, funded through not only the Family Relationships Services Program but a whole raft of other Commonwealth, state and local government programs which interface to support families. Overall, Family Services Australia member organisations would provide around 40 per cent of the services funded through the Commonwealth government under the Family Relationships Services Program.

In some service types, for example, Family Services Australia member organisations would provide 70 per cent of the programs that are funded through the Commonwealth government. In particular, I mention the Contact Orders Program, children's contact services and the Men and Family Relationships program, all of which impact on the considerations and deliberations of this inquiry. In addition, Family Services Australia member organisations provide a range of services, from aged care through to child care and everything in between. For example, about 25 per cent of FSA members provide youth services, and around 15 per cent provide specific women's services, Job Network services and domestic violence services.

One of the points we would like to highlight that we focused on in our submission is that we do not support a change to the law. We note that the current provisions of the Australian Family Law Reform Act 1995 already provide for an arrangement where children may spend equal time with each parent if the family wishes. We concur with the points identified by Relationships Australia about the need to identify ways in which the amendments to the act can actually be realised in the processes around the delivery of services in support of separating families. The fact that few Australian families currently choose a fifty-fifty arrangement indicates that a rebuttable presumption would impose an arrangement upon families that the majority would find unworkable and undesirable.

Our submission supports the fact that the Australian Family Law Act as it currently stands does accommodate the needs of parents to share the care and ongoing parenting of the children if they so wish. We also support the fact that the act as it currently stands is establishing the best interests of the children as paramount. The FSA submission also identifies that listening to the children is in the best interests of the child and that the concept of a rebuttable presumption of this kind appears oriented towards the needs of parents rather than those of children and reverts to an antiquated view of children as possessions rather than individuals with rights. FSA, informed by the experience of member organisations and research of what works to enable parents to maintain functional and nurturing contact post separation, urges this inquiry to consider the successful services that do support Australian families in this context. Strengthening these services we regard as the best approach to assisting families maintain nurturing contact. Removing the emphasis on the notion of winning in terms of ongoing parenting within legal processes is also critical to this.

The committee will appreciate that we work with children and families who have experienced separation and divorce, family crisis and conflict. Our input to this hearing comes from that direct interface with parents and children through service delivery. In recent years FSA member organisations have been instrumental in establishing and building practices that address the specific needs of children in a respectful, inclusive manner. We have responded to two significant events in developing effective and timely programs that meet the unique needs of children which are salient to this inquiry.

CHAIR—Do you have very much longer to go?

Ms Davies—Nearly finished. The committee has been cited many references to the costs around assisting families, such as the *To have and to hold* report. We would like to bring before this committee, in addition to what is highlighted in our submission, that the overall amount of support for families committed through the funding of programs such as the FRSP is very small. The government cites the figures of expenditure of $56 million this year to see approximately 140,000 clients—

Mr DUTTON—Can I stop you there, because it is not the question I asked.

Ms Davies—No, but with all due respect—

CHAIR—I am sorry, but it is not the question that was asked. We did ask that one person put forward and we are happy to take your written work and I will distribute that to the committee. But it is taking up an extraordinary amount of time of questioning that we would like to be able

to ask questions in. I am happy for you to table that and I will see that the committee members all get a copy of that. It is kind of like an ad, like a commercial break.

Ms Davies—It is not meant to be an advertisement; it is meant to be an understanding that the breadth of the organisations represented here is not just under one particular name.

CHAIR—We understand that and we will give you the opportunity to be able to identify that in the questions that are asked. That is what Mr Dutton did. As I said, we are very happy for you to table that, but we might move on, because you seem to have answered the question in a very lengthy way.

Mr DUTTON—This is probably best directed to you, Libby, in relation to your submission. You suggest that a rebuttable presumption of equal time is not appropriate in light of the fact that only a small percentage of families already have such an arrangement. You go on to highlight practical differences and much more. You also made the statement before that the law does not need to change because under the Family Law Act already if the family wishes for particular contact then there is no problem. But the reality is something quite different, which really concerns me about your submission. If that is the basis upon which the FSA submission is based, I think it is a fundamental flaw. The reality is that the reason this inquiry came to be is because we as local members see people on this issue every other day. On Friday when I went back to my electorate I had three or four constituent meetings out of eight on this very issue. It was from both sides, from people with all sorts of difficulties.

To suggest at the moment that because it is defined in the act that we act either in the best interests of the child or that there are shared care outcomes provided for in the act is something quite distinct from the reality that families are experiencing. That is the reality and that is the problem and the reason we are here. The act may well provide for shared care, but the outcomes are not there. We heard from Chief Justice Nicholson only a fortnight ago and we have heard from other witnesses and anecdotally right around Australia that this 80-20 rule is the reality of the outcome. If you are suggesting to us that because it is written in the Family Law Act that the shared care is available and if the family wishes it will be granted and that that is the basis on which you recommend to us that no legal change needs to be made, then I think you should be aware that my belief is that the FSA's submission is flawed. I would be happy to hear your comments in relation to that.

Ms Davies—Thank you for your question, Mr Dutton. I think the shared care is a possibility that is certainly canvassed with the current wording of the act. What we have highlighted in our submission is that the service delivery infrastructure and the processes which surround the application of the law are where the flaws currently occur. Services are available to assist parents to work their way through shared-care arrangements, but they are very few and far between. For example, those services may be dealing at the very high-conflict end of the spectrum, with parents who go backwards and forwards to court at a huge cost for a long period of time and who end up getting a contact order, but it may take at least six to eight months to actually access a contact order program. I will refer you to Jenny Hannan, who will continue to speak in reference to that program and expand on your question.

Ms Hannan—I agree with what you were saying about the outcomes for fathers in terms of the Family Court and what happens, but if you have a look at the programs that are actually—

Mr DUTTON—It is not just a gender issue.

Ms Hannan—No, but in terms of equity.

Mr DUTTON—It is about custodial and non-custodial, and we have taken evidence from both.

Ms Hannan—Yes, I understand that, and that certainly is very accurate. What is really important to look at are the programs that are currently in place that are non-litigation based. The contact order programs were initially pilots, but they are now programs that basically access a variety of families from those that have just separated to those that have been in the system for quite a long time. Those programs actually have success outcomes of something like 80 per cent with the families that go into them. And when I say 'success', it is success in that families come to their own decisions about what they want to do with their children. That is fantastic in terms of long-term outcomes for orders because, if you look at the outcomes that are coming out of the Family Court in Western Australia, those are the orders that actually stick. What Libby is actually alluding to is that it is the process around where families actually end up going after separation, the information they are provided with and the work that is done with those families at that time that is critical to those positive outcomes for the children and the parents being happy with arrangements. Currently, there just is not the level of service provision. We have 130 families in Western Australia waiting to access those services. We have five group programs running this term and nobody can access another program until February, yet the outcomes for those services are 80 per cent success rates.

Mr DUTTON—What about this process of the tribunal that we have spoken about? If you have read any of my contribution in *Hansard*, you will know that I am completely opposed to an adversarial system, if we want to act in the best interests of the child. One of the propositions that we have discussed is a three-person tribunal where we had somebody who was acting in the best interests of the child, a child psychologist for argument's sake; somebody with legal qualifications or a family law specialist who was able to draft what would then be a living document in so far as the orders are concerned in regard to that particular situation; and a counsellor/mediator. That would give the tribunal the teeth to be able to make definitive statements or outcomes in relation to those particular circumstances and remove the process completely from the Family Court. It would exclude lawyers and other people who feed off the process so that we would be outcome driven and focused on the interests of the child. Is that a system that you would see as being workable?

Ms Hannan—I would probably like to see a two-tiered system in relation to that. There are certainly always going to be families where a child-focused therapeutic mediation process, which is basically the process that the contact orders programs work on, still does not get a good outcome. For that percentage of families I think a tribunal is a good option. I think, though, that it is probably more important to get families who register with the Family Court into an alternative dispute resolution process like a contact orders program as quickly as possible, so that they can hopefully avoid the litigation pathway altogether. For the other percentage of families, the idea of the tribunal is something that I think would be, perhaps, a more positive environment for resolution.

Mr DUTTON—Can I ask Dianne one further question? In the Relationships Australia submission you talk about strengthening the use of parenting agreements and also about shared parenting and how to better support it. I just wonder—and perhaps we had the same problem with our previous witnesses—about the definition or the practicality of how fifty-fifty would work and whether the positions are too far away from each other. You talk about better supporting shared parenting and providing for these parenting plans. We are talking about a situation where we would have these people's issues discussed and, hopefully, resolved in a tribunal away from the Family Court. If there were conflict or enforcement matters or if the children were going through different stages, required different levels of contact or whatever, they could return to the tribunal. Are you very far away, in your submission, when you talk about shared parenting, from what we are talking about with fifty-fifty, if you take away the emotive use of the term 'fifty-fifty'—and, I think, the misconception about what its definition is?

Ms Gibson—We are not a long way away from it in terms of an exhortation to fifty-fifty, but we can see difficulties with a rebuttable presumption. So, from our point of view, we are often considering a fifty-fifty shared physical arrangement with parents but we know that is extremely difficult to achieve. We would like to exhort and encourage both parents to be actively involved in parenting but we see the difficulties that might arise out of having the rebuttable presumption. I will ask Dr Andrew Bickerdike to respond further to that, Mr Dutton, because he has done the research in our organisation around a lot of this and, indeed, has worked with families where we have been able to achieve a fifty-fifty physical arrangement and those where we have not.

Dr Bickerdike—I have worked with many couples who have come in wanting to arrange a fifty-fifty equal residency—I think that is what we are talking about—and, when they get down to the practicalities of it, it often does not quite work out for them because of the practical issues that arise from that and, of course, the children and their developmental needs need to be taken into account. There are some who have actually managed to arrange an equal shared residency. They come back to us, much in the way you are describing, when things change—when they repartner, when the children change schools or whatever or when they move away—and then we renegotiate it.

It turns out, once we have had the discussion with them and talked about the needs of the children and the future way they are going to design their family and the contact, that they actually withdraw from this need to have it exactly fifty-fifty. What they want is two parents who have a meaningful relationship with their children, and whether it is three nights or four nights is less important to them. They tend to come in, sometimes, with that as a prerequisite because they have been, if you like, solidified in that by the adversarial legal system. They have a great fear that they are going to lose contact with their children so they come in with this fifty-fifty as their non-negotiable point. When they have had further discussion they relax, they realise that this is not necessary for them to have that meaningful relationship and they sort it out in a manner that is more flexible.

Mr DUTTON—I appreciate that and I think that is wise. Why, then, is there the absolute opposition to fifty-fifty, if we can put it that way? If you are talking about a rebuttable presumption it may be, for argument's sake, that two people go into the tribunal or a mediation process and the father may say, 'Fifty-fifty is not good for me because I work nine to five Monday to Friday, our child is four years old and does not go to child care or to school yet and I could not do that. Seventy-thirty would better suit my arrangement.' It may actually be the other

party that is providing the rebuttable part but at least it provides an opportunity for the children to have a capacity to be able to see each of the parents as freely and as frequently as possible. That is why I am just wondering whether we are getting caught up on the term and that is what creates the point of difference, and I wonder whether or not that is a very fine difference. If we had that as a starting point, I do not understand how that differs from what you are saying.

Dr Bickerdike—As I understand rebuttable, to rebut something is to challenge and disprove it. To me that smacks of the legal process itself that you are talking about as being problematic. The services that work well for these families are not the adversarial services from my perspective. It is mediation, it is conciliation, it is parent education, it is the contact orders programs and all the services that these organisations provide. The rebuttable presumption does not sit well with that. If you did have a father saying, 'I do not want that fifty-fifty,' that is fine, but I do not consider that to be the pointy end of it. It is more the desire or the need to prove in some way that fifty-fifty is not appropriate in these circumstances and they get into a competitive need to challenge the other parent's parenting capacity.

Mr DUTTON—Andrew, you have done the research on it. Do you think that if we removed any financial incentive, if we took away the 109 nights and the consequences of what fifty-fifty as opposed to 70-30 might be, it might be better? If there were no financial differentiation between those two positions, do you think that would change that competitive element? What is the competition based on in trying to deprive the other parent of seeing their child?

Dr Bickerdike—The competition is based on issues around their separation, in my view, more than on child support payment.

Mr DUTTON—More to get even than to get money?

Dr Bickerdike—Yes. Someone comes to me and they sit in the room and they say, 'I want equal shared parenting here. I want fifty-fifty.' One purpose in doing it is that they are scared about losing contact with the children. They have heard things in the media. The other reason is that they are after a bit of retribution and they are feeling aggrieved and it is a competitive thing, and that is fed by the legal adversarial process. We can work on the fear of losing contact with the children and, once we work on that, then the other sometimes dissipates. The ones that we cannot work with in PDR are those that are hooked into that competitive adversarial retribution and then they go through the legal system. From my point of view—and I do not have the research or the experience, I must say, with child payments in that area—and from my experience working with clients, that is not often something that stops them agreeing to a shared parenting arrangement.

CHAIR—Mr Beaver or Mrs Roots, would you like to make a comment on any of these things?

Mrs Roots—I would like to comment on that. I think you need to understand that in separation conflict is a given in about 98 per cent of the cases. It takes two people to agree to marry or to be in a relationship. It takes only one to say, 'I am over and out.' You start from the basis of conflict. I have listened to my colleagues speak and, unless we address the conflict in the separation process, you can tailor-make around all of these issues but it is going to do nothing about what underlies them because in separation, conflict is a given.

Some people handle it better than others, but it is there and it will come back to that all the time. Whether it is the courts system or child support or the number of nights, unfortunately, whether it is children, if that is the last remaining shared thing and conflict is not dealt with, there will be difficulties. While I could entertain the idea of a tribunal I have trouble with that because, again, it is other people deciding for the couple what the outcome will be. For some people it will give a starting place as the court does now but unless the conflict is actually addressed in these situations we will just go around this scenario in a different form because that is the thing that creates the difficulty.

CHAIR—Thank you. Could I just ask about the word 'rebuttable'. It seems that the word 'rebuttable' conjures up other than what is thought and intended. Maybe a new word could be used—a 'negotiated' or 'facilitated' or 'mediated' presumption. 'Rebuttable' conjures up a very bad image.

Ms Gibson—Yes, because that draws us back into legal language, when that is what we are trying to step away from.

CHAIR—That is what we as a committee, quite clearly, are trying to step away from. In the submissions there is a lot of negative language. I came in this morning feeling that everything is in negative language—nothing seems to get a positive slant. Maybe it is negative language that we, in turn, are exhibiting with 'rebuttable'. Those sorts of words may be a problem. Even Relationships Australia's submission talks about 10 per cent of all divorcing families remaining in ongoing conflict, but it does not talk about the 90 per cent who do not. It is always negative language. Ms Davies has indicated that the Family Court currently gives all these options to people, but only five per cent end up in the Family Court.

Mr PRICE—And they do not get the option.

CHAIR—That is right. So there is another 95 per cent out there. We tend to be making rules for five per cent of the population that impact heavily on 95 per cent of the population. My worry is that we continually use negative words and phrases, reinforcing the negative rather than the positive. Maybe we, as a committee, need to consider the terminology that is used. We did not invent the terms of reference; they were the terms of reference that came to us. Maybe there is a problem associated with the terminology. We have come under some criticism because we have the word 'custody' in our terminology, but the issues of residence and contact have not infiltrated the public persona. They still talk about 'custody' and 'ownership' et cetera. Nothing has changed.

Can any good come out of an inquiry such as we are undertaking? The mothers want more contact with the fathers, the fathers want more contact with their children, the children want more contact with the non-residential parent—all of these things are evidenced in our inquiry's submissions, and it is just not happening. Why is that so?

Mr D. Foster—Speaking from my experience in the organisation I work within, if one good thing were to come out of the inquiry, it would be the end of the adversarial system for determining what happens in these cases. The current system only privileges fighting. You have two people who are fighting already, and then we put them into an arena which makes them better fighters and give them people to fight with—their lawyers, their barristers and whatever.

So either a reduction in that or an end to that we would see as being a big change and a significant movement forward.

We would have liked to have seen a system that actually looks at strengthening the family relationships, because, when you go through a legal system like the court, that is about damaging. It is about getting your version of the truth accepted by the judge over the other person's, and the way you do that is to try to damage the other person. Then, when it is finished, we expect them to get along, be parents and actually be able to negotiate changes and so on. That would be one of the big things that our organisation, in terms of the programs that we would run, would see as something that would be very worthwhile to happen.

Ms Gibson—I was just going to say in response to your earlier comments that I want to pick up what Margaret said earlier. At the time of separation, most people do have conflicts. That 10 per cent is the entrenched conflict that remains after, say, the first year or two. What we are asking people to do is make decisions about very, very important issues to do with children at the most conflicted time. We are asking people to do this who are running businesses and can manage everything else in their lives but cannot quite manage this relationship because of conflict and also because of pain. This is not just all to do with anger; this is largely to do with distress as well.

If anything comes out of this inquiry that would be very positive, from my point of view, it would be that we have had a debate that heightens the awareness of the need for children to have active participation and time with both of their parents following separation. I think the children will benefit out of this, but we still have the realities of the conflict and we still have the realities of the pain and distress of the separation and making decisions at that most critical time in families' lives.

Ms Davies—To add to that, I think it raises the issue that was also heightened by Professor Moloney and Dr McIntosh, which is around the social expectations of parenting and what that means. It certainly comes under the spotlight, once there is a separation that involves conflict, as to how that ongoing parenting is actually facilitated and the abilities of people and the strategies they bring to the relationship, whatever its form, to continue their commitment to children. We spend an enormous amount of money on health education—and that is to be applauded—but we sometimes forget about the need to change people's social mores by influencing attitudes and practices through a public awareness raising campaign.

You mentioned the word 'custody', which has come up through this inquiry. It is taking us back to the notion of children as possessions and how we can move people on from that. David and Dianne highlighted the adversarial system that continues to perpetuate this idea of children as possessions to-ing and fro-ing, rather than the responsibility that people have once they have a child. That ongoing responsibility is not severed when the relationship ends; it is actually put into a different context and requires a different set of skills. In Australia we only spend about $2 per person on keeping families, in whatever context and shape, in their capacity to nurture and to have ongoing responsibilities for their children in a very functional way. Is there a way, born out of this inquiry, that we can heighten the public awareness that needs to take place about what ongoing parenting actually means in terms of strengthening their children's abilities to become and to be part of society in a very positive and meaningful way?

Mr Beaver—I agree with what Libby has said. As a director of a welfare agency in western Victoria, I think one of the major limiting factors for an agency trying to deliver policies is that our funding is tied to certain outcomes. Funding is tied to responses to problems. You have asked why we are not working on or publicising the 90 per cent. Most agencies nowadays, because of the use of resources, are told where to target their services. We do not have the resources to target preventative work, and that is where many of our agencies put the funds that we get through other sources.

With the funds we put into preventative programs we find good results. We work with parents to enable them to see their responsibility and enable them to see the joy that there is with their children. But in most of the programs that we are here answerable for today we are responding to the conflict. Couples are coming mostly in that conflictual relationship. I think that is reflected in our submissions, if you are pointing out that they are negative. They are mainly the people we are working with at the moment because we are tied from working with others.

Mr PRICE—In terms of each organisation, what percentage is spent on couples whilst they have an intact relationship and what percentage is spent on couples after the relationship is dead?

Ms Gibson—I may not be able to do that precisely, but Relationships Australia received around $18 million from the Family Relationships Services Program last year. Still the main core of our work is at the preventative end. We do the education and counselling at a preventative level. There are also overlaps.

Mr PRICE—Is that pre relationship?

Ms Gibson—Yes.

Mr PRICE—How much would go to pre relationship, relationship and then 'death'?

Ms Gibson—I will have to give you more precise figures, but with our funding skew at the moment probably about 70 per cent of our work is in the preventative and early intervention areas and that would include counselling. About 70 per cent of our counselling is to help couples have better relationships but then about 30 per cent of our couples in counselling would be considering separation. Then we have all our PDR programs. So I would say that probably two-thirds of that $18 million would be spent in the preventative and early intervention arenas and the rest would be spent working with families who are considering separation, planning how to do that with the most dignity and best outcomes for kids. Then there is working with families who are in a lot more trouble about that separation and helping them to get on and re-form their families into the future. I will get back to you in case I am telling you something that is not absolutely accurate.

Mr PRICE—Thank you.

Ms Davies—In terms of Family Services Australia, of the funding that is committed through the Family Relationships Services Program, 39 per cent of the $22 million that the FSA member organisations receive is committed to primary or early intervention services. This is informed from research we have undertaken which will be available to you in a document, coming off the press today, called *Connecting families and services.* It highlights the breakdown of funding by

service level—early intervention, secondary services and then tertiary crisis intervention services.

Mrs Roots—Catholic Welfare Australia spent about $22 million on family services all-up. I will give you a breakdown. We do about 60 per cent of the premarriage work in this country. We receive about $10.5 million from the federal government as part of that and the rest is made up of either state contributions or church contributions. We certainly have targeted—and our mission puts us very keenly at looking at—preventative type services. However, so much of the federally funded $10.5 million, as the others have said, is constrained. Given government policy and given moving the remedial and tertiary services out into the community sector away from courts, increasingly the money that comes in that packet is being eroded into remedial services and taken away from the preventative end.

Mr PRICE—By the way, I see you quote Vatican II. I hope you are not being courageous in doing it, but I was very pleased to see it. If we were looking into the future, what would be the impact of more people choosing to develop de facto relationships instead of choosing to marry? Would that have any implications for the services that you offer? I do not mean to make a value judgment about it, but it seems to me that there is an opportunity to intervene when people marry but not when people set up de facto relationships.

Ms Gibson—Yes, and a lot of people also choose not to remarry in a church but to engage a civil celebrant, and perhaps we do not have the same opportunities there either. What it probably means for us is simply that the research shows that there are varying levels of commitment to relationships. We usually work with three groups of parents. The first group may have had a passing relationship—indeed, in some cases the parents have not known each other for any period of time—and we are trying to sort out arrangements for the children involved; the second group may have been in very committed and long-term de facto relationships and have the same issues as married couples; and the third group is the married couples. The points of intervention certainly are more difficult with the not in de facto relationship and the de facto relationship families. But, as I said, as remarriage is becoming quite a significant factor in our society, we are losing other points of opportunity to work with those families that perhaps need quite a deal of support when they are blending and reforming in different ways.

Mr PRICE—Is there a higher incidence of married people, as opposed to people in de facto relationships, seeking preventative services? Do you have any statistics on that?

Ms Hannan—For our agency, it is probably half and half. A lot of the couples we see are not in legal marriages. They may be in de facto relationships or in the blended families that Dianne was talking about. So it might be a second marriage that is experiencing difficulties. For our organisation, it is pretty much fifty-fifty for first marriages and for de facto relationships or repeat marriages.

Ms Gibson—It is certainly a challenge for Relationships Australia to provide opportunities for newly forming couples to have some sort of education. Some of my colleagues here who represent organisations affiliated with churches can provide opportunities if there is going to be a religious celebration of the marriage. One of the big challenges, I think, is to encourage civil celebrants to know a lot about preventative and early intervention services. As the statistics show

us, more than half of the Australians marrying now marry with civil celebrations, not with religious celebrations.

Mr PRICE—For people seeking an interview for preventative counselling or, in the second situation, for people seeking counselling regarding their possible separation, what is the current delay between making the request for counselling and actually receiving the counselling—on average?

Ms Hannan—It depends on whether they need a day or an evening appointment. If it is an evening appointment, it will generally be between two and three weeks. If it is a day appointment, it will generally be between five to 10 days.

Mrs Roots—But I think that depends on what area of Australia you are in. We are out in the rural area, and many of our services have closed their books because, if you can keep the service open for only three days a week, you may have to tell people that you will not be able to see them until three months down the track. The thing about services for separation and pain is that people want immediacy.

Mr PRICE—Absolutely.

Mrs Roots—Or they move into a maintaining pattern that disturbs and becomes the norm of how they are going to relate.

Mr PRICE—Do you have any figures on the number of people you are currently turning away or have the books closed against?

Mr Beaver—I do not think we have. We have anecdotal evidence from talking to the agencies. I know from my agency that we would shut the books basically after four weeks. We think that is too long, and in that period we would probably have to turn away 25 per cent.

Ms Hannan—Also, the longer people wait the more cancellations you are likely to get when you offer them an appointment because the crisis is over and people generally need the help when they need the help. That is particularly important with families facing separation issues. One of the things that I would also like to add in terms of the 50-50 custody bottom line is that in terms of the contact order programs, which I was referencing earlier, those programs work very effectively, we believe, because the focus of those programs is on the best interests of the children. Very clearly, parents go into those programs knowing that that is the way those programs are framed.

Also, input from the children is fed into that process. Generally parents have the best interests of their kids at heart. Sometimes the conflict and the emotional stuff are getting in the road of them being able to access what they need in order to make good decisions around the children. Having parents going in knowing about the 50-50, I think, would actually interfere at a level with the process of being able to work with parents together saying, 'We are here to work out what is best for your kids.' If there is already a starting point, whatever the starting point might be, it does not mean that it is as open a discussion and the input from the children, I suspect, would not have as powerful a significance. That really is so critical to moving parents. It is quite amazing to see—

Mr PRICE—But the tyranny of 80-20 is equally evil.

Ms Hannan—I agree with you absolutely.

Mr PRICE—That is what the committee is struggling with, I think.

Ms Hannan—But those 80-20 are also the parents that are in the Family Law Court system. Most parents are—

Mr PRICE—Yes, that is the majority of what you get out of—

CHAIR—I would dispute that. I would think that there are more people in 80-20 outside of the Family Law Court process than there are within the Family Law Court process.

Ms Hannan—Most of the people who do not go through the Family Law Court process actually come to agreements themselves about what is in their children's best interests.

CHAIR—Again, I would dispute that. The reality is if you get to the Family Law Court that is what it is going to be—80-20. So you accept what you accept because you have this overlying issue that you really do not have any choice. You might accept 70-30, so to speak, because it is more than 80-20, and that is a perceived norm. Whether it be the case or whether it be reality, the perception is that there is a template of 80-20 in the Family Law Court. If you do not go there, you still will not be getting 80-20 outside of the Family Law Court template. You might be getting 70-30. You might not be getting anything near what you want but you may accept that that is what you get simply because, if you go further, you might get less. So I really dispute that because I do not think any person that has come before us—and any submission—even if they have gone through the process and made the agreements themselves without family law, is happy with the time that they have got. It is just a kind of unwritten rule that there is 80-20 and if they get anything more than that in an ordinarily agreed frame outside a Family Court, then they have done well.

Mr PRICE—Pardon my ignorance in asking this, but do your organisations offer parenting skills programs, and what percentage of your funding would go to those? Are parenting programs, again, for intact parents or separated parents?

Mrs Roots—In a lot of the programs only one parent actually turns up. The amount of funding for them is very small. We have a huge commitment in our services to parenting programs, but I think the federal budget around these programs is about $4 million in total and that includes premarriage education as well, so the budget which includes these sorts of services is actually quite tiny. Then you get into the realm of assessing the need and looking at what is going to happen to the children if that parent does not get them. A lot of single-parent families are particularly targeted. You might want to say something about this, David.

Mr Beaver—In Victoria the state government funds parenting programs. We are called a 'parent resource service' in one region of the state and are in partnership with another Centacare parent resource service in another part. These parent resource services are targeted at the general population, so we run programs for intact families, families who are having problems with children and also separated families, about what is the best way to work.

Mr PRICE—So you go right across the gamut?

Mr Beaver—Yes, it is a preventative program. We are one of the few programs that are just given numbers—for example, to see 3,000 parents or whatever throughout the year. The program is not targeted to specific groups.

Mr PRICE—If we were to dramatically increase the Commonwealth money spent on such family programs, would it be unreasonable for us to link it with a state contribution, then, to really get both governments working in the same direction and to get a bit of oomph out there in voter land?

Mr Beaver—Yes, I would think that could be. There was a program that was jointly funded in Victoria by the Department of Family and Community Services and the Department of Human Services, the family skills training program, but it ceased two years ago, I think it was—I am not sure what were the reasons behind that; I think there were some issues between the two departments—so that we now receive funding from the federal government for family skills and from the state government for parenting.

Mr DUTTON—This all sounds fairly familiar from our last inquiry, on substance abuse, where we had these different layers of organisations and the overlapping of services between the departments and between each layer of government. The waste must be unbelievable. For argument's stake, through beyondblue, in Queensland at the moment there is a parenting skills program that is funded by the Commonwealth government in association with the University of Queensland, essentially, which provides that service to the south side of Brisbane. There are plenty of organisations that are benefiting from that. There seems to be a need for more coordination of some of these processes.

Mr CADMAN—I would just like to run through your various attitudes. There is a strong push for 'consider the children'. Very good, but where do parental responsibilities lie? There seems to be a conflict between 'What should parents be doing?' and the other alternative, 'Let's ask the kids.' I do not see a balanced point of view coming through, I am afraid. It seems to be: 'We have tried to get parents to solve it; that's failed. Let's ask the kids. Now we are on another kick.' That is the theme of your submission: shift it to the children.

Ms Hannan—The child inclusive process is not about asking the children what they want. The child inclusive process is about assessing the needs of the child by asking the child about their experience of going to school, sporting activities and so on. We do not ask children what they want; that is not appropriate. The parents need to decide what is in the best interests of their children. The child inclusive process is about collecting that information, taking it back to the parents and saying to the parents, 'These appear to be the issues that need to be considered in your decision making.' This is not about taking decision making away from parents; it is about empowering parents to make good decisions about what is in the best interests of their children.

Mr CADMAN—Fine. I notice the central submission says we should do that 'without putting the responsibility for decision making on them or placing them in loyalty conflict'. It sounds very easy to do.

Ms Hannan—It is a process whereby you need skilled practitioners to do the work, and there are programs that are currently doing that work and doing it very effectively.

Mr CADMAN—I do not know how many of you would agree with some of the comparisons that have been made between processes of family law in Australia and other countries where:

The reform has thus created—

and that is the 1995 reform—

uncertainty and confusion as to what the act now implies. The previous legislation was clear concerning who had responsibility for the children. The present law does not clarify the present meaning of joint responsibility.

Is that a fair comment? Is that the environment you find? David, were you involved prior to 1995?

Mr Beaver—No, I just came into the field around that time.

Mr D. Foster—Prior to 1995, the experience that I had working in the same types of services but in a different organisation was that to win custody it was much clearer—it was, in fact, a prize to be won—and it presented you as being the good parent and the other one as being the bad parent. That was a very common theme that came through, which I would say at the practitioner level and just seeing these families—

Mr CADMAN—Yes, that is what we need to know.

Mr D. Foster—I would not want it again to be seen that because you have got the kids you are the better parent. Some of the terminology around 'residential' and 'contact' implies that as well. We try to get the parents to both be involved and engaged. The way that we now view it, just to try to explain it as simply as possible, is that we see the interaction on three levels: one where you have, for example, the conflict over the kids, what the arrangements are, and people's reaction to it. Beneath that you might have the reaction to the separation and how they felt their relationship or their marriage had been, and under that you have how well adjusted they are as people. Each level feeds the one above.

In reference to the fifty-fifty notion: on one level we do not particularly have a position on it in our organisation because it will just be something else for them to fight over and whether you want to put that there for them. How well they deal with the arrangements is how well you can get in and address the issues about their marriage. So if there is not a lot left over, you will find they will resolve their issues fairly quickly about what the arrangements are going to be. If they are not particularly well-adjusted individuals, you will find that will drive how they perceived and experienced their marriage or their relationship, which in turn then drives the conflict over the arrangements. We would see the Family Court or the legal system as really intervening in what the arrangement is going to be. And if we are not getting under and addressing some of these other issues, it just continues the fight, so to speak.

Mr CADMAN—They are all nodding. Margaret, what do you think?

Mrs Roots—For me, it is really about addressing how to get people to relate better in this country. Family relationships underpin the whole fabric of our society—how we relate at work, how we relate in the home—and we put so little into it. We do not invest in our own people. Is it any wonder when a crisis hits that families fall over. You have to understand about relationships. We all learn to relate in the families we are born into, but we learn how to relate as kids. Relatively few people actually examine that. Is that a very good paradigm from when you are an adult and when you want an equal relationship? Some people discover it, but we do not educate our children into those transitions.

I think there is such a sadness in this country that we actually do not invest in our own people, because as you grow and change and develop the way you relate has to change. But most of us—particularly when we are in crisis—regress. People go back to the most significant time in their childhood, and they actually act out that. Unless we get some wisdom about that and invest in that so that people become more aware of those processes in their lives, it is a hidden secret—it is like breathing.

Mr CADMAN—This is not an antagonistic question, but it is not a nice question, just the same. Do you teach that in Catholic schools?

Mrs Roots—Relationships?

Mr CADMAN—Yes.

Mrs Roots—We certainly have relationship education going into Catholic schools.

Mr CADMAN—At the end of the day, are the results with Catholic parents better?

Mrs Roots—I would not say so. The reality is that we are all people, and families take what they can get. Certainly I know there are programs that are in Catholic schools and increasingly we try to do them. But, again, when pain hits, dollars go to where the pain is. That is the reality of it. Nobody wants to think about relationships until somebody is hurting.

Mr CADMAN—To me, your organisation and your church stand very strongly for families and always have. I endorse that 100 per cent. But it would seem to me that that environment is just about the perfect environment to get good results in marriages. Could you just have a look at the stats for me—I do not know whether they exist—as to whether those people in Catholic families that have been to Catholic schools are more likely to succeed in their family relationships than others?

CHAIR—Wouldn't that be a relatively very difficult task?

Mr PRICE—But, Alan, you are trying to suggest that the amount of relationship training you get as an adolescent—and I do not think you really should—

Mr CADMAN—That is what Margaret was saying.

Mr PRICE—No, Margaret was saying that, when they partner, they actually also need assistance to develop and grow.

Mr CADMAN—Not quite.

Mr PRICE—Is that not right, Margaret? Isn't that the point you were making?

Mrs Roots—Well, I—

Mr PRICE—We are all quoting you!

Mr CADMAN—I think you may be right, but I would just like for us to see if we can grasp a few proofs of your correctness so that we can develop this even further.

Mr Beaver—I would say that the Catholic population is a true reflection of the Australian one—

Mr PRICE—Hear, hear!

Mr Beaver—so what is mirroring in the Catholic schools—the good and the bad—would be very similar to what is occurring in all other organisations. I would hope that, say, the school my children go to gives a commitment to working with my children and helping them to form relationships, but I do not think we could say that that school is any better than other schools around about.

CHAIR—That is good. I am glad that you cannot say that. Thank you very much.

Mr PRICE—We should be accountable.

CHAIR—I will just ask a question on the issue of parents and children. We have the interests of the children at the intense heart of this inquiry. Everybody that comes before us has the interests of the children right up-front in the beginning, and then they continue to talk about what happened to them: 'Me, me, me, me, me.' Everyone who comes before us starts out with the interests of the children and ends up with the interests of the parent. It does not matter whether it is you, because you actually ended up on the interests of the parent as well—in essence because we continually talk about the parents' rights and roles. We cannot get away from it. So the question I ask is: do we have to remove the parents from the issue of whether or not we have a presumption of a fifty-fifty shared parenting model? Do we have to remove the parents because, in essence, don't happy parents equate to happier children?

Ms Gibson—What we absolutely know is that, the more conflict between the parents, the less happy the children are. That is just a given. It is like a seesaw: high conflict; low level of adjustment for kids. You flip it the other way: low conflict; the children are going to do much better. You are absolutely right that we have to reduce conflict around children.

However, perhaps when we use children as a starting point we say: 'What do these children need? How old are they? What are they doing? Are they at school?' Then we say, 'What is the capacity of both parents to help the children reach their potential and stay engaged with their children?' That is why we have children as a starting point: children's needs vary enormously, depending on how old they are and all the stuff you have heard many times before. So we start

with the children's needs, but of course it is the parents who are going to nurture and love these children and help them to reach their potential.

CHAIR—We come under criticism for being responsive to the needs of parents. As you will have read, and as you may have been involved in part thereof, this inquiry is responding—supposedly, in people's perception out there—to the needs of parents rather than the needs of children. I fail to see how any inquiry into a relationship between a mother, a father and children cannot look at responding to the parents' needs and wishes in order to get a better outcome for the children.

Ms Davies—Part of the submission identified the research that focuses on the voices of the children—particularly those at particular age groups—and how they perceive their parents in a separate context and where it is that they reside in relation to their parents. So understanding the perspective of the children is a determinant of their ongoing residence. We are not saying that it is the main determinant, but it is one of the factors to input to the ongoing deliberations around residence.

CHAIR—In your submission, Dianne, you have given a table of child developmental stages. If you look at the developmental needs of infants aged nought to two, it seems that it would be ideal for infants to interact with both parents every day or every other day. Again, you heard me say to Dr McIntosh that it seems that everyone has a perception or understanding of what children need. I guess that she was saying in her evidence that, in essence, the nought to three age group require a different set of guidelines from, perhaps, the one printed here in front of us. That is my problem: experts are experts, and they none of them agree.

Ms Gibson—I will have to have a discussion with Dr McIntosh. I did not actually hear her evidence. Of course, there may be varying views on this, but I think that what emerges from all of this is the fact that there are differences between these age groups, whether it be zero to two, two to three, seven to eight, and then into latency and adolescence. I think that that is one of our concerns: to try to convey that, even though they may not precisely match all of the time, there are different needs of children across their ages and stages of development. So to have a presumption that all children of all ages and stages of development can manage the same physical shared arrangements would not be appropriate for kids.

CHAIR—Take that table of child developmental stages and the fact that mediators report that it is not uncommon for parents to begin mediation seeking equal residency arrangements but to change their minds after reality testing. The developmental stage indicates that there is a definite need for strong involvement from two parents and daily involvement up to the age of five; then, as the child gets older, they can experience, accept and understand longer absences if that is the case—they can recognise that in their minds.

Putting that table together with the fact that parents can start seeking equal residency arrangements but then change their minds after reality testing, wouldn't that be a very good reason why shared residency may not be possible? You start with a negotiated shared parenting arrangement—I am moving away from rebuttable presumption—then you sit down and your mediations quite clearly demonstrate, as the factors are put on the table, that shared residency may not at all times be possible due to factors such as after-school care, shift work et cetera. For example, you look at the developmental table and the starting point is the need for shared contact

between each parent at a particular time. You start a negotiation procedure on that basis to determine how the processes went from age to age and whether your circumstances allowed you to be a part of that developmental stage. As you negotiate that at the table, for all given reasons, commonsense tells you it cannot work out. Is that a bad position to be in?

Ms Gibson—That is our ideal position. It is called negotiated mediated agreement. That is exactly our preferred position. That is why we are trying to move these terribly difficult times for families away from courts and into community based arenas where people can negotiate. This is to do with parental education. I reckon if I went out into the street and asked most parents what a one- to two-year-old could manage in terms of moving between an auntie and a grandmother, they probably would not know. There are opportunities to educate and inform people about what is appropriate for children in these sorts of negotiations. It is when we are locked into adversarial processes and the conflict escalates—when the warriors are there as well as the parents—that we lose the opportunities to talk to parents in a genuine way and to educate them about these needs of children.

CHAIR—Basically, it seems we are not too far removed in the thought processes but maybe the terminology is entirely incorrect.

Ms Hannan—It is the context of the negotiations, whether it is in a PDR setting or a mediation setting, that is really important. If parents go into a situation where they know they are going to be negotiating but feel they have a right to fifty-fifty custody, as opposed to it being the starting point for negotiations, then it is another thing for people to fight about, which is what David was saying earlier. Currently, the situation is that parents go into a negotiating position and, certainly in the ADR processes and contact orders programs, the presumptions by therapists working in those programs centre on children having the maximum amount of contact with both parents that is possible and practicable.

CHAIR—That might be in your mind but, out there amongst the general public, the presumption would be that when they go into this it is going to be 80-20.

Ms Hannan—I can only talk for my program, and over 80 per cent of our outcomes are positive from parents about whatever the negotiations achieve. I am very concerned that we would have a situation where we might have another hurdle to overcome to get to that point, rather than starting with an open negotiating forum.

Mr D. Foster—I agree with you, from seeing a lot of negotiations and mediations, particularly when the lawyers are involved. Within the family law system—and I think there is even a problem with that name itself—lawyers will advise, 'That is roughly what you'd get if you went to the Family Court, so why don't you agree to that?' So I think you are right.

Another comment I would like to make, which is probably more my own personal view and which picks up a point made by Mr Cadman, is that we are talking about parents' interests as well. People do not have kids purely for altruistic reasons, to see this child grow; they do it to meet some of their own needs. Where it works best, obviously, is where you can get the parents' interests to align with the children's interests. Where the conflict really blows is when the children's interests do not particularly align with the parents' interests, or at least one of the parents' interests. A lot of what we do is try to align those interests.

In wider society we do not elevate children's interests to the level that the family law system does. Out there I think it is much more an ebb and flow between what parents want and what kids do, say, in intact families. I do not think every decision made in an intact family is based on what is good for kids or what the kids would like to do. Yet when they are put in this system—except maybe for the child protection system—parents are scrutinised in a way that they are not scrutinised anywhere else. We do not have a system that stops people from having kids. We do not say 'You are not the right type of person to be a parent.' Yet when they come here, and one of them puts up their hand to say, 'We need some help here', they are scrutinised and judged at a certain level. They are put into a system that, in a sense, expands the whole, 'Are you a good parent or a bad parent?' thing, rather than flipping over it along the lines of what you were saying before about looking for the strengths, what you can bring and what can be done. The system at the moment is more about—

CHAIR—What you cannot do, rather than what you can do. That is my problem with the whole thing. It is all in negative language. It is nobody saying: 'How can we do this?' It is every reason why you cannot do this. It is all in negative language. It is not all the benefits and attributes you bring as a parent. Everyone has misgivings and failings. It is a system of identifying every failing you have rather than any good aspect of parenting you might have.

Mr D. Foster—They must have seen something good in each other, you would think, to have had a kid—

CHAIR—Initially—surely.

Mr D. Foster—So where is that?

CHAIR—Where has it gone? I have a problem with all the negativity in relationship counselling services. Everyone concentrated in their submissions on the negative side, rather than recognising the positive side. Everyone concentrated on the small percentage that is the negative aspect rather than demonstrating a real desire to look at the good parts.

Before we started this inquiry, we were going into another inquiry called 'Children's developmental health and wellbeing'. When we first went to go there it was about child poverty; it was about a whole host of areas. Ultimately, we said: 'There has to be something good happening out there with children. It cannot all be bad. So let's try and find out what a good child and family friendly community looks like. What is a good model?' We were developing a questionnaire to put out: 'If you think you are in a child and family friendly community, tell us about it and tell us what it looks like. Rather than continually identifying all the problems, start to look at things that are working, or that could work, and develop programs that centre on them, rather than on those that are not working.' We got this inquiry in the interim and unfortunately we were not able to progress with the other inquiry. It bothers me—and I am not being in the slightest disrespectful—that an industry develops and builds up on the negative lifestyle, on the bad outcomes. As we have indicated before during this hearing, industries should be building up on the good side.

Ms Davies—I think they are, and I think that is a very relevant point. Perhaps the terms of reference create a conceptually responsive framework, which does militate against the other, more positive, elements of early intervention prevention services, which do build on the

capabilities of parents. So the therapeutic interventions of early intervention pick up those inherent abilities that we all have as human beings and enhance those as part of the strategy that the early intervention program develops with the clients, the parents.

Certainly across the sector, even though you are identifying and critiquing that we have highlighted the negative elements of the parenting interventions, the early intervention services that operate at local, state and national government level do highlight the capacity of joined-up service delivery to deliver very positive outcomes building on the positive strengths that exist inherently within a community. Certainly, those types of interventions can be highlighted to supplement the information that you have in respect of this particular inquiry.

CHAIR—I think it is a problem that we keep identifying and capitalising on and there is no ability to move forward.

Dr Bickerdike—The good news is our daily bread. We work with families that are separating and we have success with them. The services that we provide for them are effective and those people leave our services satisfied with what they have encountered. Eighty to 90 per cent of people who come to our PDR services are satisfied with what they have found there and men are just as satisfied as women. In fact, men are even a little more satisfied if we want to get back into the gender issue. That is our daily experience. Our difficulty is that we rub up against the adversarial legal system constantly and that makes our work difficult. Perhaps we are a bit reactive because of that. I am constantly working with families where they actually have created a very nice shared parenting agreement outcome, then they encounter the legal system and it unpacks it.

CHAIR—Exactly—stronger protection, countering domestic violence. Nobody in this committee is going to look to put a child in any danger. Commonsense must prevail, surely. Every submission talks about how much danger a move toward a shared parenting arrangement would put children into. Then you have the conflicting viewpoint that, after mediation, you find it is not right and you cannot do it. It is a shame that no commonsense actually exists in this equation any more. It is all a matter of an adversarial approach. It is a minority that we highlight all the time—but commonsense tells us that nobody wants to put any child at risk or any partner, either a male partner that is subject to and a recipient of domestic violence—because that has certainly been brought home to us during the hearings—or a female partner that is subject to and a victim of domestic violence. Nobody is looking to do that. It is a difficult process.

Mr DUTTON—Jenny, I want to go back to a couple of the comments that you made which caused me some concern. You talked about the lack of shared parenting arrangements that are arrived at—which, I think, was part of the FSA submission, so you may not be directly aware of it, but I think your comments related in a broad sense to that judgment. You talked about the people that do not go to court and are satisfied. It is important to me to understand because I think there is a perception out there in some circles that people who do not go through the court process are satisfied and that they have come to some sort of amicable agreement and do not need to arrive at an 80-20 situation of every second weekend and half the school holidays, as it has been described to us and that they do that because things are cheery and they are happy to do that.

The reality is that—and we see them every day and we have certainly seen them in this inquiry—if they had $100,000 to go to court, they would fight it, but in the end they throw their hands up and think, 'I'm not going to drag the kids through it and I'm not going to go through it myself.' When these people go to their lawyers for advice they are told, 'This is what you are going to get out of the court process, mediate now or give in, or spend your $100,000 and end up with the same result or, in some five per cent of cases, with a reasonable result.' How did you source those comments?

Ms Hannan—I guess I was alluding more to families that had interface with the family law system first at a PDR level rather than at a legal system level. Certainly, families that go down the legal pathway and get legal advice about what their chances of winning are, which is usually what they are told, are less likely to negotiate in a neutral environment than families that come through counselling and then get referred to PDR because they have decided to separate. Certainly, those programs focus on providing an environment where the parents make a decision about what is in the best interests of the children that is based not on whether it is going to be 20 per cent, 80 per cent or fifty-fifty but on what is going to work for them as a family. I am sure that there is a good percentage of families—and I have met them and worked with them—where people do feel it is pointless. They cannot afford to go back to court, they cannot get any further legal aid funding—because they have already been once—and they are forced into positions where they have to make decisions because of financial constraints, usually, or because of the emotional overlay of having been through the court system for three or four years and not being able to manage it any more.

I think it depends on where people first interface with the system, and that is why I think it is incredibly important that people be encouraged, as a first port of call, to go into the non-adversarial PDR child focused mediation services and not into the legal framework. What David was saying was that the legal framework feeds that conflict, whereas the PDR services of trying to promote skills in the parents around resolving their conflicts and putting their children's interests first will be sustainable. So it is a very different framework. If I had my wish, all parents who were considering separation would have to go into programs where they learnt about what to look at in making good decisions in relation to parenting when they are separated.

Mr DUTTON—We heard some evidence previously about developmental problems in children under the age of three—and I think the figure was 60 per cent—who had spent more than 70 nights of contact per year with the non-resident parent and where there was also some conflict present in those situations. How would those figures differ from intact families where there was a level of conflict present in the relationship or in the family home in so far as that 60 per cent is concerned? Speaking anecdotally, because obviously you do not have the study available, can you just distinguish for me why it would be different? How would the situation with the parents we are discussing here differ from the situation of being in a house where the parents could quite easily be separated but are not because, for whatever reason, they have decided to stay in the relationship—or one party has?

Mrs Roots—I could only guess at the reasons for that. I would just say that the added anxiety created by seeing the absent parent and not having continuity in their young lives would exacerbate—

Mr DUTTON—No, they are saying that the contact is not a bad thing but that more than 70 nights per year where conflict is present is a factor in the outcome of 60 per cent of children not being able to progress or to develop adequately—on my understanding of the evidence.

Ms Hannan—Conflict is bad whether it is within an intact relationship or whether it is on an access visit. I guess the difference for children in the non-intact family is that children often have mechanisms to support themselves—they may have an ally in another sibling or feel that the other parent may protect them—and they may feel that that protection is gone. You would have to look at the individual cases really. I do not think you can make any general statements about that. All you can really say is that conflict is bad, whether or not it is in intact families.

Mr DUTTON—Would you expect it to be markedly different in the outcomes, though?

Ms Hannan—I would probably expect it to be higher where it is a residential handover situation because of the increased stress on the child in terms of being out of its primary residential environment, especially if the child is small. Children like to have structure and predictability.

CHAIR—We are talking about attachment disorganisation and being able to develop.

Mr D. Foster—Has the committee had a presentation on attachment theory? I gather that is what you were just saying. The main difference would be that when the family is still intact the child is still actually with their safe base albeit they are being in contact. When they are in separate households, the child is away from the safe base. It goes back to a question to the previous witnesses about why it happens that we have not got this fifty-fifty thing related to that. If it is not too much a stereotype, when a child is born it is still generally the mother that has the most time off work and may or may not breastfeed. The father still works full-time. Under the thinking of attachment theory, the child will have the mother as a safe base.

One of the things we are finding in our program when dealing with the very high conflict end, because we have a contact orders program, is that there is—I do not know whether you would say exactly a correlation—a predominance when the separation happens when the child is at a really young age. Our thinking around that is that, because the child is very connected to that safe base or the primary caregiver, although I think attachment theorists say you can have multiple attachments at the same level, when the child goes with the father the child will become anxious because they are not the safe base. Then the mother sees this and says, ‘He is hopeless. I don’t want him to go there.’ And then you get this dynamic generating where it feeds back on itself.

CHAIR—So that perpetuates this attachment disorganisation process that builds up in the child; that is what she was talking about.

Mr DUTTON—But does that not conflict with your evidence where in your child developmental stage table you say that it would be ideal for infants—and you define infant as a child aged nought to two—to interact with both parents every day or every other day? You say that for this to work it is important that parents have confidence in each other’s skills.

CHAIR—That is a point I was making. It differs from what was said previously.

Ms Gibson—This does not stipulate an overnight stay. It does not stipulate time. Time is one of those factors that for babies and young children is very different to our experience of time. We are saying that in this situation ideally both parents might see the child every other day, but that does not necessarily mean that the child would be taken from that environment to another environment and sleep in a strange place. We do not quite understand the way infants experience time but we know it is different to ours. A night away from the safe base, the mother, could be very difficult for a young child to manage. So to keep the relationships going it would be ideal if children could have some time, and regular time, with both parents when they are young, but to equate that to meaning that a babe can leave their safe base, their mother, and stay in an overnight environment somewhere else I think is really pushing beyond what we are intending to say.

Mr CADMAN—It is an important topic, but your claim for funds all the way through this put me off, I have to say. 'We need more money.' This is not about your coming here and throwing your hat into the ring asking for more dough. We do not give out money; a parliamentary committee does not do that. If you want to go on a publicity campaign for funds, I would advise not to try parliamentary committees because it is not a good look from our point of view. We want to get to the facts and we will make recommendations on what we find and governments will determine in a different arena how they are funded. It is not our role to do that. Having said that, I had a little bit of a problem with the paper by Relationships Australia from November 2000. I was struggling to define what the goals of the FRSP are. The first chapter is partly devoted to defining what your purposes are. Your groups provide trauma care, and pre- and post-marital support and counselling. Is that right? Does that cover everything you do as a group? Is it basically trauma care for people who are in trouble and assistance to people prior to marriage and after marriage?

Ms Hannan—And during marriage. That can be counselling or education.

Mr CADMAN—How much good statistical work is drawn out of what you all do? Has any one of you done a doctoral thesis on your work and gone back through your statistics? You have to keep stats and produce results.

Dr Bickerdike—We do quite a lot of that.

Mr CADMAN—You are a researcher on a board, aren't you?

Dr Bickerdike—Yes. I came into the organisation doing a doctoral thesis in the area of mediation. Relationships Australia promotes research and has a lot of people looking at the work it does. It opens itself up and even allows external researchers to come in and observe and videotape the work that it does. Afterwards, it follows up with all clients to see what happened—what worked and what did not work. I think all organisations would do this sort of work: 'What could we have done better? What sorts of things helped?' We try to follow them up two or three years down the track and say, 'What was the impact of what we did back then? How is it impacting now?' So we do do that sort of work; yes.

Mr CADMAN—Outcomes are really important. Centacare, have you got that sort of support for research?

Mrs Roots—We certainly do. All our services are continually under the spectrum.

Mr CADMAN—I do not mean to ask you to justify expenditure money. What achieves the best results? What are the changing factors at work in families?

Mrs Roots—We have been working in the field for 70 years. If something does not work, we stop and we change. We have got an ongoing—

Mr CADMAN—But, from our point of view, if you can tell us what the facts are, we can help this funding thing and the decision making becomes easier for us. That is what I am driving at.

Mrs Roots—Sorry, I do not understand what you mean by 'facts'.

Mr CADMAN—Does mediation work better than arbitration? At what stage in a relationship is it most effective to intervene? Everybody is going for early intervention. That makes sense, but can you demonstrate by the records you have kept whether that is a fact?

Mrs Roots—Certainly, over the years of this program—it has had a long history—comparative research has been done.

Mr CADMAN—That is good. From our point of view it is important that, if research is not being done, we try to identify weaknesses and get those facts out. Compared with other nations, Australia has not got as much information on families. Certainly, we do not have as much information of a valuable type as, say, the United States does. Jenny, what about your organisation? Have you had any definite research programs? It is hard for an active organisation to put aside funds for research.

Ms Hannan—Certainly, at my organisation we have done client surveys and longitudinal studies of our client base in terms of outcomes. They are quite positive in terms of what individuals identify as being a positive outcome, which may be a separation that has gone amicably, not necessarily a relationship that stays together. I was talking about the Contact Orders Program. That program has been quite heavily researched and we currently have two master's degree students doing research on that particular program, because the outcomes seem to be very good. We are doing surveys with parents before they came into the program and then surveys with parents after they leave the program to see what value has accrued and what attitudinal changes have happened in the course of being in contact with the program. We then do follow-up studies on that. Certainly, it has been identified as one of the most successful programs in the country in terms of outcomes.

Ms Davies—There are various levels of research which are undertaken right across the sector. Certainly academic research and doctoral theses, which you referred to, are under way on an ongoing basis and informed the submissions that you would have received. There is also action based research which occurs within the agencies in relation to partnering with other academic institutions to follow particular elements of their service delivery, such as the success of particular interventions at particular times. There are also evaluations conducted by the government itself of Commonwealth funded programs. The Men and Family Relationships program was one of the most recent to be evaluated as a successful program, along with the

Contact Orders Program and the Children's Contact Services, which have a bearing on this inquiry.

Mr CADMAN—I would like to get some information on parenting agreements. I do not think it has been sufficiently developed yet.

Ms Gibson—What sort of information would be useful?

Mr CADMAN—Some of the factors that parents think are significant, relating that to socioeconomic background, length of marriage and the number of children. I would have thought also the elements that they include, which ones work and which ones do not, because that seems to be the foundation of getting away from the legal system. Do you have information on parenting agreements?

Dr Bickerdike—We have lots of information on that. We have done research over all our organisations and have a very large database of client outcomes in mediation and counselling which inquires very closely into what the outcomes were, how they worked and whether they were durable or not. We have all that data there, we often use it and we publish it. We often do it in partnership with the universities. That is one way we can get around the problem of it being a bit of an expensive activity for an organisation like us to undertake. I did not expect it to be opportune to show them today, but I have graphs and outcomes data showing differences between parents under different circumstances. For example, we do counselling, mediation, conciliation and property conciliation—a whole raft of services—and we can compare outcomes for clients and what they feel about them across all those different services. The data is there and we can produce it.

Mr CADMAN—How much arbitration do you do?

Dr Bickerdike—We do not do arbitration; we do conciliation, which is getting towards arbitration. Under the Federal Magistrates Service we do property conciliation, where a legally trained mediator will act in an advisory way. We do conciliation for parenting matters. Again, a professionally trained conciliator who comes from a psychology or a social work background will be less facilitative and more advisory for parents. They will say things like, 'I think with a child of that age you might need to consider these sorts of circumstances and take this into account.' We do that sort of work as well.

Mr CADMAN—Is there a role for an arbitrator? A person might say: 'You guys have been at this long enough. We cannot get anywhere. I'm going to make a declaration and you can wear it or not, but if you choose to ignore me you are off to the Family Court.'

Dr Bickerdike—There is a program in the States that I am aware of. They call them special masters, and they are people who are particularly skilled in that area. You might have heard of Joan Kelly. She is regarded as a special master and she makes decisions like that. If Christmas was coming and parents could not decide where their children would be on Christmas Day, they might ring up their special master. I am not quite sure of the legal term, but that person can make orders and say, 'From what I've heard I think the children will do this and this this Christmas, because you can't decide yourselves.' There is evidence in the States that that works.

Mr CADMAN—What is your judgment about whether it would be successful? I know it would be used in limited cases, but it might preserve some civility.

Dr Bickerdike—I am certainly aware of that. That research I was telling you about, where we compared across the raft of different services we provide, showed that the more we take away the control for the decision making from the parents and give it to someone—from counselling to mediation to conciliation, you are going down a pathway—their level of satisfaction with the service begins to drop off. I am not sure I would want to be an arbitrator either, under those circumstances. Whether it is useful or not, I do not have the knowledge about how it works.

Ms Gibson—I think one of the key elements of arbitration is that both parties or both parents need to agree in advance that they will abide by the arbitrator's decision and the outcome. It is closer to a judicial decision. Sometimes it is useful if you have a respected arbitrator or a master that people will tell their stories to and then they respect and abide by that decision.

Mr CADMAN—Are you speaking from personal experience now? Because Andrew did not seem to have had personal experience.

Ms Gibson—In our family law system—and I include Relationships Australia in that—we have only had arbitration for a very short period of time. It certainly has not been very well tested, and it is not used in the community based sector of this system at this time even though it might be useful in the future.

Mr CADMAN—Has anybody got ideas about whether it could be used in the community based sector, providing you could find qualified people to do it?

CHAIR—If you would like to have a think about that and respond, we would be most happy to receive that. Mr Cadman, do you have any further questions?

Mr CADMAN—No, except I cannot agree with you on quality time. I thought that was an old-fashioned notion. As a father, I know it is just time. There is no quality about it. I can kick a football round in the backyard which is just as good as going to a scintillating opera or symphony concerts with my sons. For goodness' sake!

Ms Gibson—I think we are referring to the difference between a parent that just picks the children up and takes them to McDonald's as opposed to a parent who will go along to the school or stand on the football sideline and really play an active part in the children's lives.

Mr CADMAN—I don't know—there are a lot of family problems that can be solved at McDonald's, let me tell you.

CHAIR—Thank you for attending today. We certainly appreciate what you have been able to provide us with, and you have certainly given us some very strong food for thought.

Proceedings suspended from 1.27 p.m. to 1.42 p.m.

BUDAVARI, Ms Rosemary, Treasurer and Australian Capital Territory Representative, National Association of Community Legal Centres

DICALFAS, Mr Phillip Antony, Convenor, Child Support Network, National Association of Community Legal Centres

O'BRIEN, Ms Liz, Convenor, National Association of Community Legal Centres

HUGHES, Ms Kate, Solicitor and Member, Family Law Working Group, National Legal Aid

REABURN, Mr Norman, Chair, National Legal Aid

FOSTER, Mr Michael, Chairman, Family Law Section, Law Council of Australia

REES, Ms Judith Anne, New South Wales Barrister Representative on Executive, Family Law Section, Law Council of Australia

CHAIR—I welcome the representatives from the National Association of the Community Legal Centres, National Legal Aid and the Family Law Section of the Law Council of Australia to today's public hearing. The evidence that you give at this public hearing is considered to be part of the proceedings of parliament. I therefore remind you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. The National Association of Community Legal Centres, National Legal Aid and the Family Law Section of the Law Council of Australia have each made a submission to the inquiry and they are available from the committee secretariat. Bearing in mind that you are three different organisations, I ask one person from each organisation to give a very brief overview and to explain to the committee how you stand before this committee and then I will proceed to invite the members to have their questions.

Ms O'Brien—I am mindful of the time frame of the committee so I will keep my remarks brief. You have received a submission from the National Association of Community Legal Centres which draws mostly from points that are before the committee from a number of community legal centres that have submitted to you. There are more than 200 community legal centres in Australia and between us we cover every aspect of the law. We provide free legal assistance for people who are unable to afford private legal advice or who, for many reasons the committee will have heard over the last couple of months, are either not eligible for or not currently in receipt of grants of legal aid. We cover centres from Port Hedland to Sydney. Our areas are what we call regional, rural and remote as well as the major cities and major regional centres.

We cover solicitors for liable parents in child support and solicitors for carer parents in child support. We provide advice through our women's legal centres to women in family law matters. We have a number of generalist legal centres. The major part of our work over the last few years has also been the provision of advice in family law. One of our networks is the National Network of Indigenous Women's Legal Services. We provide a great deal of advice both to Indigenous

women in matters of family law and family violence and to various government agencies on issues that are important for Indigenous women's legal services.

I encourage you to look carefully at the submissions from community legal centres. I am aware that the committee has a vast number of submissions to look at. We have encouraged our centres to be concise and to provide the committee with case studies where feasible to illuminate the points we are trying to make and to make them accessible.

In general we find that one of the major problems in the provision of family law services or systems in Australia at the moment is the amount of, for want of a better term, 'bush lawyerdom' that goes on. There are a great many misconceptions about what happens in the family legal system in Australia, and I am sure the committee has heard many of them—from the assumption that grandparents are not able to apply for contact orders through to the assumption that for some reason the family law courts are biased against men. None of these things are the actual case that happens in our system nor are any of them borne out by the extensive research that is done or by the experience of our services and their clients. I can do little more than commend those submissions to you.

There is another area of particular concern to us. Given that we assist people who are otherwise unable to access legal assistance, whenever these sorts of inquiries are afoot and we make submissions or presentations to various parliamentary committees of the states and the Commonwealth our centres are subject to a level of correspondence, telephone and email abuse that we find significantly difficult. I am mindful of the fact that the committee is obliged—I think those are the words—'to punish' people who intimidate or threaten potential witnesses. It is not punishment I suppose that we are talking about here, but an awareness of the level of abuse that providers of free legal advice suffer from time to time in these areas. To that matter I seek to table some correspondence to the Women's Legal Resource Centre in Sydney and some letters of demand from Freehills on behalf of the national association as a result of the publication of a briefing paper written by the Women's Legal Resource Centre for the national association on the web site of two organisations: the Men's Rights Agency and OzyDads. I submit them for your attention and for whatever action you may take, should it be necessary, to protect our centres.

All of our centres are concerned about the concept of rebuttable presumption of equal time parenting to shorthand the process and to find unanimity. It is the significant experience of those of us who work on the ground all the time with mothers and fathers—parents who are contact parents and parents who are not, and parents who are liable parents and parents who are not—that any rebuttable presumption is not in the best interests of children nor often in the best interests of our clients. The other thing we would ask you to take into consideration during your hearings and in your recommendations are those areas of family law and the family legal system where for whatever reason we are failing in our duty to protect children and most often their mothers from domestic or family violence. We would ask you to have great concern in your considerations of the fact that, on a far too regular basis in a civil society, women and children are murdered at handovers, on contact visits and during family disputes.

Shared custody, in our view, is not the same as shared responsibility. The court is already enjoined to consider the joint responsibility of parents to act in the best interests of their children. We believe that the provisions in section 68F of the Family Law Act are sufficient to

the court to consider the best interests of the children. We also believe—given that I dare say many of us are parents and do understand the raising of children—that children's needs vary enormously from when they are three months old to when they are 15, which is the window in which the court will make decisions, and that our families are different.

In fact, in what are called in our society 'intact families', it is not normally the case that parents share 50 per cent of time in caring for their children. There is a very great difference between counting amounts of time and counting what is done with the time. We would say that caring for your children can also be counted when you are in your office wondering how on earth you are going to get them to their soccer training this afternoon, as much as it is the five minutes it takes to get them there; that we need to broaden our view of what caring for our children is; and that we ought to also understand that children's needs vary enormously over their lifetime. Most parents make arrangements that suit both of them in the best interests of their children. Of those arrangements which are made between parents in a reasonably amicable way, only two per cent of those will be for equal time type joint residency. I think that is an important thing for us to look at and to acknowledge. Most people do not spend 50 per cent of their time, all of the time, with their children. It is simply not feasible in the society that we live in. Caring for our children is a very different concept from spending half the time with them.

Finally, one of the things that also concerns us in this whole inquiry is the implication that providing financial support for one's children is not somehow significant, important and caring for one's children. We urge the committee to consider, in its recommendations, that what we need to talk about is financially and emotionally supporting our children wherever they reside and no matter who the carer parent is. I have not covered the other areas of the terms of reference in my opening remarks—matters to do with child support and child support payments—but we have brought our expert with us who will reply to your questions during the afternoon.

CHAIR—Thank you.

Mr Reaburn—In the light of the committee's expressed wish for us not to make commercial statements, I will be very brief about National Legal Aid. National Legal Aid is simply the title we assume, when the directors of all the legal aid commissions in Australia and New Zealand meet together, for the purpose of being able to speak at a national level with a single voice. We rotate the chair among ourselves and it simply happens that this year it is my turn. But I do want to say that, taken together, we have the largest family law practice in the country. We receive something in the order of 50,000 applications for family legal assistance in the course of any given year and we give assistance to more than 35,000 of those applications. So we have an enormous, extensive, country-wide family law practice. We have within our organisations an extraordinary range of accumulated experience and expertise with the system.

We have made a submission to you. In the light of the discussions that I have been listening to this morning, can I say how delighted I am that our submission begins by saying, 'People negotiate under the shadow of the law.' That is certainly true, and it is an important element in all aspects of the way in which both the legal and the non-legal bits of the system tend to operate and interrelate. I suppose you could say that we have focused in our submission on practicalities. We looked at the committee's terms of reference and said, 'If you went in this direction, these are some of the things that would have to be looked at, accommodated and taken into account.'

We have done that because, of course, where there is a family dispute it manifests itself in the practicality. Certainly, when it has to manifest itself outside the parties concerned, it has to be concerned with practicality. Otherwise it would just be concerned with trading abuse, and nobody is going to operate on that kind of level. So we focused a little on practicality, but I would want you to understand that legal aid commissions, as well as anybody, understand that what underlies dispute in the kinds of circumstances where it becomes necessary for us to give assistance is a dynamic and conflict. In other words, it is the nature of what the parties are and the way in which they are interrelating that leads in a sense to the need for legal assistance. We are as conscious as anybody that huge numbers of people whose relationships break down manage by themselves to make satisfactory arrangements to handle the consequences of that relationship breaking down. Large numbers of them do not need help from anybody. We are very conscious of that.

Legal aid commissions—and this may seem a little strange, given that one of our primary statutory purposes is to provide people with legal representation and assistance in courts—are also fairly strongly committed to operating in ways that, wherever possible, keep people with family problems out of the Family Court. In my own jurisdiction, for example, we run an alternative dispute resolution program to which we try to turn as many people as possible who make application to us for legal assistance. It has a very high success rate, and we are very proud of it. If I can be dramatic and indulge in a bit of purple prose, I regard every hard-fought family law court case as like a boil on society. It does not just involve the parties and their children; it involves their families, their friends, the places where they work and their communities. It spreads bitterness and poison, sometimes to great lengths. So anytime that we can do something to prevent and avoid that, we take that option. We are happy to assist you today and to answer questions.

Mr M. Foster—In a sense, my organisation represents the barristers and solicitors of Australia who work in family law. We have about 1,700 members but we touch base with a great many more family lawyers who would not actually be members but who would support, be influenced by or respect the work that we do. Our member barristers and solicitors appear every day for men, women and children. Many of our members work as child representatives in Family Court matters. The two points I want to make very briefly by way of opening were points that arose from my having sat in the back of the room this morning and listened to the dialogue.

The first of these is that the squeaky wheel, as they say, gets the oil, but there is always a risk that the squeaky wheel persuades the listeners that the machine is broken in a fundamental way and so, instead of getting oil, you get something much more radical. My point is this: the reality is that around 97 per cent of all separations in Australia have all of their issues resolved without the need to ever see a tribunal—97 per cent would never see a tribunal. You would obviously spend more time working out how to make sure that 97 per cent travels smoothly through the system than you probably would making sure the three per cent is well attended to, although that is not quite the point I would really like to make. The 97 per cent resolves itself through negotiation, through conciliation, through mediation or through counselling, and it could resolve itself through arbitration, because we now have legislation to allow for arbitration only in financial matters, not in children's matters. Certainly the legal profession is keen to see arbitration up and running and we now have a lot of trained arbitrators in Australia. When I say a lot, I would think there are probably 100 to 200 experienced family lawyers who are qualified and have trained as arbitrators. In that sense the system works in that for 97 per cent of the

people it is providing solutions which are agreed. Those solutions are agreed in different ways. Some mediation or counselling goes on as part of the court system, some of it goes on outside, but wherever it goes on it is lawyers who are really playing a key role in managing that proportion of the disputes to a happy ending.

The second point I would like to make is that, although it is popular to disparage what is called the adversarial system, in the end, for that very small proportion of separations where there is one or more aspects of their affairs that they cannot resolve, having a system where in relation to children there would often be a representative of the interests of children, a family report from a psychologist talking about the needs of the children in the relationship, each side putting their best points and then a judge to manage efficiently the whole process without letting people stray too far from the key relevancies, is a system which I would have to say is very difficult to improve on in terms of balancing efficiency and fairness, which are the two things you want. So, looking at those two aspects I have just mentioned, the point I would like to make is that you can refine those systems—and the family law section has ideas about how to refine them and we constantly lobby for those refinements—but making radical changes to them will probably simply bring a new queue to your electoral offices. It will be made up of different people, it could even be people of different gender, but it will still be a queue of unhappy people.

Mr CADMAN—There are range of views in the submissions. Firstly, Mr Reaburn, I will ask you about a few things because I think you in a legal sense represent those who are close to a lot of the more difficult cases and probably those that are not well funded. There appear to be no enforcement measures in anything the court decides and that causes a great deal of anxiety with people rectifying or having restored a court order that appears to be very simple and cannot be implemented because one party decides to ignore it. Is that your experience?

Mr Reaburn—Yes.

Mr CADMAN—How do you put in place some enforcement process?

Mr Reaburn—The kind of thing I usually say over the third glass is that we ought to put 50 people a year in prison. But enforcement is actually a little more complex than that. I will illustrate with a story. It is a situation where we have a mother who had a bad accident and is now crippled. The parties have separated and because of the extent of the mother's disability the children are with the father.

The father is not complying with the order in relation to letting the mother have time with the children. It has been to court on numerous occasions. The court will not do anything to the father because to do anything significant to the father is going to have a serious impact on the children because there is no real alternative for the children. I am left in a situation where I can do nothing for the mother. In fact, all I can do is say to her: 'I'm sorry; because these are taxpayers' funds I'm not even going to be able to help you any more because all it will do is to continue futile applications to a court that will do nothing.'

That is a really hard one, but a lot of them are not that hard. The court has exhibited a total history of being very hesitant to visit consequences upon any of the people who appear before it, even to the extent of turning around and saying to somebody, 'We are rejecting this application out of hand. You are not even going to be entitled to five minutes in the court. Go away.' The

court is very hesitant to take any sort of positive and concrete step toward enforcement. I know that the people who come to your offices have that kind of story because they come to me with the same kind of story and, not only that, they come to me in circumstances where, because of the story, it costs my organisation and, through my organisation, the taxpayers of Australia money to try and do something about it. So I would definitely agree with the statement you put to me.

Mr CADMAN—We hope you can help us with some solutions.

Mr Reaburn—As I said, when I have had the third glass I say, 'Let's put 50 people in jail,' but the solution has to be more one of those kind of 'switch in the head' things. I think part of the problem is that the court is hesitant. It is not as though it does not have powers. The parliament has given it plenty of powers; it does not exercise them. What does it require for them to be exercisable? Part of it is the attitude that says, 'Anybody who wants to come and file a document is entitled to their day in court.' If somebody wants to put that silly a document with support from us, they will not get it, but we have to support the other side to fight it. You look at it and you say, 'Why does the court let this through the door?' These are 'switch in the head' things rather than something that you can formulate in a couple of paragraphs in a provision in a statute, put through the parliament and expect will make a difference. So, I am sorry; I have come back to you with a layer of even further complexity than was inherent in your question.

CHAIR—Would anyone else like to make comment on Mr Cadman's questions?

Ms Rees—There is a small portion of the population who will never obey court orders unless the orders represent exactly what they went to court to get. With those people, there is not much you can do. There is another section of the population where the ultimate sanction, which is: 'We'll remove the children from your care and give them into the care of the other parent if you can't act responsibly,' is not available—some like the cases that Mr Reaburn talked about; some not quite so drastic. For those people, too, there is absolutely nothing you can do.

You must understand that we visited this question extensively two years ago when the government brought in amended legislation in relation to the enforcement of contact orders. We are working now under the new scheme which is the result of all that work that was done over some years as a result of a recommendation of the Family Law Council.

We have what the government believed was the state of the art system. Let me tell you that does not work either because it boils down in the end to the willingness of an individual judicial officer to grasp the nettle and deal with an enforcement application. They are unpopular and not much comes out of them because at the end of the day if you have an aggrieved parent coming along and saying, 'I didn't get my contact last weekend,' how am I going to make that better? I can give them a weekend of make-up contact but it is not going to change the fact that they did not get their contact last weekend and neither is it going to change what is in essence the problem between these parties, which is attitudinal. It is just another way of continuing on the conflict between two parents who hate one another. They do not have anything else left to fight with now; their property has usually been sorted out between them and they cannot fight about it. There are two things left to fight about: child support and contact. Until such time as they come to terms in their own minds with the breakdown of their marriage, the relationship between them and how it is going to become, that is what they are going to do. You cannot change that

situation or that dynamic. That is why you need somewhere for those people to go, expensive and difficult though it may seem.

Mr CADMAN—So you would put them into deep therapy.

Ms Rees—If I had the money, I would put them into deep therapy, but the resources do not exist.

Mr CADMAN—That is an idea; that is an alternative. That is good.

Ms Rees—If you had an unlimited chequebook and you said, 'How could we fix this system?' I would say, 'Leave the Family Law Act alone but give us some more judges so that people can be pushed through the system more quickly and not have the delays that we have. Put your money into pre-trial counselling, mediation, post separation counselling and post separation contact plans. Put your money into teaching people firstly, before they separate how to be good parents and, secondly, after they separate how to adjust to the fact that they now have to continue to be good separated parents.' I suggest that the remedy is not in the Family Law Act, it is in the way people parent their children and in the way that they think.

Mr CADMAN—My next question is to Mr Foster. Is a legal person the best person to act as an arbitrator? I am not saying that they are not. Do not presuppose that that is my suggestion. I want your opinion. From a professional point of view, you would be inclined to say yes, but there are a lot of factors in arbitrating these decisions, aren't there?

Mr M. Foster—Yes, but in the end what you want is a clear mind. A clear mind, a good decision maker, someone who can gather information that may be contradicted, because there may be two points of view being put forward, and someone who can distil from that what is best. For example, it would be better to have a clear mind trying to choose between the evidence of two psychologists than to have a psychologist trying to guess which of the psychologists was best. The same clear mind may then, later in the same day, have to choose between two valuers in a property case, and again you do not want a valuer—in fact, it is not practical to have a valuer—you want a person whose only training is to have clear thinking and a reasonable level of experience and skill in making decisions in areas that can be quite difficult.

Mr CADMAN—Would you allow legal representation in that situation?

Mr M. Foster—I think that legal representation—and I heard this morning's comments from this inquiry—is crucial because that is the only thing that ends the power imbalance and delivers the fairness that gives a reasonable chance of people going away feeling as though they have been heard. That is why in my opening I said that you could change the system radically but you would end up with a different queue at your electoral offices. The different queue would be made up of organisations representing women probably who would say, 'I wasn't represented; I never got my case out; I never had the chance to challenge what was being said. The tribunal did not come in on my side, as it should have; it should have realised that I was the vulnerable person in this inquiry.' Of course, the tribunal cannot come in on anybody's side because it will then very quickly look as though it has lost its independence. It really leaves those vulnerable people. I know if I said to Anne, 'Women are vulnerable people in this situation sometimes', she would

say. 'Lots of people are vulnerable,' and that is true. There are some gender issues in relation to vulnerability, fairness and the power imbalance in these processes.

Mr CADMAN—I do not think this is cynical, but wouldn't there be an opportunity to say, 'Let's go to the next stage, and once we have finished with arbitration we can still go to Family Court and straighten it out there?'

Mr M. Foster—Yes, you can do that.

Mr CADMAN—The customer could say, 'If they can afford to go that far, let's do it.'

Mr M. Foster—Yes, but that is the trouble: in the end the process cripples everybody. Money is not the only price you pay in the process. You are dealing with people who are already dealing with their family breakdown, so they are carrying a fair emotional and personal burden anyway and a lot of them are really on the brink of just saying, 'I give up. I can't handle it any more.' I do not know that it would sensible to put another layer in the process. It is a bit like departure orders with child support: some people cannot believe that they have to go through a process of fighting that within the agency and then go on to fight it again in the Family Court. It is a pretty corrosive process and requires more than some people have got.

Mr CADMAN—That is really valuable. One area that has worried us—and I would like a comment from all of you—is the delay between the interim order and the actual day of hearing when there may be an expiry of a couple of years or more before that occurs. That has been worrying us, because the interim orders tend to become the fact, and the Chief Justice said that he felt that that was the case also.

Mr M. Foster—It is a very serious problem, more so because the court, for sensible reasons of efficiency, has determined that interim orders have to be made on the papers, as they say, which of course is code for a very superficial look and no testing of the claims. So it is possible to win interim residence with untested and quite inaccurate claims and find that 18 months later solid status quo has built up, which really means that you have won the day. That, I think we would all agree, is a very sad state of affairs but it is very common.

Ms O'Brien—Interim orders can also increase the danger in a situation, because of the length of time.

Ms Budavari—From the point of view of community legal centres, the only way of avoiding that delay is to put more resources into the Family Court. All of us who assist clients who are appearing in the Family Court know that that is the situation, that you are unlikely to get a final hearing for at least 12 months after an interim hearing. It is simply the fact that the court is working as hard as it possibly can.

Mr CADMAN—What tactics do you use in advising your clients? If I were in your situation, I would say, 'How do we get the best run out of this process? We know there is going to be delay and we know it is going to be done on the papers' What sort of approach would you normally use?

Ms Budavari—The approach is the same as in any situation: you advise your client to put their best possible case forward at the interim stage in order to achieve the result at the interim stage that will carry over to the final hearing stage. It will give them an advantage in the final hearing because of the build-up of the status quo, as Mr Foster said.

Mr CADMAN—And particularly if you were confronted by somebody who decided that they would represent themselves or be unrepresented because they thought that it was a short-term thing, that the interim order would only be interim and that they would have a full hearing within a few weeks. So represented people would gain a substantial advantage at that first point, wouldn't they? Would that be your experience?

Ms Budavari—Yes.

Ms Hughes—I am a family law lawyer as well. In my experience, people are often very anxious at the interim stage about what is going to happen and they speak in the old language: 'I need to get sole custody because I am afraid he is going to take off with the children,' or 'She is going to relocate back down to her family in Melbourne,' or whatever. My experience is that lawyers do encourage people to consider the interests of the children, that they say, 'These children have a right to regular contact with both parents.' There is a culture in the legal profession to refer people off to counselling and mediation. That is something that solicitors do on a regular basis.

CHAIR—Do you mean family law solicitors?

Ms Hughes—Yes, indeed. There is a very strong culture of that. I think that family law practitioners have been united in dismay at the lack of Family Court counselling now, because pre-filing counselling was very much a part of the everyday practice of family lawyers. You would refer people to see the counsellor and see if they could sort it out first. It was only if they could not resolve it that you would say, 'Come back and we'll start negotiating formally for you.' In my experience, people do encourage their clients to see if they can work out an amicable shared arrangement. They explain to them that the court will order some sort of shared arrangement unless there is an unacceptable risk to the child. It is difficult in the interim stage to test whether or not there is an unacceptable risk. The evidence has to be very strong. It is unfortunate that it takes so long to get to a final hearing. There is some unease about situations that are put in place on an interim basis because, as you say, it may take another 12 to 18 months or two years to get to a final hearing in some registries.

There are a couple of things that have happened in order to address that. The magistrates of the Federal Magistrates Service are working very hard around the country. Some are sitting until eight o'clock or nine o'clock at night in order to get through their lists so that people do not have to wait so long. The Family Court in various jurisdictions has done that in the past as well. The Family Court has introduced a system called the case assessment conference, so that when people file in the Family Court the first thing they do is sit down at a table with their lawyers and a counsellor to see if they can work it out. It is very successful because people do want to be heard. They do want to try to find a resolution. It is only then, if they cannot reach a resolution, that they go off to see a judge or a judicial registrar.

Mr CADMAN—I turn to the 80-20 rule. Mr Reaburn referred to it earlier. Our evidence from people who have spoken to us leads us to believe that permeating down from the Family Court there is this concept that the 80-20 rule works along the lines of every second weekend and half the school holidays. That is the formula that people run on, and they may decide to contest it or not contest it, based on that perception. If that is the case, is there any difference between that and having a 50-50 rule?

Mr M. Foster—There is no 80-20 rule, and I have never heard it suggested. All it is—

Mr PRICE—It is a guaranteed outcome.

Mr M. Foster—The reality is that a disproportionate part of the population has a working father and a non full-time working mother—perhaps a part-time working mother. That is the reality. If you then look to see what the practical contact regime is in relation to the children of those parents, you will come very quickly to the conclusion that only weekends are really available to dad, because he is at work during the week. It is unfair to mum and to the kids if she does not have some weekend time, so that takes care of the weekends. He has four weeks off a year, and that gives you a proportion of the school holidays. So it is a reflection of the reality of our work force, our community and our society, rather than any percentages.

Mr CADMAN—We have half the women in Australia in the work force.

Mr M. Foster—Full time? That is the big difference, I think. That is what we are saying in our submission. Of the clients who come to see me—who are, of course, fifty-fifty men and women—I would have to say that the men are generally full time in the work force and the women are much less full time in the work force. That is a really big determinant of the way in which you then look after the kids.

Mr PRICE—How do you apply that approach when the dad repartners and his new partner has a child in the house as well? There is a family home and two parents; how does your argument hold up in that situation?

Mr M. Foster—It is not an argument. I am not lobbying for any particular outcome. That situation, of course, is not everybody's situation, but that is the point about family law: you need individual solutions for individual families. Faced with that situation, you may well have a different contact regime other than alternate weekends and a share of the school holidays.

Ms Rees—You seem to be saying: 'I, the father, have repartnered. I now have a new partner, and she has a child of her prior relationship and she's not working. What is the purpose of having the children come and stay when I'm not there?' What are we trying to achieve here—just numerical equality or fathers spending time with their children?

Mr PRICE—The argument that was advanced to me was that it is a physical impossibility because men tend to work full-time. I accept all the underpinnings of the argument, but I think then it becomes a little bit more difficult when they repartner, and we are seeing them repartner and repartner.

Mr M. Foster—You are saying it is a physical impossibility for the dad to be with the child.

Mr PRICE—Because the dad is on his own, he is working full time and therefore does not have the ability to make appropriate arrangements to have the child. I thought that was the argument that you were advancing.

Mr M. Foster—No. As I said, I am not arguing for a particular outcome. I am simply saying, if the question is why there is an 80-20 rule that says that children should spend 80 per cent of their time with their mother and not with their father, that is a reflection of the way the work force pans out. Of course, if there are people other than the parents who can look after the children—grandparents, child carers, professional organisations or stepmothers—that creates all sorts of other possibilities.

CHAIR—I think what Ms Rees was saying was that that defeats the purpose, if the purpose is to have contact. But the essence is that the child would be able to experience the culture of that family. It does not matter if the person is at home. It could very well be that the mother or the father—whoever has permanent full-time residence of the children—may work as well. So at times that person might be at work and that child might be in child care or something like that. I do not quite follow where you came in, Ms Rees. If the issue is to have time with the parent, what have you gained if the step-parent is doing the primary day care for the child whilst that shared arrangement is taking place?

Ms Rees—It depends rather on who is going to be the alternate carer. If, for example, you have two working parents, both of whom are relying on child care, it would be highly likely that a committed step-parent would be seen as being a terrific alternative. If you have a stay-at-home mother who does not work at all, she may well say to the court: 'Why should the children be spending time with my husband's new partner when he is not there, when they could be with me?' What we are really saying is that in every situation you have to look at the particular family, not a generic family.

Mr CADMAN—But you do not see a rebuttable assumption of fifty-fifty doing that; you think it is mandated fifty-fifty.

Ms Rees—No. I see a rebuttable presumption of fifty-fifty as being extremely good for lawyers because there will be a boom of litigation that you cannot imagine.

Mr PRICE—Getting back to the point where you said that you have to look at every family—why is it then that 94 per cent of families are locked into sole residency?

Ms Rees—Because that is what they have chosen, that is what they have agreed on and that is probably the way their children were parented before they separated.

Mr PRICE—I do not agree with that all. I think the challenge for this committee is to try and bust out of the outcomes of the Family Court and the 94 per cent sole residency.

Ms Rees—Then look at the way in which children were parented prior to separation. When you get to a situation where you can say truthfully that parents have equally shared the care of their children before separation, you will have no difficulty in persuading a court that they should equally share it after separation.

Mr PRICE—What is magical about the prior pattern? Are you saying that patterns remain intact once people are separated? I thought there would have been a whole change of behaviours with both parents. The idea that, because the prior pattern reveals a certain degree or percentage of care, we should use that as some immutable force and not be prepared to adjust things post separation—

Ms Rees—Because the pattern which has existed up to the date of separation has influenced the children's attachments, the way the children are used to living and the way they are used to being cared for.

Mr PRICE—The separation is going to traumatise them.

Ms Rees—I am not arguing about that. I am talking about their primary attachments and the people that they look to for their primary nurture. That will have been determined throughout the course of the relationship by the way they were cared for by agreement between their parents. You cannot change that fact. For example, if we have had a mother who has stayed at home, looked after children and not worked, those children are almost certainly going to have a primary attachment to her. They will look to her for their nurture. You cannot simply decide that because the parties have separated all of that is going to change.

CHAIR—Can I refute that?

Mr PRICE—I am interested in the children—not saying that one parent has a gold-plated right over another, which you seem to be arguing—

Ms Rees—No. If that is the case, then I have put my argument very badly

Mr PRICE—on the basis of the degree of care that they have provided in the past.

Ms Rees—No, I am talking about the attachments, not the degree of care they have been provided with.

Mr PRICE—Attachments vary over age—that is the evidence we got this morning.

Ms Rees—Of course they do.

Mr PRICE—The critical issue of attachment comes from age zero to three, I thought.

Ms O'Brien—Yes, they do vary over age. I do not think any of us would dispute that. The point is that at what we are calling the 'point of separation'—a situation which I am sure we all agree is very difficult and volatile for the adults—the best interests of the children, which are paramount, are considered by most experts, not just those of us who have children, to be to maintain the situation for them in as stable a manner as possible until the situation has settled down and the differing needs of the children as they grow and change, and as their parents do, can be determined. What we are saying, in effect, is that if you have a rebuttable presumption in this early phase you are likely to confuse the rights of the parents with the best interests of the children.

The court, in considering the best interests of the children, and all the matters which it must already take into account, will consider what the arrangements have been until this point in the likelihood that what the children are used to at this point of very great difficulty for the adults in this situation is most likely to be in their best interests in at least the medium term until the parents are able to resolve all the other matters that happen under separation and focus their attention on the best interests of their children. Most people, in fact, do achieve that. They do consider the best interests of their children in a time that is very difficult for them. Most parents are able to do that.

Mr PRICE—I am more radical about the children. I am attracted to the idea of children having an input, which they do not necessarily get with the legal representatives of the children—but that is another story.

CHAIR—Mr Reaburn, would you like to comment on the question and on the discussion taking place now?

Mr Reaburn—Sometimes I sit and listen to discussions like this and I wonder how any of us grew up straight. One of the things that is definitely in the interests of children is that they should have contact with both their parents. They need different kinds of contact with both their parents at different points in their lives. The ways in which separations occur and the times at which separations occur produce different sorts of needs and requirements in children. I spend moderate amounts of my time talking to angry participants in family matters—more often than not men, but not necessarily. I try to persuade them to take the long view. I say, 'The really important thing is that, when your child becomes an adult, the two of you have a good relationship. If one of the ways of achieving that might be to roll with the punch or two and suffer some pain because you missed the fifth birthday party or something like that, at the end of the day it is the result in the long haul that is the one you want.

Most of these people are speaking out of immediate pain. Again, it comes back to the fact that what is going on here is the way the two parents are relating to each other. I would love to see a situation where people were able to have as much time as they each possibly could, dependent upon their circumstances, with their children. Almost every family is going to have something about it that is a little bit different to the one before and the one next. I suspect that somehow it may be better to start neutral and build up rather than start with a fixed assumption and build away from. The concern we have expressed in our submission is that, if you start with a fixed assumption and then leave it to the system to build away from, that will in fact increase the calls on the system.

Mr PRICE—I have a couple of questions about child support. I note the National Association of Community Legal Centres expresses concern about the increasing emphasis on private collection. Could you explain that concern to me?

Mr Dicalfas—When a person goes to the Child Support Agency as the carer parent and applies for an assessment, the Child Support Agency usually uses the formula and works out the amount that has to be paid. At that point, the carer parent can chose to either have the Child Support Agency collect the money, which means the paying parent pays first to the Child Support Agency and then the money is payed on to the carer parent, or they can chose private collect, which is where the paying parent pays directly to the carer parent and the Child Support

Agency does not have any direct involvement in that collection. The concern with that is that, if the money is not paid, the carer parent can go back and ask the Child Support Agency to collect it, but they can only collect the last three months that has been unpaid. If the situation has been going on for more than three months, they miss out on child support and the agency cannot collect it for them.

Mr PRICE—If we amended that to make sure the debt was recoverable as if it was being paid to the Child Support Agency, would you be happy?

Mr Dicalfas—At the moment, as I said, the agency can only go back three months. If they could go back further, that would be one step in the right direction. My view is that the agency is there to monitor the payment of child support.

Mr PRICE—If there was some monitoring so that the payer got a good conduct report after six months or something so we got a pattern of good payment, would you like to see that function?

Mr Dicalfas—I do not understand how that would work. I am not sure what you are suggesting.

Mr PRICE—You are saying that the agency is not supervising the private collection arrangements. If we did two things: firstly, let them go back beyond three months and, secondly, for any new person, monitor it for six months for example, just to make sure there is a good pattern of behaviour and if there is not, flick it back to the Child Support Agency.

Mr Dicalfas—I suppose an advantage with that is that, at the moment, some carer parents do not even know they are entitled to have the Child Support Agency collect the money for them. Perhaps what you are suggesting is that, after the six months, there be some reminder to the carer parent that they have that right to have the agency collect it for them.

Mr PRICE—Things do surprise me, but they should be aware of their choices—I am concerned about that. You say in your submission that child support 'should not be watered down'. Could you elaborate on that?

Mr Dicalfas—The basis of that submission is that, when the formula was brought in in 1989, there was a lot of research involved in bringing into place the formula.

Mr PRICE—There was none in Australia; that was based on United States systems. No research was done in Australia.

Mr Dicalfas—The watering down you are asking about relates to some changes to the system over the years. If the system is to be changed at all now, it should be based on thorough research and not tinkered with any further.

Mr PRICE—The problem is that there has been inadequate research, and often it does not go to household incomes. You do not get a good feel for what is happening out there, so I share that, but I do not know that we can hold up things. There are 207 CLCs. How would you break up the proportion of your clientele in family law matters?

Ms O'Brien—Our latest figures, which we produced for submission to the Senate, would indicate—do you mean what is the percentage in family law or how much of our work is family law?

Mr PRICE—Actually both would be of interest.

Ms O'Brien—I would have to take on notice what percentage of our work is family law. I could provide it fairly easily but I did not bring the statistics with me. Within family law itself, once again I would rather provide the accurate figures for you because it is very varied according to the state and the region.

CHAIR—In addition, could you provide the numbers of the mix, what percentage of men and what percentage of women you represent?

Ms O'Brien—A gender breakdown in family law?

CHAIR—Yes.

Ms O'Brien—And of our quarter of a million clients how many of them are family law. I can tell you that the answer to the second is in the realm of 60 per cent, but I get an accurate figure for you.

Mr Reaburn—I can answer that question for you as far as National Legal Aid is concerned right now—not for the CLC figures but for ours, and it might be useful for you to have some knowledge of those. I mentioned the figures before about 50,000 applications across the whole of Australian and just over 35,000 granted. Within that, the proportions run at about two to one, two female to one male. But the interesting thing about it is that that is the proportion of applications we receive, that is the proportion of applications we approve and that is the proportion of applications that do not succeed. The pattern has remained the same—

Mr PRICE—But it is also true that in those two-thirds of women you are turning away people who are financially qualified to get legal aid—

Mr Reaburn—Yes.

Mr PRICE—and often have very serious issues that they wish to pursue legally, like custody. You say, 'We are dealing with 35,000 applications and two to one are women,' but you are also turning away a lot of women who are financially qualified who I would say have very serious issues.

Mr Reaburn—Interestingly, I can say that is true because my state is the only state that is actually in a position to have figures on this. All legal aid commissions in Australia operate under guidelines that are laid down by the Commonwealth, so we are all supposed to be applying the same kinds of tests. There is a means test, of course, and you have to get through the door on the fact that you are poor enough to get our assistance. There is a merits test. We do not give assistance to things that we do not think have particular merit. But in Tasmania we also have a rule that says, 'We can knock you back if unfortunately we do not have enough money

today. You have passed all the other tests but we do not have enough money today.' We keep figures on how often we do that, and we do it far too much.

Mr PRICE—I would be interested in those figures.

Mr Reaburn—I can send you that. But we do turn away women who have real issues and we turn away men who have real issues, and we do it at the rate of about two to one, two women to one man. It is consistent right across the field and it has been consistent for a decade.

Ms Budavari—I will aid to that that often those people who are refused legal aid will turn up at a community legal centre and will require some assistance through community legal centres—not just those who are refused but also legal aid has a cap on the amount of money that they will spend on a particular family law matter of $10,000. Depending on where people are in the system, they may exhaust that cap before they get to a final hearing and require some assistance to represent themselves, which is what a lot of the community legal centres provide.

CHAIR—I want to come back to the issue of how, if you want shared parenting post separation, you have to demonstrate improved shared parenting prior to separation. You say that, if you have a stay-at-home mum and a working father, the attachment is obviously to the mother because of the stay-at-home scenario. But when a child gets to school age of five-years old, the majority of the day is spent in school, so the father or a mother—whoever is in residence of the child—for the majority of the day does not have the caring, nurturing role for the child. You start to balance the equation a little bit when you get to the scenario of the five-year-old. You start to reduce the gap between the time spent with the children of the stay-at- home parent—whether it be a mum or dad—and the other partner who may come home from work at five o'clock and may really only have missed out on two hours in the day where they have not been in a shared care role. Is that taken into consideration?

Ms Rees—Firstly, I think the question that you are asking me is one that ought to be addressed to the court counsellors or the child psychologists rather than to the lawyers.

CHAIR—The reason I ask you is that you are the one that made the inference, and you referred to the issue of this stay-at-home parent.

Ms Rees—What we see in running residence cases is reports which come from qualified social scientists or, indeed, psychologists and psychiatrists that talk about the importance of the children being cared for by the person to whom they have their primary attachment. They do a lot of empirical testing. They do a lot of talking to the families and talking to the parent to work out where those attachments lie. We look at their evidence and we test their evidence, but ultimately the court is very influenced by the evidence that they give. The evidence they give, consistently, is that it is in the child's interest to be cared for by the parent with whom they have the strongest attachment. There is no doubt that those attachments change depending upon the age of the child. The significance of the attachments change too, depending upon the age of the child. The significance to which one would assign a primary attachment for say, a five-year-old is quite different from the significance for a 15-year-old; the attachments will have changed as the children grow older. But certainly, if you are looking at what the evidence is which the court has to evaluate, that is the evidence that the social scientists give to us.

CHAIR—The reason I raise it with you—I will come back to it again—is that you were the one who raised it in the initial place. I wanted to pursue it further because it appears to me that there is an obvious area whereby the child's attachment might clearly be with the parent who works rather than the parent who stays at home.

Ms Rees—It absolutely happens. In those cases, the court goes to elaborate lengths to try to work out a system that allows a full-time working parent to maximise their time with the children and to nurture that attachment. Please do not come away with the idea that the Family Court just makes orders that someone has contact every second weekend and half the school holidays. That certainly is not the situation. We spend our working lives trying to engineer sets of systems that will cater to all of these factors and take into account the ballet lesson and the soccer lesson and the fact that dad has to go interstate every third week on Wednesdays. What we do is infinitely flexible.

CHAIR—Following on from there, because there is such a small number of people in the Family Court scenario—I think it is consistently five or six per cent—

Ms Rees—Six per cent seems to be the current figure.

Mr M. Foster—That is only of those people who file applications.

Ms Rees—Exactly.

CHAIR—Ultimately, the others seem to have resolved themselves in some form or another, whether it be satisfactorily or unsatisfactorily. The more people that come before this committee and the more submissions you read, it is more unsatisfactorily rather than satisfactorily. How, in the spirit of cooperation, could you see a presumption of shared parenting with a negotiated starting point of 50 per cent shared residency and shared parenting operating for the other 94 per cent that do not go through the family law court?

Ms Rees—I think it would divert the attention of the parents from 'What is best for our children?' to 'What is the expectation of the community?' To put it to you in a different way, I see in my practice women who want to give the residence of their children to their husbands—women who believe their children would be better cared for by their husband or sometimes by their husband's mother but, nevertheless, not by them—but they will not do it because the community expects that women will care for their children. They will not, because they cannot, make that step. I think you will find the same thing will happen to a father or a mother who knows that having the children spend one week here and one week there, or five days here and five days there, is not the best thing for the children but who feels that they are under pressure to do that because 'That's what the community expects of me.'

CHAIR—We are not speaking at all of an enforced five days here, five days there; seven days here, seven days there; one month here, one month there; or however fifty-fifty shared care might come about. That is certainly not what the committee is looking at: forcing somebody to be with the child for half the time. We are asking: would it be valuable to have an assumption that a child could have a shared parenting arrangement, whether or not it is a shared residence arrangement, with a presumption of spending equal time with each parent as a starting point—as a negotiating point—and then you make your arrangements around what you can actually cope

with, achieve and deliver? As was brought before us by the last group of witnesses, in the mediation process people invariably come to the table with the thought of having fifty-fifty shared care but, after looking at the reality and practicalities of schooling, work and a whole host of different things, they tend to move away from that process. Is there a major problem with assuming that all things are negotiated and all things are possible and that, in an ideal world, if you were able to, you would like to have shared parenting and shared residency to the capacity which each of you could manage, starting at an equal rather than an unequal stage?

Ms Rees—There are a number of ways in which I would like to answer that. Firstly, it depends upon whether we are talking about the people who are going to consider the interests of their children and come to an arrangement in their children's interests, no matter what.

CHAIR—Let us start with those people.

Ms Rees—Then why do you assume in the first place that it is in the children's interests to spend half of the time with each parent? What is the basis of that assumption? I know of no research which supports it.

CHAIR—On the other side, what is it that assumes that they should spend 80-20 time?

Ms Rees—Nothing does. I have been practising family law since 1976 and today is the first time I have ever heard anybody say that.

CHAIR—Are you serious?

Ms Rees—Absolutely.

CHAIR—Well, can I say that it is a template perception.

Mr PRICE—It is not a rule, but it is the outcome and therefore people say, 'Well, that's what it is.'

Ms Rees—It used to be—in 1976, I suppose—that every second weekend and half the school holidays was the mantra. I do not think we have been there for a very long time.

CHAIR—The majority of people who have come before this committee and written submissions believe that that is what is offered. We have had evidence in this committee, as well, that that is what your legal adviser advises you: 'Don't bother going there, because you will only get 20 per cent and, if you want more, you really have to prove that your partner is unfit.' The people who have appeared before us—and the evidence will be there in *Hansard*—have said, 'But we don't want to do that; we really only want to spend a greater percentage of time with our child,' and that whomever has residence is not an unfit mother or an unfit father. We have had women and men who are non-residential parents coming and saying exactly the same thing: 'We do not want to prove that our previous partner is an unfit parent; we just want to extend the percentage of time we can have with our children.' But they are encouraged to pursue that because, on the face of it, there is an unwritten template, an unwritten law, that it is 80-20 in favour of the resident parent through interim order.

Ms Rees—I suppose we come back to what Ms O'Brien said in her opening remarks—that there is an awful lot of misinformation out there.

Ms O'Brien—That is so far from how the system is actually operating on the ground. It does go back to one of the things that I said in my opening remarks. One of the things that we find in community legal centres—particularly, as Rosemary has already alluded to, as we actually get people right at the end of the process—is that one of the best things that we offer is actual advice about how the system works, what happens in the system and how these things are what I call bush lawyerdom or urban myths. They simply are not how the system works.

We find that once people understand how it all works—and they understand through advice and information we provide free of charge—often the situation becomes much less conflicted because they are not expecting to be done over on an 80-20 formula or to have to prove that each other is unfit. That is a term which does not exist within the family law system—the 'unfit parent' or the 'fit parent'—and 'custody' does not exist in the law system either, along with some other things.

We have found, invariably, that when we run community legal education sessions throughout our communities or when we see clients—and we see up to 250,000—the amount of conflict in the situation reduces dramatically because people know how the system works. I think it is really indicative—and this is something that your committee could take on as one of the things that could come out of this inquiry—that it is not just the people on the ground and in these difficult situations who live through all these myths about what things mean and how the law works; these myths are so far endemic that you yourselves are in fact repeating them to us as if they were how the system works.

Mr PRICE—You say there are urban myths and misconceptions and I accept that. You can even say that we are ill-informed. But why wouldn't we be, with section 121 of the Family Law Act that has it operating like a star chamber? How can ordinary people understand the processes of the Family Court if there are such injunctions on publicising cases? Could I ask each of the organisations: what are your views on section 121 and do you believe it should be reviewed?

Mr M. Foster—Firstly, it has just been reviewed.

Mr PRICE—By the McCall review.

Mr M. Foster—Yes, but, secondly, it is not restrictive. It is amazing to me that the press are so weak. The only thing they will take any interest in is high-profile or scandalous cases—cases of great intrigue to the public.

Mr PRICE—But you can only base that on pre-1975, because there was a total prohibition after 1975.

Mr M. Foster—No, there is not a prohibition—

Mr PRICE—Without identifying the parties.

Mr M. Foster—Exactly. So the press could all the time be running—

Mr PRICE—But they don't.

Mr M. Foster—That is right. But that is not a criticism of the legislation; it is a criticism of the press and I guess in the end that is a criticism of the public who are not interested in reading about ordinary cases.

Mr PRICE—But if the intention of 121 was to afford publicity, which it was—and that was a result of a parliamentary committee—then shouldn't we move further, particularly when Ms O'Brien was saying that there is a whole raft of ignorance out there? Why shouldn't there be more but with the safeguards?

Mr M. Foster—If the law is satisfactory at the moment, then you do not achieve your object by changing the law. The law is satisfactory. It is a very good idea that children do not find that their parents' names are plastered all over the newspapers. That is a really sound law. But if you can put a rocket under the press, that would be very much appreciated. We would like more people to know.

CHAIR—I want to move on to Mr Dutton. Before I do, I want to state my absolute amazement that every day I am in my electorate office somebody in this situation comes before me, and they are all of the opinion that the unwritten template of 80-20 exists because that is what they come to me for. That was well before this inquiry ever began. Can I state my absolute amazement on the record that the representatives of the Family Law Section of the Law Council of Australia have never heard that. That to me—

Mr M. Foster—But with respect—

CHAIR—and neither has—and I will not leave you out—the National Association of Community Legal Centres, which absolutely staggers me. I am not sure who we should be educating here, because it was presented that even we, as a committee, are quoting this back to you. Let me say quite categorically that, well before this inquiry was ever initiated or commenced, these same assertions were coming across our desks. It is just staggering that there is no knowledge or understanding that this happens and that this is there.

Ms O'Brien—I want to make clear that my point was that people do come to us with these sorts of urban myths and it is when we tell them that this is not how the system works. That was my point. I think that the transcript will show I was not saying we had never heard of such a thing.

CHAIR—I am sorry, then. I will not apply it to you; I will apply it directly to the Family Law Section of the Law Council, who have said quite categorically and quite clearly, 'Never heard of it.'

Mr PRICE—That is getting into semantics.

CHAIR—No, it is not, Mr Price.

Mr PRICE—Yes, it is, because their position is the same as Ms O'Brien's.

Ms Hughes—From the legal aid perspective, it is quite true that there is a certain amount of urban myth. People come to me as a family law practitioner and say, 'Well, he or she will only get every second weekend and half of the holidays, won't they?' So there is a perception—it is a hangover from the days of custody and access—that that may be the case. I know of no family lawyer, nor of any counsellor or mediator who practises regularly in the field, who will say, 'Yes, that's right. If you go to court, your partner or you will only get every second weekend and half of school holidays.' There has been a big shift in society and there has been a shift in the practice of family law, such that parents are encouraged to find a shared arrangement or an arrangement that is best for the children—and it is certainly not necessarily a template of every second weekend or half of school holidays.

Even where it is considered that it is good for a particular group of children in a family to have some amount of stability, the courts will often order or parties will negotiate an arrangement that, for instance, the children might go from Wednesday after school until the commencement of school on the following Monday to the other parent so that they have a nice big block of time, which has ordinary homework time and ordinary family interaction, while still having a week and a half at the primary home. There are quite creative solutions being negotiated every day—and being ordered by courts—even at the end of a fully contested hearing. But there is a perception that lingers. We still get people coming into our office saying, 'I want custody.' Custody has not existed in the Australian legal system for years, yet people still have that perception. It takes a long time for things to filter through to the community.

Mr PRICE—It is even in our terms of reference!

CHAIR—Because it has not changed, and that is why it was.

Mr DUTTON—Mr Reaburn, I just want to ask you about the referral process that you spoke of in your opening statement where you have enjoyed some success. Could you just tell us a little bit more about how that operates and the reasons for its success?

Mr Reaburn—When we receive applications for assistance, whether it is for assistance to do alternative dispute resolution or assistance to go to the Family Court, we push as many of those toward our PDR program as we can. We think they are successful because we hand-pick the people who run each of the PDR conferences. Mr Michael Foster was asked a little earlier whether lawyers were good as arbitrators and things like that. We actually pick lawyers to do this, but we pick them very carefully in terms of their skills, experience and character, and then we put them through a very intensive mediation training, which was specifically designed for this program. In order to achieve consistency, we picked very few. We keep them fairly busy.

We think it is successful because we can encourage people through this process to understand the value of coming to an agreement. Part of that value is the point that you have made, Madam Chair—that of course it is a matter of negotiating under the shadow of the law. In effect, part of it is an appeal to the better interests of the parties concerned, both the value and the practical better interests. Part of it is that we say to them, 'We're going to give you assistance to do an alternative dispute resolution but, if you can't make this work, there is no guarantee that we will give you any other assistance. So don't imagine that you can sit there and say, "No, I won't cooperate with this because, when this fails, I can go to the Family Court."' We have the attitude that you can, but not with our assistance. So we do put a bit of pressure on the parties in that way

and we do give them legal representation for precisely the reasons that Mr Michael Foster mentioned earlier: so that people feel that they are not being pressured into something without having independent advice.

In this program, that is really what we are doing. We are saying, 'We're going to put you into a bit of a hotbox situation here to see if you can produce some agreement, but we don't want to put you in a situation where you feel you are totally on your own and you are being manipulated by people who know more about it than you do, so here is a lawyer each and you can get advice.' But our chairs work on the basis that it is not a proceeding where the two lawyers come in and talk to the chair of the conference. The two parties come in and talk to each other and to the chair of the conference and the lawyers are there as adjuncts to them. This is not uncommon in these kinds of programs. In terms of leaving all issues fully sorted or all the issues substantially sorted but with maybe a few loose ends, if you take those two categories, we get about 90 per cent. Furthermore, we have been running it for a number of years and we do not have any indication that these things are collapsing. In other words, four months after the meeting they are not saying, 'Gee, it's all fallen in a heap,' and everybody is dissatisfied and they want something else.

I think it works for those kinds of reasons. But we do not send people that we think are really fixed, rigid and already in seriously adversarial positions into that program because we know that it will not work for them. For those people, we try to make a judgment and say, 'Here are a couple of people who, if they are going to get out of this, are going to have to be put in a situation where somebody else can say, "Sit down and shut up, you two, I'm making the decision"', because they are not ever going to be able to do it.

Mr DUTTON—Would you describe alternative resolution as a non-adversarial system?

Mr Reaburn—Yes, I would.

Mr DUTTON—The majority of evidence that we have had from child psychologists and from people that claim that they are acting in the best interests of the child would suggest to us that the non-adversarial system is preferable to dragging people through the Family Court process, that some parties spend over $100,000 each, and that the interim orders are an inflexible document because of the reasons we heard about before like the delays and the fact that circumstances change when there are new partners or step-siblings introduced, or whatever the case may be. Would you lend weight to that body of evidence, or would you support the Family Court system as it is at the moment?

Mr Reaburn—I and National Legal Aid have plenty of criticisms of the Family Court system. The difficulty about it is that you say that there should be a distinction between non-adversarial and adversarial. I would rather see it as there being a situation which is adversarial. Some of the contexts in which you try to resolve those situations amplify the 'adversarialness' already going on. Some of them do not; some of them actually operate to dampen it down. But make no mistake: we talk about the huge numbers of people that can virtually go off by themselves and sort this out; that is not adversarial. There is tension there, but it is not adversarial. Groups that are adversarial towards each other come in like that; the system does not produce it. They produce it first and then almost, in a sense, look for ways to magnify it. One of the criticisms you could make about the Family Court is that some of the things they do have a primary effect of

magnifying that adversarialness, when they could do things that would dampen it down a little bit. But you are not going to be able to say: 'If we change the court structure, we will produce a situation where there isn't adversarialness,' because you have to start outside the system with that kind of thing.

Mr DUTTON—What about this tribunal process that has been suggested to us where you would have, say, a three-person tribunal outside the Family Court? There may be one lawyer present as part of the make-up of the tribunal, somebody legally qualified or who specialises in family law who would represent the legal interests—for lack of a better description—of the two parties; a child psychologist who would represent the best interests of the child and advise what would be developmentally appropriate for that child; and somebody else that might have some counselling or mediation skills to provide the tribunal with some teeth, I suppose, or an ability to provide an outcome. Do you think that has merit?

Mr Reaburn—When you say 'an ability to provide an outcome,' do you mean that, for example, the tribunal would be entitled to make orders about the care of and responsibility for children and the division of property?

CHAIR—No, the division of property would be left to the Family Court. It does not come under our terms of reference in any case. I am talking about taking away the division of children in an asset sense—which is what may be done with the matrimonial home—and the tribunal approaching it from the point of view of what is in the best interests of the children, primarily, and then that of the parents, for the future easy transition of the relationship between the three. So they would have the capacity to make what are now specific interim orders or final orders.

Mr Reaburn—If that were the case, you would find that the lawyers would have you, hip and thigh. If it made orders of that kind that people had to obey then somebody would run it up to the bloody High Court. The High Court would tell you that it was an exercise of the judicial power of the Commonwealth and that the tribunal had to be a court.

Mr PRICE—The two professors who appeared before us made the suggestion that residency and contact could be dealt with administratively. If we were of a mind to go down the tribunal path, we could very well start it in Western Australia under the Western Australian constitution with no difficulties whatsoever, and avoiding what occurred in Brandy's case.

Mr Reaburn—You could deal with them administratively, and that might reduce the ability of the tribunal to make the kinds of orders that you have just been describing. I promise you that I will not fund any of the cases, but I would watch with great glee because the whole point is that in this area—I simply say this as a matter of principle—you have to be really careful because the lawyers have you in a vice and they want to keep you there. I do not mean lawyers like Mr Foster.

Mr PRICE—There are exceptions.

Mr Reaburn—I mean the constitutional lawyers, the professors and the High Court, because it allows them in a sense to run the system, rather than the parliament and the people.

Mr DUTTON—I appreciate those reservations, but if we put aside those perceived constitutional impediments, if we said that we would be able to settle those—

Mr Reaburn—Putting those aside, I would be happy to support an idea like that, because it might bring greater elements of expertise and choice to what is happening. In a funny way, the Family Court is moving parallel to that situation in the way in which it is now starting to set up a new structure for expert evidence. Their proposals about expert evidence come very close—in terms, I suspect, of consequence—to the tribunal suggestion that you are putting to me.

Mr DUTTON—I hope that course is under their own steam and that they are not being dragged to a position they otherwise would not have liked to adopt.

CHAIR—No, they were doing it.

Mr Reaburn—No. They are involving the profession, legal aid and the various other people you would expect to be involved in that.

Mr DUTTON—I will put a scenario to you for your comment. I am a part-time self-employed carpenter—and my dad is a builder, so they are people of a very good ilk—and I have come to you for advice. I have just separated from my wife, and we have a five-year-old child from our relationship. I tell you that I find myself in a difficult situation. My wife has said to me that I can only see my child every second weekend and that I can pick him up on Saturday morning at nine o'clock but must have him back at three o'clock on Sunday afternoon. As a concession, she says I can have him for half of the school holidays from next year, when he will be going to school. Providing that I met all the requirements to receive legal aid—and, after you had spoken with the other side, you had a pretty strong impression that they were not going to budge on their position and that it was not really going to be a process that was capable of being negotiated—what would be your advice to me and how far would you progress it?

Mr Reaburn—I would probably send you to primary dispute resolution, even though you are saying to me that they are not going to budge. We would look at that, and we would want to organise a conference. We organise conferences pretty quickly. There would not be a great delay involved in us doing that, and that is another reason why we would take you down that path. We would hope that that would produce a result that was capable of satisfying the sorts of concerns you had put to us and, in effect, the concerns on both sides. We would wait and see what happened with that.

If that did not work, what we would in effect have is a report from the chair of the conference, and one of the things he would report on would be your attitude. If he thought your attitude was that of a sensible, grown-up person, he would say to us that it was worth assisting you to go a bit further down the track. That would not determine what we do, but we would take a large amount of notice of that assessment of your approach to the issues involved. If we received an assessment that you were a reasonable, grown-up person, as I am sure we would, we would probably assist you to make an application, probably in the Magistrate's Court.

Mr DUTTON—What outcome would you envisage?

Mr Reaburn—We would not envisage a total expectation of abject failure in the application. If we did envisage that, we could not give you the assistance, because it would fail our merits test.

Mr DUTTON—Would you say to me, 'This is what you are asking for but, realistically, based on our experience of thousands of clients, this is what the outcome is going to be'?

Mr Reaburn—No, we would not say that. Interestingly, in legal aid our experience is a little bit different. Because of the people we assist, we actually see—don't we, Kate?—an enormous range of quite creative orders about the sharing of children in terms of time spent, occasions and things of that kind. Sometimes it is because we have the clients from hell, who need to be nailed down for every five minutes of the year; sometimes it is because we are dealing with people who either do not work very much or are totally unemployed, so there are opportunities for creativity there; and sometimes we are dealing with people who have the time to focus on these kinds of issues—as in 'I've got nothing better to do than to focus on this'—and that can sometimes produce some extraordinarily imaginative ways of trying to sort some of this out. I see creative orders all the time.

Ms Hughes—Mr Dutton, I think the scenario that you paint is a particularly difficult one for legal aid. If I as a legal aid officer were advising you about your prospects of success in obtaining more contact than you had been offered, my advice would be, yes, you are likely to obtain much more contact than what is being offered at the moment—Saturday morning to mid-afternoon on Sunday—unless there was some disqualifying factor in your case. But the legal aid question is really quite difficult because the Commonwealth government imposes the funding agreement that says there are—

Mr DUTTON—Look at it from a practitioner's point of view, then. If you were in private practice and the same scenario presented itself, what would you say? You said you think that you would get more care.

Ms Hughes—It is a question then of do you want to—

Mr DUTTON—What do you base that comment on? I might then say to you, 'What do you think I can get? Do we need to go to court? Tell me what we're going to get if we go to court and then I'll decide whether or not I want to spend the money.'

Ms Hughes—If you are a part-time worker and you have a child who is not yet of school age, it may be that you can pick up the child several days a week when you finish work, spend the afternoon with the child and drop the child home or keep the child overnight—all sorts of arrangements may be in place. But the question you would have to ask yourself, whether you were a private payer or a legal aid client, is: how much money do you want to spend on incrementally increasing your amount of contact? If you have unlimited resources, you can go to court. If the other person is going to be unreasonable, they have to make a decision too: how much time and how much money are they going to invest in resisting what appears to be a perfectly reasonable application?

For the legal aid dollar, we have to be satisfied that spending very scarce legal aid money is justified in pursuing something when you have contact, when there is an agreement. If there was

unlimited money, of course you would say, 'We want to pursue this matter in court because the other side is being absolutely unreasonable and there is no reason why this child should not have the benefit of a proper relationship with his other parent.' But there is not unlimited money, and so you might come up against that particular hurdle.

Mr DUTTON—Sure.

Ms O'Brien—Just to take the other side, one of the things that is likely to happen in this scenario is that your partner may apply for legal aid and will be conflicted out because you have applied for legal aid. Your partner will become one of our clients, and how we deal with the scenario is the other side of a very different coin. Rosemary might add something.

Ms Budavari—I wanted to add that as a lawyer I would be talking to you about the section 68F factors in the Family Law Act: your relationship with your child, the nature of that relationship; the nature of the relationship that the child has with others—I know you said there is only one child—if there are siblings involved; and the background of that child—is that child Aboriginal or Torres Strait Islander? That is something we have not talked about much here this afternoon, but they are a big proportion of our clients and they have—

Mr DUTTON—Can I assure you that we have taken evidence in Darwin and in North Queensland, for argument's sake. I wanted to ask—

Ms Budavari—That is great. I suppose the bottom line is that I would be saying to you, 'Why are you saying that your proposal is in the best interests of this child and how can you meet each of those factors?' Because that is the evidence you are going to have to put before the court: whether what you are proposing is in fact best for this child. So the advantage of a discretionary system, as opposed to fixing the arrangement at either 80-20—if we are going to talk about that—or fifty-fifty, is that all of those things come into play, and the bottom line is that you are looking at what arrangements are best for that child.

Mr DUTTON—I have a final question for Kate. You state in your submission with respect to grandparents and the consideration of legal aid—and that is part of the terms of our reference—that you believe the current provisions are adequate. Can you explain that to me? We have had a lot of grandparents before us that would disagree.

Ms Hughes—The legislation provides that children have a right of contact with significant people and, for many children, significant people are grandparents. In a lot of situations that can simply be negotiated, but for some people—for instance, where you have parents who may have mental health problems, issues of drug addiction or other particular issues—it may be that a grandparent has, in fact, been the primary carer for the children for many years. In a more traditional situation, where you might have a family where a grandparent is alienated and does not have contact with that child, there is no reason why the grandparent cannot make an application to the court and ask the court to order mediation or counselling to try to resolve the situation.

Mr DUTTON—Just impediments of time and money.

Ms Hughes—There is nothing that stops a grandparent seeking contact with a child.

Mr DUTTON—That does not answer my question. You may have grandparents who are pensioners and have had reasonable contact with their grandchild and then the parents of the child separate and, for whatever reason, one set of grandparents is denied access even though they may have had contact and cared for that child in the preceding years. You are saying to me that the current provisions are adequate. I am saying that the outcomes are not adequate. The outcomes are not there. Assuming it is a contested matter and a high-conflict situation, a grandparent would need thousands of dollars to engage counsel to proceed in the Family Court. How can you say to me that it is adequate?

Ms Hughes—I am not necessarily saying it is adequate; I am saying grandparents—

Mr DUTTON—I am just quoting your submission.

Ms Hughes—I am saying that a grandparent is not in a different position to any person significant to the child. Any person is faced with the barriers of expense and difficulty if the person on the other side of the issue is intractable, difficult or unwilling to negotiate. If you have a situation where one set of grandparents is alienated as a result of the breakdown of a relationship, that grandparent can approach through mediation or counselling and make an application to the court. I am not saying that these things are necessarily easy; they are difficult psychologically and financially. A grandparent can apply to a legal aid commission for assistance. For a lot of people, achieving the outcome they want is difficult. The situation of grandparents is not different to other people, in that sense. There is no legal impediment to them approaching a court or their child or their former child-in-law about the issue.

Mr Reaburn—I think the point we are making in the submission is simply that the fifty-fifty presumption that the committee is required to look at is capable of operating in circumstances where the dispute is between a grandparent and a single parent. But, where there are two parents and a grandparent, the presumption would actually have to be expressed quite differently in order for it to operate in a way which might produce an outcome in that context. I think that is really the point that we were getting at in our submission. If that is not sufficiently well drawn out, I apologise.

Ms Budavari—Community legal centres are starting to see more and more grandparents. That is because often they are asset rich, which means they will fail the legal aid merits test. They do have time to make those applications and we are assisting them to make those applications. We are getting some quite good outcomes. The other monetary aspect of it is that if they are on a pension, for example, they can get a waiver of the filing fees in the Family Court or the Federal Magistrates Service. We are finding that a lot of these cases settle, as Kate mentioned, at that case assessment conference where the parties are brought together. That is the first step in the Family Court. Often grandparents are getting consent orders at that stage. I am also aware that in Canberra there is a program at the moment run through Relationships Australia and Marymead which is supporting grandparents. We would certainly be working cooperatively with those programs. There is movement there. I suspect that what is facing grandparents particularly is this urban myth we have talked about this afternoon.

CHAIR—It is probably not even that; it is probably lack of education and awareness of the possibilities that exist out there.

Mr PRICE—We have focused on the presumption of joint rebuttable residency. If we were to make some changes to family law, what would be the changes you would like to see us make? What changes would each agency recommend?

CHAIR—You may like to take that on notice and provide a response back to the committee.

Ms Hughes—I would like to take that on notice, because it is such a great opportunity, but I would like to make two brief comments. If you want to move things along and shift the change a bit more rapidly to put a greater emphasis on shared arrangements, we have suggested in our submission that, as part of the section 68F(2) factors, you consider whether the court or people negotiating in the shadow of the law be required to consider whether this is an appropriate circumstance for a shared arrangement. Our concern about a rebuttable presumption is—

Mr PRICE—Yes, I follow what you are getting at.

CHAIR—If you could take that on notice and respond, that would be most helpful.

Mr PRICE—It is a fair point.

Ms O'Brien—We would like to take the point on notice. One of the things we have not had time to turn our attention to is the impact of any of these changes or decisions in areas of Australia which are generally referred to as remote rural and regional areas, where there are no PDR and ADR services; the courts come on circuit. We would like to take those things on board too.

CHAIR—That is fine. We have taken evidence on that as well.

Mr M. Foster—We would say: don't change the laws. The main thing is the resource thing. It is really important to provide the resources for the counselling up front that always worked but has been taken away, more counselling and other PDR things within the Family Court and outside the Family Court and more resources into the court system so that if you do have a case that does need extra assistance or ultimately a tribunal decision then it happens quickly.

CHAIR—Thank you for attending this afternoon; it has been most helpful and provides the committee with some great insights. Your submissions are also of great value to us as well.

[3.38 p.m.]

BOLTON, Ms Genevieve, National Liaison Officer, National Welfare Rights Network Inc.

PRIEST, Ms Julia, Welfare Rights Advocate, National Welfare Rights Network Inc.

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

Ms Priest—Thank you for the opportunity to address you today. The National Welfare Rights Network have made a relatively brief submission in which we detail the implications of a presumption of joint residency for the social security system. Eligibility for many social security payments is dependent on complex criteria, one of which, in relation to some payments, looks at the dependency of children. When we saw the terms of reference of this committee, we immediately thought about the implications that such a presumption may have for the already complex social security payments system and wanted to draw to your attention and highlight some of the exacerbations such a presumption might place on social security legislation. It is an area of law which is relatively complex.

Welfare rights centres are located throughout Australia, but there are not very many of us. Including some practitioners in legal aid, there are probably not very many lawyers, solicitors or advocates that specialise in social security law, which is why we thought it was important to put our concerns to you in writing. The current social security system is a complex area of law. I know that you have had submissions from the Department of Family and Community Services and have been recently addressed by Mark Sullivan, the Secretary to the Department of Family and Community Services. We would like the opportunity to put to you some concerns that we have that such a presumption might impact upon social security payments.

The two areas that we want to focus on today in a bit more detail are the implications for the payment of parenting payment single and the implications for family tax benefit. Briefly, in relation to parenting payment single, as you may well be aware from our submission, it is a payment that is only payable to one parent, so, even where both parents have a significant share in responsibilities, only one of those parents is able to claim that pension. Generally, and practically, it is usually the parent who makes the claim first who is the parent in receipt of that pension.

We represent and are contacted by people who are reliant on income support—pensions and allowances. It has certainly been our casework experience that we have had parents who have a significant caring responsibility—generally men—who are in receipt of Newstart allowance and are ineligible for parenting payment single because their ex-spouse is receiving that payment. The difficulties they face are that in receiving Newstart allowance they are required to meet

activity test requirements in order to remain eligible for payment. That basically involves looking for employment. We have experience that people have difficulty negotiating with Job Network members flexible preparing for work agreements that can take into consideration their caring responsibilities. When a parent is in receipt of Newstart allowance, the rate of payment they receive is less than the rate of payment they would get if they were in receipt of a pension, by approximately $30 a fortnight. As well as that, a person in receipt of Newstart allowance does not receive the more generous concessions that are available to pensioners—they do not receive the telephone concession and they are not eligible for a pensioner education supplement if they decide to study to improve their job prospects. So there are decided disadvantages in being a parent and being on Newstart allowance.

One of the recommendations we have made in our submission is that parents who have a significant caring responsibility, in the vicinity of 40 per cent or more, ought not to be precluded from receiving parenting payment single simply on the basis that the other parent is receiving that payment. We have concerns, as I mentioned, that the current preparing for work agreements, which unemployed people are required to negotiate, do not adequately take into consideration caring responsibilities and that a presumption of joint residency would exacerbate this problem.

The other area which we wanted to touch on today is family tax benefit. You may well be aware from the submission that family tax benefit is a payment under the social security system and is able to be shared by both parents, depending upon the level of care which each parent provides. We see significant numbers of people coming to our centres who have overpayments as a result of the shared care rules, as they are generally known. That is quite a complex area of the law as well.

Our submission highlights examples where people have been in receipt of 100 per cent of family tax benefit partly because of the transition period when family tax benefit was introduced and the threshold at which family tax benefit could be shared was lowered. We have a number of cases coming to us where people have been in receipt of 100 per cent family tax benefit and were unaware that they were not entitled to 100 per cent on the basis of the fact that they have not got their children in their care for 100 per cent of the time. Somewhere down the track, the contact parent lodges a claim for family tax benefit and is legitimately paid that payment, but the result is that there is a significant debt to the parent who has been in receipt of the higher level or the 100 per cent family tax benefit. In many circumstances that debt is borne by a parenting payment single recipient. The case study in our submission highlights an example, which is not uncommon, where the contact parent who legitimately receives family tax benefit does not receive as much in arrears as the residential parent received by way of overpayment, and that is a windfall to the government. That is an area in which we would like to see some consideration given to changing the legislation.

Significant research, which has been done relatively recently by ACOSS, would suggest that the adequacy of family tax benefit, where it is split, is not sufficient for low-income families—that is, the indirect cost of raising children does not necessarily get shared when the level of care gets shared. So, while we would recognise that there are significant costs associated with contact parents maintaining and instigating contact with the children, there are problems where that results in the residential parent losing family tax benefit. We would like to see an allowance being made to contact parents in recognition of the costs associated with maintaining contact with the children, but not necessarily at the expense of the residential parent.

To quickly sum up, we see that a presumption of joint residency would raise the stakes for many of our clients in terms of what it does: it threatens their income support payments; it reduces perhaps the amount of family tax benefit which they receive; and, for contact parents who have a significant amount of care and responsibility, the current system is not flexible enough to accommodate the care and responsibility that they have.

CHAIR—Thank you, Ms Priest. I think this is a great submission because it certainly brings to our attention aspects of what we need to come to terms with. With respect to making any recommendations, we certainly have to be cognisant of all of these issues. So I thank you for that because these are the things that we have to put together in respect of what takes place in finality.

Mr PRICE—What would you like to see us change?

Ms Priest—We would like to see the recommendation that we made initially, which is that parents who care for their children for at least 40 per cent of the time should be eligible for parenting payment as well. That would mean that, presumably instead of receiving Newstart allowance, they would receive parenting payment, which is paid at a higher rate and for which there is not the same degree of onerous mutual obligation placed upon them as is currently borne by Newstart allowance recipients. A concern of ours would be that parents who are unable to comply with the preparing for work agreement or the activity test requirements placed upon them when they are on Newstart allowance would be breached. As I am sure you are aware, without going into too much detail, the financial penalties of being breached under the social security system are quite severe. Of course, for people who also have dependent children, the implications of losing such a high percentage of their fortnightly allowance would have ramifications on the children and increase the chances of poverty in those families. Parenting payment single is quarantined from the harsh mutual obligation penalties that are borne by Newstart recipients.

Mr PRICE—So if we shift that 40 per cent, how do we get over the problem with the child support formula where 94 per cent of people have sole residency—and shift them into more categories of shared residency?

Ms Priest—We are certainly not experts in the child support formula. We are not child support solicitors in the Welfare Rights Network but my understanding is that under the child support formula liability is dependent to an extent upon the level of care that a person has.

Mr PRICE—Yes, very much so.

Ms Priest—So presumably if a parent had their child for 40 per cent of the time the child support liability would reduce. The impact would be on family tax benefit due to the interaction of the child support payment and the family tax benefit child support income test. That would mean that, if, for instance, we had two parents in receipt of parenting payment single, the amount of child support which would be paid, presuming they had no income, would be the minimum amount of child support which is $5 per fortnight.

Ms Bolton—That is $5 per week.

Mr PRICE—What if one of them did have income other than Centrelink income?

CHAIR—If they had an income, a wage or even their own business?

Mr PRICE—Yes, or what would happen if they had a part-time wage or whatever?

Ms Priest—My understanding—and perhaps this is something that might be best addressed by child support solicitors—is that if they are in receipt of income support payments from social security, which would be a Newstart allowance or a parenting payment single, their child support liability is $5 a week.

Ms Bolton—Yes, I think that is correct.

Mr PRICE—I apologise; why are you advocating the 40 per cent? I do not understand.

Ms Priest—The reason we are advocating that parenting payment single be paid is that it is a preferable payment to Newstart allowance. So the amount of money that a parent would receive would be more per fortnight under parenting payment single than it would be under Newstart allowance. So, taking child support out of the equation for a minute, it is simply a matter of the amount—

Mr PRICE—Is this the situation where the children turn 13? You will have to help me here, I apologise.

Ms Priest—Parenting payment single is paid in respect of a person who has a dependent child and that can be paid from age zero up until age 16. So it would be our position that any parent who has their children a significant amount of the time—and we have come up with the 40 per cent as reflecting a significant proportion of time—would be eligible for a parenting payment single. I am referring to the old sole parent pension, as it used to be known.

Mr PRICE—So we are talking about those families where the children are 16 years or older—they should not go on Newstart but single parent payments?

CHAIR—No, younger.

Ms Priest—No, we are talking about those families where the children are younger than 16.

CHAIR—We are talking about those parents who have children younger than 16, who would be on a parenting payment. And if they were unemployed and had their children for 40 per cent of the time you say that they should get parenting payment?

Ms Priest—That is right.

CHAIR—Then, once they get to age 16, the children go on youth allowance or Newstart allowance, depending on whether they go for a job or they are still students. They then get the payment themselves; the parent no longer gets the payment. So, basically, if you have as a single parent your children 40 per cent of the time, you should be getting a parenting payment as well.

Mr PRICE—Okay. I apologise for being thick.

Ms Priest—Social security legislation is quite complex.

Mr PRICE—When currently would they be on Newstart allowance?

Ms Priest—They would be on Newstart allowance if the parent is on parenting payment single. The legislation currently prevents two parents from receiving the pension.

Mr PRICE—Yes, I have got that. I know you say that you are not child support experts, and I accept that, but do you think the committee should look at a variation in child support, say, for from zero to three, from four to 12, and then 13 to 18?

Ms Bolton—I do not think we are in a position to provide a response to that question.

CHAIR—That is fine.

Mr DUTTON—Thank you for your submission. I think it is very useful to us, and it is an area that we need to properly consider as part of any recommendations that we make. The family tax benefit is paid on a proportional basis depending on the amount of time of care. Why don't you advocate the same system for the parenting payment partnered—if it was 40-60, and that is the case under FTB, why wouldn't we apply the same process to the parenting payment partnered rate? Is it just a dollars argument or is there a more ideologically based argument to it?

Ms Bolton—Parenting payment single, which I think you are referring to as opposed to parenting payment partnered, is—

Mr DUTTON—No. Let us work on that, because if the couple were together, they would get the partnered amount for the family. Let us base it on the amount the family would receive in FTB part A, for argument's sake. If you apportion the FTB, why not apportion the partnered amount based on the care percentages?

Ms Bolton—I think it is important to appreciate that we are dealing with two very distinct payment types. The parenting payment is what we call a full income support payment. It is paid to an individual who happens to also have the responsibility of looking after children. A parenting payment has a similar structure to, for example, a Newstart allowance payment. The difference is in the requirements a person has to meet in order to continue to satisfy the requirements for that payment. The family tax benefit is, in actual fact, a very different payment under the social security system. It is a payment which is paid as a supplement to a payment like parenting payment or Newstart allowance. The purpose behind the family tax benefit is to provide direct financial assistance to assist in the raising of children, whereas that purpose or rationale does not stand in the same way for a parenting payment.

Mr DUTTON—I appreciate that, but I am not sure that I am any clearer as to the argument for or against.

Ms Priest—If the parenting payment was paid on a pro rata basis depending upon the level of care, as you suggest, in some instances it would not be adequate as an income support payment,

so you then look at what other alternatives are available to that individual in order to adequately support themselves. The most obvious one would be seeking employment. If, for instance, a person had their child 40 per cent of the time and they only received 40 per cent of the rate of parenting payment, that would not be enough, so then they would be required to gain income from another source, which must necessarily be looking for work. That in itself creates a problem similar to the one that we have expressed that Newstart allowance recipients have. It would be difficult for a parent with significant caring responsibilities to juggle those demands together with the demands of looking for work and finding suitable work that would still allow them to meet their caring responsibilities. It is certainly a difficulty—this is again through our casework—that we have seen men in receipt of Newstart allowance encountering: they want to care for their children more often than perhaps they are but they are unable then to easily satisfy the activity test requirements. It is difficult, particularly for those people who do not have many work skills, to find employment that is flexible enough to accommodate their caring responsibilities. The same would apply if we were to pay parenting payment on a pro rata basis. It would exacerbate that problem of parents then trying to find suitable part-time work that would accommodate those caring responsibilities or then being at risk of perhaps losing an income support payment.

Mr DUTTON—I do not understand the argument. I respect what you are saying, but for intact families the same problems present themselves if the mother wanted to go out and find part-time work, for argument's sake, and put the child or children into day care for two days a week or indeed worked when they went to school. But under your proposal the real difference—and I understand there is some monetary difference—is that we would not be placing any activity tests on them under either suggestion, whether we split it proportionally or if they each receive the single parenting payment. There would be no obligation on both parties to engage in work at all, would there?

Ms Priest—You may be aware that, under the Australians Working Together initiatives, there are increasing obligations being placed on parenting payment recipients. Currently, as of 26 September this year, there is a requirement that parenting payment recipients whose youngest child is over the age of 13 attend an interview with Centrelink in order to talk about their proposed plans in preparing themselves for work, becoming work ready. Under those initiatives, a parenting payment recipient is not able to be breached, for instance, and suffer a loss of penalty for not attending that interview. They are required to attend the interview but they do not suffer the breaching regime that is currently in place for Newstart allowance recipients.

It is admirable and certainly preferential for Centrelink to encourage carers to maximise their income by taking up offers of employment to prepare themselves for the eventuality of no longer being eligible for a part pension when their child turns 16 and to encourage them to think about their future educational needs or what they may need to do to be work ready. Centrelink has taken steps, through its personal adviser program, to have in place specialist staff that are able to talk to parenting payment recipients about those very measures. The difference is that, under mutual obligation for Newstart allowees, there is such a heavy emphasis on punitive measures and penalties that we would really not like to see that extended to those people who have significant caring responsibilities, because of the implications for the family.

Mr DUTTON—I understand that, but under your proposal we are faced with the proposition that two parents could be on a parenting payment single. Really, there would be no activity test,

no mutual obligation, up until the child reached the age of 13. So, conceivably, there could be a gap of 13 years where there would be no activity testing at all. Would we not then be compounding the problem for those people that you are suggesting Centrelink are trying to equip to go forward post that period? Is it not a compromise to take the one parent out of newstart, where the activity tests do exist, and put them into the same position as the parent that had previously first applied for the parenting payment single, split the parenting payment between partners and not have a mutual obligation on either so that each of them would be able to satisfy their shared care agreement, if you can put it that way, and still have the ability to only apply for work or target positions that might fill in the other three or four days a week—or two, three or five days, whatever the case may be?

Ms Priest—Again, under the Australians Working Together initiative there will be an extension of that measure—I am sorry I cannot tell you what date that will be—whereby parenting payment recipients whose youngest child is six or more would be required to undertake an approved activity of the equivalent of six hours a week. I think it is 150 hours every six-month period, which equates to six hours a week. That initiative has not yet come into place, but it is designed to assist a significant group of people to perhaps do more to prepare themselves for work or become skilled or become trained. As I have mentioned, anything Centrelink does to encourage that is certainly admirable. Our only reservation is the punitive penalties that might be associated. Through negotiations that we have been involved in with the Department of Family and Community Services, the National Welfare Rights Network has been able to negotiate with the department to look at introducing those initiatives in a way that is not as punitive as the harsh measures which apply to newstart allowance recipients. We certainly like the concept of Centrelink doing more to assist those people.

Mr DUTTON—I know that you are not the experts on the child support side, but there are a number of non-residential parents who pay either nothing or as little as of $5 a week, which I think is appalling. Not only should they have a moral obligation but a financial obligation if they bring a child into the world. Would you support any strategy we had to increase that $5, for arguments sake, even if the payer were in receipt of unemployment benefits?

Ms Priest—Looking at the levels of unemployment benefits that are paid, any child support liability in excess of $5 a week would represent an increasing proportion of their newstart allowance benefit. That is something that our network has not developed a policy on. But what I can say is that the levels of newstart allowance that are presently payable certainly are not generous. I could see that it would present some difficulties for newstart allowance recipients who have income from no other source.

Mr DUTTON—How do you balance that with the payee with two children from the relationship who is also in receipt of newstart allowance and is only receiving $5 a week, for arguments sake, from the father of the children?

Ms Priest—That person finds it extremely hard to support their children. I do not know that there is an easy solution, other than perhaps looking at paying more generous family tax benefit allowances.

Mr DUTTON—This is not a government issue. The government provides an amount. Some would argue that we pay too much; others would argue that we do not pay enough. I am talking

about the obligations of the biological parents of the child and, in this case, the biological father who is paying $5 a week—and has been at that rate since this system of child support was introduced—to the mother of the child from the relationship towards the upbringing of that child. Five dollars now does not buy a packet of cigarettes. I do not understand how we can sustain an argument, regardless of a person's personal situation—whether they are unemployed or not—justifying payment on an ongoing basis at that appalling level of $5 a week.

Ms Priest—I would agree that $5 a week reflects in no way the actual cost of supporting children.

Ms Bolton—We would say that a person's level of income is an important factor when looking at what level of child support should be paid. Really, our point is that, in relation to the current rate of social security payments, we would have concerns with some of the difficulties that changes in levels of liability for child support might cause someone who is in full receipt of a newstart allowance.

CHAIR—Ladies, I must reiterate that the submission you made was indeed different to others we have received, but it is extraordinarily important that we consider those areas that are not obvious to us when we are looking at making decisions that may necessitate or warrant some change. This was one of the most extraordinary standout submissions that gave us information that we needed to consider. It really triggered us to look at these issues. Also, the recommendations you made are very, very helpful in understanding what you might be coming across every day. We thank you very much for taking the time out to appear today. As I said, it is the submission itself that is really very valuable to us because it does concentrate on the areas that we need to understand better and to get better information on.

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 4.13 p.m.